Neutral Citation Number: [2024] EWHC 2994 (Ch)

Case No: BL-2021-001664
BL-2021-001951
BL-2023-000902

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

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

Date: 29/11/2024

Before:

MASTER CLARK

- -

BL-2021-001664 ("the Ivan claim")

BETWEEN:

IVAN NORMAN

Claimant

-and-

N & CJ HORTON PROPERTY (a firm)

Defendant

BL-2021-001951 ("the Dean claim")

AND BETWEEN:

(1) SELECT LIFESTYLES LIMITED
(2) N&C HORTON (a firm)
(3) HORTONS MOTORCYLES LIMITED

Claimants

-and-

DEAN NORMAN

Defendant

-and-

NICHOLAS JOHN HORTON

Third Party

BL-2023-000902 ("the Crump claim")

AND BETWEEN:

(1) STEVEN CRUMP

(2) ACCESS PRODUCTS (MIDLANDS) LIMITED
(3) APL FORMWORK LTD

Claimants

-and-

(1) SELECT LIFESTYLES LIMITED
(2) N & C HORTON (A FIRM)
(3) HORTONS MOTORCYCLES LIMITED

Defendants

- -
- -

David Lewis KC (instructed by **Ingram Winter Green LLP**) for the **Claimant** in BL-2021-001664
Matthew Parker KC and **James Gardner** (instructed by **Peters & Peters Solicitors LLP**) for Select Lifestyles Limited, N & C Horton (a firm)/N & CJ Horton Property (a firm), Hortons Motorcycles Limited and Nicholas John Horton
Faisal Osman (instructed by **Weightmans LLP**) for the **Defendant** in BL-2021-001951
Alexander Cook KC and **Josh O'Neill** (instructed by **DWF Law LLP**) for the **Claimants** in BL-2023-000902

Hearing date: 25-26 July 2024, followed by written submissions on 29 August 2024

- -

Approved Judgment

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

.....

Master Clark:

Applications

1. This is my judgment on three applications in three related claims with common parties: two applications to amend and one application to strike out and/or for summary judgment, in all of which identical or closely related issues arise. There are also ancillary applications to admit expert evidence in relation to the substantive applications.

Claims and procedural background

BL-2021-001664 - "the Ivan claim"

2. In this claim, issued on 15 September 2021, Ivan Norman is the claimant. He claims the repayment of loans totalling £500,000 made between 28 March 2018 and 10 June 2019. I refer to him, without intending any disrespect, as "**Ivan**", to distinguish him from his son, Dean Norman ("**Dean**").

3. The defendant to the claim is N & CJ Horton Property ("**the Partnership**"), a partnership between Nicholas and Christine Horton, one of 3 family-run businesses of the Hortons.

BL-2021-001951 – "the Dean claim"

4. In this claim, issued on 28 October 2021, the claimants are the Partnership, and the other two family-run business of the Hortons: Select Lifestyles Limited ("**Select**"), and Horton Motorcycles Limited ("**Horton Motorcycles**"). Together, I refer to all 3 as "**the Horton parties**".

5. The defendant is Dean. He was initially Select's accountant, and then its finance director, with a break from 29 June to 15 July 2019, until the directorship finally ended on 17 August 2020. The claim is for breach of his director's duties, and includes a claim for an account. Dean counterclaims for repayment of a loan of £75,000 alleged to arise from a payment of that sum made on 3 February 2020 to HMRC on Select's behalf (at Mr Horton's request), and a personal indemnity from Mr Horton in respect of any breaches of duty by transferring monies from Select to Horton Motorcycles.

6. On 13 July 2022, Deputy Master Collaco Moraes granted the Horton parties summary judgment on their claim for an account in respect of 795 identified payments (referred to in the Horton parties' pleadings as "**the Account Payments**") to or from the bank or building society accounts of the Horton parties.

7. On 17 August 2022 Dean provided his account.

Proposed amendments in the Ivan claim and the Dean claim

8. On 28 February 2023 the Horton parties issued applications in both the Ivan claim and the Dean claim to amend their statements of case ("**the amendment applications**"). In each claim, the draft statement of case attached to the application notice has been superseded by a further draft dated 22 March 2024. No point is taken by Ivan or Dean on that.

9. The amendments in the Dean claim introduce, at paragraph 23A of the proposed re-amended particulars of claim ("**the re-am PoC**"), an allegation of money laundering:

> "… in breach of the duties pleaded in paragraphs 19 to 21 above, Dean Norman dishonestly used his control over the [Horton parties'] bank accounts and /or (direct or indirect) control over the accounts which transacted with them (including the accounts of the purported creditors) to operate a money laundering scheme by means of (among other things) the Account Payments, which were therefore not made pursuant to any legitimate loan transactions.[2]
>
> 2. The [Horton parties] adopt the definition of "money laundering" from section 340(11) of the Proceeds of Crime Act 2002."

10. Paragraph 23A then sets out that the existence of Dean's money laundering scheme is to be inferred from certain facts and circumstances, which are then set out, and to which I will return.

11. Paragraph 23B sets out the allegations of money laundering against Dean:

> "By reason of the aforesaid, [Dean]:
>
> 23B.1 concealed, disguised, converted and/or transferred property which he knew, alternatively suspected, constituted or represented a person's benefit from criminal conduct, in whole or in part, directly or indirectly, and thereby committed an offence under section 327 of the Proceeds of Crime Act 2002.
>
> 23B.2 further or alternatively, entered into or became concerned in an arrangement which he knew, alternatively suspected, facilitated the acquisition, retention, use or control of property by or on behalf of another person which property he knew, alternatively suspected, constituted or represented a person's benefit from criminal conduct, in whole or in part, directly or indirectly, and thereby committed an offence under section 328 of the Proceeds of Crime Act 2002.
>
> 23B.3 further or alternatively still, acquired, used or had possession of property which he knew, alternatively suspected, constituted or represented a person's benefit from criminal conduct, in whole or in part, directly or indirectly, and thereby committed an offence under section 329 of the Proceeds of Crime Act 2002.

23B.4 otherwise, attempted, conspired, incited, aided, abetted, counselled or procured the commission of the offences set out in the preceding paragraphs."

The total number of offences alleged in these paragraphs to have been committed is 105.

12. In the Ivan claim, at paragraph 15A of their proposed re-amended Defence ("**the re-am Def**"), the Horton parties repeat and adopt paragraph 23A of the re-am PoC in the Dean claim. At paragraph 15B, they allege that Ivan's payments to the Partnership of which he claims repayment were, "as [Ivan] knew and/or knows of or suspected", part of the dishonest money laundering scheme pleaded in paragraph 23A of the re-am PoC in the Dean claim. Particulars are then given of the basis on which knowledge or suspicion is alleged, culminating in, at paragraph 15B.6:

> "In all the circumstances, it is inherently improbable that [Ivan] became involved in the money laundering scheme being operated by his son without knowing or suspecting that was the case."

13. Paragraph 15C sets out the allegations of money laundering against Ivan, which are in substantively the same terms as those against Dean.

BL-2023-000902 – "the Crump claim"

14. In this claim, issued on 23 June 2023, the claimants are Steven Crump and 2 of his companies: Access Products (Midlands) Limited ("**APL**") and APL Formwork Limited ("**APL Formwork**") (together "**the Crump parties**") The defendants are the Horton parties. The claim is for repayment of an outstanding balance of about £1.4 million on loans totalling about £3.1 million made between 29 November 2016 and 1 November 2019, or alternatively, for restitution for unjust enrichment in that amount.

15. In their Defence dated 21 August 2023, the Horton parties accept that payments totalling £1,807,300.30 were made to one of them. Their defences include that:
    (1) there were no legally binding loan agreements between any of the Horton parties and any of the Crump parties;
    (2) even if there were such loan agreements, they are unenforceable by reason of illegality as having been entered into as part of a dishonest money laundering operation operated by Dean (now defined as "**the Money Laundering Scheme**").

16. The Horton parties allege that the Crump parties knew, now know and/or suspected that their payments to the Horton parties, if made, were part of the Money Laundering Scheme. Particulars of this knowledge are set out, again culminating in, at paragraph 43(8):

> "In all the circumstances, it is inherently improbable that Mr Crump became involved in the money laundering scheme being operated by his business associate, said in paragraph 10 to be his "longstanding friend", without knowing or realising that that was the case."

This is followed by the allegation that, as the director and/or directing mind of APL and APL Formwork, Mr Crump's "knowledge and dishonesty" is to be attributed to those companies.

17. In paragraph 45 of their Defence, the Horton parties allege that by participating in the Money Laundering Scheme, the Crump parties committed money laundering offences substantively identical to those alleged against Dean and Ivan.

18. On 27 March 2024, the Crump parties applied to strike out those paragraphs of the Defence which relate to the allegation of money laundering, alternatively for summary judgment in respect of them ("**the strike out application**"). The grounds for striking out are under CPR 3.4(2)(a) and (c).

Issues

19. On a broad level the issues are:
    (1) The legal issue: the test for establishing money laundering when the party alleging it cannot directly establish a predicate criminal offence – whether the decision in the criminal case of *R v Anwoir* [2008] EWCA Crim 1354, [2009] 1 W.L.R. 980 applies in civil cases.
    (2) Whether the Horton parties have a real prospect of satisfying that test;
    (3) Whether the Horton parties' claim is sufficiently particularised to permit it to proceed.

Legal principles

20. Most of the applicable legal principles were not disputed.

Amendment, strike out and summary judgment

Amendment

21. The following principles (so far as relevant to this case) govern the court's discretion in deciding whether to allow a proposed amendment.

22. The amendment must have a real prospect of success. To establish this:
    (1) It is not enough that the claim is merely arguable; it must carry some degree of conviction.
    (2) The pleading must be coherent and properly particularised.

(3) The pleading must be supported by evidence which establishes a factual basis which meets the merits test; it is not sufficient simply to plead allegations which if true would establish a claim; there must be evidential material which establishes a sufficiently arguable case that the allegations are correct.

See *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] EWCA Civ 33, [2021] 3 All E.R. 978, [2021] 1 C.L.C. 284, at [17], [18].

23. As to particularisation, this is not an absolute requirement and is a question of degree: particularisation may be enough to allow the amendment, but only on the condition that further particulars are provided, or that requests for further information by the other party are responded to: *Various Airfinance Leasing Companies v Saudi Arabian Airlines Corporation* [2021] EWHC 2330 (Comm) at [15(3)].

Striking out

24. CPR 3.4(2) provides, so far as relevant:

> "3.4— Power to strike out a statement of case
> (2) 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 …defending the claim;
> (b) …
> (c) that there has been a failure to comply with a rule, practice direction or court order."

25. In this case the Crump parties rely upon rule 3.4(2)(a) and (c), and in respect of (c) the failure of the Defence to comply with CPR PD16, para 8.2 (discussed below).

Summary judgment

26. CPR 24.2 provides, so far as relevant:

> "The court may give summary judgment against a … defendant on the whole of a claim or on an issue if—
> (a) it considers that the party has no real prospect of succeeding on the …, defence or issue; and
> (b there is no other compelling reason why the case or issue should be disposed of at a trial."

27. The principles to be applied on applications for summary judgment are well established. They were summarised by Lewison J (as he was) in *Easyair Ltd v Opal Telecom Limited* [2009] EWHC 339 (Ch). It is unnecessary to set them out here. The burden of proof is on the applicant to show that the conditions in CPR 24.2 are satisfied.

28. As to striking out for no reasonable grounds, as noted in the 2024 White Book (para 3.4.21), there is a considerable overlap between the court's powers under CPR Part 24 and r.3.4; and the court has a discretion to treat an application made under CPR 3.4 (2)(a) as if it were an application under Part 24.

29. There is, however, a distinction between the two types of application in respect of the admissibility of evidence. Under CPR 24, evidence as to the merits is admissible. In an application to strike out under CPR 3.4(2)(a), the facts pleaded must be assumed to be true, and evidence regarding the claims in the statement of case is inadmissible: *King v Stiefel* [2021] EWHC 1045, [2022] 1 All E.R. (Comm) 990 at [26] to [27].

Alleging knowledge and dishonesty

Particularisation

30. Additional requirements as to particularisation apply to allegations of knowledge and of fraud. CPR PD 16 provides, so far as relevant, at paragraph 8.2:

> "The claimant must specifically set out the following matters in the particulars of claim where they wish to rely on them in support of the claim—
> (1) any allegation of fraud;
> (2) the fact of any illegality;
> (3) …;
> (4) ….;
> (5) notice or knowledge of a fact;"

31. There can be no doubt that these requirements apply to a defence as well. This reflects the position in the case law that allegations of fraud, dishonesty or bad faith must be supported by particulars: *Three Rivers District Council v Bank of England* [2001] UKHL 16, [2003] 2 AC 1 at [55].

32. The following propositions can be derived from [184] to [186] and [189] (Lord Millett) in *Three Rivers*:
    (1) fraud or dishonesty must be distinctly alleged and as distinctly proved;
    (2) it must be sufficiently particularised;
    (3) it is not sufficiently particularised if the facts pleaded are consistent with innocence: see *Kerr on Fraud and Mistake*, 7th ed (1952), p 644; *Davy v Garrett* (1878) 7 Ch D 473, 489; *Bullivant v Attorney General for Victoria* [1901] AC 196; *Armitage v Nurse* [1998] Ch 241, 256;
    (4) a claimant who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest;
    (5) particulars of facts which are consistent with honesty are not sufficient – this is partly a matter of pleading, but also a matter of substance;

(6) since dishonesty is usually a matter of inference from primary facts, this involves the defendant knowing not only that they are alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference;

(7) there must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved;

(8) if the particulars of dishonesty are insufficient, the defect cannot be cured by an unequivocal allegation of dishonesty – such an allegation is effectively an unparticularised allegation of fraud.

Summary judgment and strike out applications where fraud and/or dishonesty are alleged

33. *Portland Stone Firms Ltd v Barclays Bank plc* [2018] EWHC 2341 (QB) at [25] – [29] sets out the relevant principles, in the context of amending pleadings and a strike out application; and was applied to a summary judgment application in *King v Stiefel*. They can be summarised as:

(1) "Cogent evidence is required to justify a finding of fraud or other discreditable conduct": per Moore-Bick LJ in *Jafari-Fini v Skillglass Ltd*., [2007] EWCA Civ 261 at para.73. This principle reflects the court's conventional perception that it is generally not likely that people will engage in such conduct: "where a claimant seeks to prove a case of dishonesty, its inherent improbability means that, even on the civil burden of proof, the evidence needed to prove it must be all the stronger", per Rix LJ in *Markel v Higgins*, [2009] EWCA 790 at para 50.

(2) The standard of proof remains the balance of probability, although typically, the more serious the allegation, the more cogent the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.

(3) Unless it is dealing with known fraudsters, the court should start from a strong presumption that the innocent explanation is more likely to be correct: *Jafari-Fini v Skillglass Ltd (In Administration)* [2007] EWCA Civ 261 at para 49, Carnwath LJ.

(4) As is noted in many of the authorities, often the victim of a fraud will not be able to particularise how the fraud was carried out, as the fraudster will have taken steps to keep their wrongdoing hidden. The Court should respond to this by adopting a "generous" approach to pleadings.

(5) However, if and to the extent that the person alleging fraud relies upon the drawing of inferences about a defendant's state of mind from other facts, those other facts must be clearly pleaded and must be such as could support the finding for which the claimant contends.

34. The logic of the last principle extends, in my judgment, to all statements of case where an allegation of knowledge, fraud or dishonesty is based on inference from other facts.

Money laundering under the Proceeds of Crime Act 2002 ("POCA")

35. Here, the relevant legal principles are largely, but not entirely agreed.

36. Sections 327-329 of POCA provide for the principal money laundering offences. They cover a wide range of conduct in relation to criminal property. The offences set out in those sections are as follows:

> "**s.327 Concealing etc**
> (1) A person commits an offence if he—
> (a) conceals criminal property;
> (b) disguises criminal property;
> (c) converts criminal property;
> (d) transfers criminal property;
> (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland."
>
> "**s.328 Arrangements**
> (1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person."
>
> **"s.329 Acquisition, use and possession**
> (1) A person commits an offence if he—
> (a) acquires criminal property;
> (b) uses criminal property;
> (c) has possession of criminal property."

37. "Criminal property" is defined in s.340(3) as follows:

> "Property is criminal property if –
> (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
> (b) the alleged offender knows or suspects that it constitutes or represents such a benefit".

38. "Criminal conduct" in s.340(2) is defined, so far as relevant, as conduct which constitutes an offence in any part of the United Kingdom.

39. In criminal proceedings, the prosecution must prove that the property is or represents the proceeds of crime: *R v Montilla* [2005] 1 Cr App R 26 HL.

40. Thus, under ss.327-329, an offence is only committed where the property *in fact* constitutes or represents a person's benefit from criminal conduct, and the accused knows or suspects that it does.

41. A person 'suspects' a state of affairs where they subjectively think there is a possibility, which is more than fanciful, that it exists: *R v Da Silva* [2007] 1 WLR 303 at [16]; see also *K Ltd v National Westminster Bank Plc* [2006] 4 All ER 907 at [16]. In an appropriate case, the suspicion so formed "should be of a settled nature": *K Ltd* at [16].

42. A prosecution will not be made out where the suspicion fails to coincide with the *actus reus* of the offence. If a person converts property which was in fact criminal and had at the time of the converting neither knowledge nor suspicion, they will not be guilty if at some future time they had the requisite *mens rea*: *Smith, Owen and Bodnar on Asset Recovery, Criminal Confiscation and Civil Recovery* (2nd ed., 2015) at [I.3.121].

43. It is "of course" possible that an offence under s. 327 of POCA is also an offence under s.328, and vice versa: *R v Fazal* [2010] 1 WLR 694 at [17].

44. While suspicion is enough to prove a substantive offence under ss.327-329, it is insufficient to prove the crimes of conspiracy or attempt to commit such offences: *R v Saik* [2007] 1 AC 18; *R v Pace* [2014] 1 WLR 2867. For those crimes, the defendant must either know or intend that the relevant property was or would be derived from crime.

45. Criminal property is property which already has the quality of being criminal property by reason of criminal conduct distinct from the conduct alleged to constitute the actus reus of the money laundering offence itself: *R v GH* [2015] 2 Cr App R 12 at [30]-[37]. Sections 327-329 are 'parasitic' offences, because they are predicated on the commission of another offence which has yielded the proceeds which then become the subject of a money laundering offence: *R v GH* at [37]. For a s.328 offence, the criminal property need only exist when the arrangement operates on it: *R v GH* at [40].

46. The definition of "criminal property" in s.340(3) does not embrace property which the accused intends to acquire by criminal conduct; property is not criminal property because the wrongdoer intends that it should be so: *R v Akhtar* [2011] 1 Cr. App. R. 37.

47. Funds in a bank account are 'converted' within the meaning of s.327 when they are lodged, received, retained, withdrawn, or transferred between accounts: see *R v Fazal* [2010] 1 WLR 694 at [21]-[22].

48. Section 329 is subject to a defence in s.329(2)(c) that the recipient of the money "acquired or used or had possession of the property for adequate consideration". This defence operates even if the defendant actually knew or suspected that the property was criminal property: see further The Explanatory Notes to POCA at [477].

49. As to proving that property is criminal property, the leading case is *R v Anwoir* [2008] EWCA Crim 1354, [2009] 1 W.L.R. 980, in which it was held at [25] that the prosecution may prove that property is "criminal property"—

(1) by showing that it derived from conduct of a specific kind or kinds and that conduct of that kind was unlawful, or

(2) by evidence that the circumstances in which the property was handled were such as to give rise to an **irresistible inference** that it could **only** have been derived from crime.

(emphasis added)

50. It is common ground between the parties that *Anwoir* applies in civil proceedings, and that the standard of proof is the civil standard of the balance of probabilities: *SOCA v Namli* [2013] EWHC 1200 (QB) at [45]-[49]; *NCA v Khan and Others* [2017] EWHC 27 (Admin) at [27]; and *NCA v Baker* [2020] EWHC 822 (Admin) at [98]-[99].

51. There is however an issue between the parties as to how the *Anwoir* test is to be applied in civil proceedings. The Horton parties submitted that in civil proceedings, the words "irresistible" and "only" are not appropriate or essential elements of the test. They rely on the omission of these words in *Namli* at [45] –[49]. In those passages, Males J cites passages in *SOCA v Gale* [2009] EWHC 1015 at [14]-[16], *Director of the Assets Recovery Agency* v *Olupitan* [2008] EWCA Civ 104 at [30]-[31], *Serious Organised Crime Agency v Pelekanos* [2009] EWHC 2307 at [34]-[37] (which in turn cites *ARA v Olupitan* [2007] EWHC 162 (QB) at [65]-[66], *Gale* at [17] and *ARA v Jackson & Smith* [2007] EWHC 2533 (QB) at [118]-[119]).

52. In *Namli*, the judge's conclusions as to the burden of proof are then summarised in [48] –[49]:

> "48. Whether an adverse inference is appropriate will inevitably depend on the detailed circumstances of each individual case. But, in an appropriate case, it is clear that such an inference can properly be drawn from a failure to provide an explanation of apparently suspicious dealings and that doing so does not involve an inadvertent reversal of the burden of proof, which remains on SOCA throughout: see also *Olupitan v. Director of the Assets Recovery Agency* in the Court of Appeal [2008] EWCA Civ 104 at [30] and [31].
>
> 49. Putting this in crude terms, and not forgetting SOCA's burden of proof, if a transaction looks like money laundering and has not been satisfactorily explained by a defendant who ought to be in a position to explain it if there is an innocent explanation, that is probably what it is."

53. In addition, at [194] and [195], the judge, in applying the law to the facts before him also refers several times to drawing an "inference", rather than an "irresistible inference".

54. I cannot accept that the judge in *Namli* intended to modify the test in *Anwoir*, to which he expressly referred by way of citation from *Gale* – particularly when there was no issue in *Namli* as to whether the test in civil cases differed from that in *Anwoir* (a criminal case). In any event, as to the cases referred to in *Namli*, I note that:
    (1) *Gale* cites the *Anwoir* test without suggesting that the civil test is different, and there was also no issue in that case as to whether the tests were different;
    (2) *Olupitan* both at first instance ([2007] EWHC 162 (QB)) and on appeal were decided before *Anwoir*, which clarified the test – *Olupitan* was cited in *Anwoir*;
    (3) *Pelekanos*, although it post-dates *Anwoir*, refers to *Olupitan* and *Jackson* (pre-*Anwoir* cases) and then *Gale* (which, as noted, cites *Anwoir*).

55. In addition, *Anwoir* was cited and applied in *Baker* (at [98] to [99]) and *Khan* (at [26] to [28]). The test is not repeated in full in the later parts of the judgment in *Khan* ([57], [70], [73], [81]), but in my judgment, given its earlier citation in full, it is clear that the judge was applying that test.

56. In my judgment, therefore, the test to be applied in civil cases alleging money laundering is the full test in *Anwoir*: the person alleging money laundering must show that the circumstances in which the property was handled were such as to give rise to an **irresistible** inference that it could **only** have been derived from crime.

Horton parties' case on money laundering

57. The Horton parties' case as pleaded is that the primary facts pleaded in the sub-paragraphs of paragraph 23A of the re-am PoC give rise to an inference that Dean used the Horton parties' accounts to launder criminal property by way of (among other things) the Account Payments. They submitted that those primary facts show that the Account Payments and their surrounding circumstances bear many of the hallmarks of money laundering, and contradict the purportedly innocent explanation that the payments were made pursuant to legitimate loans.

58. The relevant primary facts pleaded in paragraph 23A of the re-am PoC are:
    (1) the circuitous payments through intermediate transferees: para 23A(a);
    (2) the use of dormant/dissolved companies as intermediate transferees: para 23A(b);
    (3) revolving transactions: para 23A(c);
    (4) the uncommerciality of the alleged loans: para 23A(d);
    (5) the absence of supporting documentation for the alleged loans: para 23A(d), (f);
    (6) the inconsistent assertions about the terms of the alleged loans: para 23A(e);
    (7) lies told by Dean: para 23A(g)-(i).

59. As to Ivan and the Crump parties, the Horton parties rely on broadly the same hallmarks of money laundering; and on the inherent improbability that Ivan and Mr Crump became unwittingly involved in a money laundering scheme operated by their son/best friend.

Expert evidence

60. In making their case, the Horton parties apply for permission to rely upon evidence which, they submit, is expert evidence.

61. This evidence is contained in 3 reports of Tim Care dated:
    (1) 23 February 2023 ("**Care 1**");
    (2) 2 June 2023 ("**Care 2**");
    (3) 5 June 2024 ("**Care 3**").

Expert evidence - legal principles

62. Section 3 of the Civil Evidence Act 1972 provides:

> "**3.— Admissibility of expert opinion and certain expressions of non-expert opinion.**
> (1) Subject to any rules of court made in pursuance of this Act, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence.
> …
> (3) In this section "relevant matter" includes an issue in the proceedings in question."

63. As noted in *Expert Evidence: Law and Practice* (5th edn.) at [1-001], fn 4, the effect of ss.3(1) and 3(3) of the 1972 Act was to abolish the common law rule against an expert giving evidence on the ultimate issue; although, obviously, the mere fact that the expert's opinion is admissible does not mean that the court is bound to follow it.

64. CPR 35.1 provides:

> "Expert evidence shall be restricted to what is reasonably required to resolve the proceedings."

65. The first task for the court is to determine whether the proposed issues for expert evidence are issues arising on the statements of case. CPR 35.1 does not refer to issues, but only to proceedings. However, as noted by Warren J in *British Airways Plc v Spencer* [2015] EWHC 2477 (Ch), [2015] Pens. L.R. 519 at [68], if evidence is not reasonably required for resolving any particular issue, it is difficult to see how it could ever be reasonably required for resolving the proceedings.

66. In *Barings Plc v Coopers & Lybrand (No 2)* [2001] EWHC 17 (Ch); [2001] PNLR 22 Evans-Lombe J reviewed the authorities, and extracted from them at [45] the following propositions:

> "expert evidence is admissible under section 3 of the Civil Evidence Act 1972 in any case where the Court accepts that there exists a recognised expertise governed by recognised standards and rules of conduct capable of influencing the Court's decision on any of the issues which it has to decide and the witness to be called satisfies the Court that he has a sufficient familiarity with and knowledge of the expertise in question to render his opinion potentially of value in resolving any of those issues."

67. However, this is not entirely consistent with Bingham LJ (as he was) in *R v Robb* (1991) 93 Cr. App. R. 161, in which, after referring to Lord Russell's judgment in *R v Silverlock* [1894] 2 QB 766, he said, at 165,

> "… the essential questions are whether study and experience will give a witness's opinion an authority which the opinion of one not so qualified will lack, and (if so) whether the witness in question is *peritus* [skilled] in Lord Russell's sense. If these conditions are met the evidence of the witness is in law admissible, although the weight to be attached to his opinion must of course be assessed by the tribunal of fact."

68. *Robb* requires the court to assess whether the witness is skilled and has the relevant expertise by reason of their study (knowledge) and experience in the relevant field. For example, in *R v Silverlock* [1894] 7 QB 766, a witness was permitted to give expert handwriting evidence, although his profession was that of a solicitor:

> "the witness who is called upon to give evidence founded on a comparison of handwritings must be peritus; he must be skilled in doing; but we cannot say that he must have become peritus in the way of his business or any other business. The question is, is he peritus?"

69. This is a broader test, and more accurately reflects the current practice in litigation, and I adopt it.

70. If the evidence is admissible, then, as set out in *The RBS Rights Litigation* [2015] EWHC 3433 (Ch), the position is as follows.

71. In determining whether particular evidence is reasonably required a key question will be:

> "…whether the subject matter of the opinion is such that a person without instruction or experience in the area of knowledge or human experience would be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in the area."

See *R v Bonython* (1984) 38 SASR 45 at 46, cited in *JP Morgan v Springwell* [2006] EWHC 2755 (Comm); [2007] 1 All ER (Comm) 549 at [20] and *Barings* at [38].

72. The burden of establishing that expert evidence is both (i) admissible and (ii) reasonably required (i.e. not just potentially useful) is on the party which seeks permission to adduce the evidence concerned (see *JP Morgan Chase* at [19], Aikens J (as he was)).

73. In *British Airways Plc v Spencer* [2015] EWHC 2477 (Ch), [2015] Pens. L.R. 519 Warren J (at [68]) set out a three-stage test for the application of CPR 35.1 which brings out the sliding scale implicit in the assessment of what is "reasonably required", from the essential to the useful:

> "(a) The first question is whether, looking at each issue, it is necessary for there to be expert evidence before that issue can be resolved. If it is necessary, rather than merely helpful, it seems to me that it must be admitted.
>
> (b) If the evidence is not necessary, the second question is whether it would be of assistance to the court in resolving that issue. If it would be of assistance, but not necessary, then the court would be able to determine the issue without it (just as in *Mitchell* the court would have been able to resolve even the central issue without the expert evidence).
>
> (c) Since, under the scenario in (b) above, the court will be able to resolve the issue without the evidence, the third question is whether, in the context of the proceedings as a whole, expert evidence on that issue is reasonably required to resolve the proceedings. In that case, the sort of questions I have identified in paragraph 63 above will fall to be taken into account. In addition, in the present case, there is the complication that a particular piece of expert evidence may go to more than one pleaded issue, or evidence necessary for one issue may need only slight expansion to cover another issue where it would be of assistance but not necessary."
>
> (emphasis as in the original)

74. As to Warren J's reference to [63] in his judgment, he said in that paragraph:

> "A judgment needs to be made in every case and, in making that judgment, it is relevant to consider whether, on the one hand, the evidence is necessary (in the sense that a decision cannot be made without it) or whether it is of very marginal relevance with the court being well able to decide the issue without it, in which case a balance has to be struck and the proportionality of its admission assessed. In striking that balance, the court should, in my judgment, be prepared to take into account disparate factors including the value of the claim, the effect of a judgment either way on the parties, who is to pay for the commissioning of the evidence on each side and the delay, if any, which the production of such evidence would entail (particularly delay which might result in the vacating of a trial date)."

Expert evidence - discussion and conclusion

75. The starting point is to identify the issue to which the expert evidence is said to be directed. This is found at paragraph 23A of the re-am PoC: whether the existence of Dean's money laundering scheme is to be inferred from the facts and circumstances set out in that paragraph.

76. I note at the outset that that is not sufficient for the Horton parties to succeed. As I have held above, they must plead and prove an irresistible inference.

77. In their instructions to Mr Care, the Horton parties asked him to give his opinion as to whether there are reasonable grounds to believe that:
    (1) Dean committed one or more of the offences as alleged at paragraphs 23A to 23B of the re-am PoC;
    (2) Ivan Norman committed one or more of the offences as alleged at paragraphs 15A to 15C of the re-am Def;
    (3) the Crump parties committed one or more of the offences as alleged at paragraphs 43 to 45 of the Defence in the Crump claim.

78. Turning to the admissibility of Mr Care's evidence, the matters set out in paragraph 66 above were not addressed by the Horton parties. There is no evidence that Mr Care has a recognised expertise governed by recognised standards and rules of conduct. However, applying the test in *Re Robb*, this is not an absolute bar to its admissibility.

Expertise

79. Mr Care describes himself as a "financial crime subject matter expert with a background in law enforcement, retail banking and financial services enforcement". His relevant qualifications are an Anti-Money Laundering Diploma (International Compliance Association) and a BTEC Professional Diploma in Financial Investigation (Met Police). He has 20 years of experience in investigating and prosecuting financial crime and money laundering, including in the police, the banking industry, the Financial Action Task Force (which he describes as the global standard setter for combatting money laundering) and the Financial Conduct Authority.

80. The Horton parties assumed that Mr Care's expertise would be accepted by the court, describing him as very experienced in the investigation and detection of money laundering offences. However, as set out in *Namli* (see para 52 above), whether an adverse inference can be drawn will inevitably depend on the detailed circumstances of each individual case. Furthermore, whether the inference of money laundering can be drawn from those facts is a matter of law, to be determined by the judge. Mr Care has knowledge and experience of factual situations in which a judge may (or may not, if no

judicial determination has been made) have found money laundering. That does not, in my judgment, confer expertise on him to give an opinion as to whether money laundering has occurred. The Horton parties did not refer me to any case in which expert evidence as to money laundering was adduced; and it was not adduced in the cases to which the other parties referred me.

81. If I am wrong on whether Mr Care's evidence is admissible, then nevertheless I consider that his evidence is neither necessary, nor of assistance to the court. My reasons for this conclusion are the same as those set out above. It is for the judge, once they have found the facts as to the detailed circumstances of the case, to decide whether the required irresistible inference can be drawn. Mr Care has no role to play in this process.

82. This is highlighted by the fact that in Care 1 and Care 2, Mr Care does not apply the appropriate legal test. He only addresses whether certain facts are "indicative" of money laundering, and does not consider whether the test of "irresistible inference" would be met. It is only in Care 3, the stated purpose of which is to address the impact (if any) of the subsequent developments in these proceedings, that Mr Care amends the test applied by him, and then states that it is met in respect of 3 matters: circuitous payments ([22]), absence of commercial rationale ([31]) and the absence of the payments being recorded in the accounts of APL ([33]) (as to which see paragraph 145 below). None of the other factors are said to justify this irresistible inference.

83. Finally, Mr Care was not provided with the evidence filed after he prepared Care 3, in particular, the 1st witness statement dated 11 July 2024 of Mr Crump ("**Crump 1**") which addresses:
    (1) the trackable and auditable record of loans by and repayments to the Crump parties;
    (2) written requests for loans; and discussion of security and interest;
    (3) similar informal loans without security having been made by Select to Horton Motorcycles and to Select by a third party lender;
    (4) the facts that the loans were (contrary to Mr Care's assumption) recorded in APL's accounts;
    (5) the source of the Crump parties' funds.

84. I approach Mr Care's evidence therefore on the basis that he puts forward arguments, albeit based on limited and incomplete materials, that could be put forward by the Horton parties, but that those arguments are no more than that, and are not matters of expert opinion.

Discussion and conclusions

85. The Horton parties' case as to money laundering falls into two parts:

(1) the payments made were not made pursuant to any legitimate loan transactions;
(2) the payments have the hallmarks or indicia of money laundering.

Legitimacy of loan transactions

Dean's claim

86. I deal first with this claim, as it is relatively straightforward.

Dean loan

87. This loan is alleged to have been made on 3 February 2020, in the sum of £75,000. Dean's case (in his counterclaim) is:

> "37 On or around 31 January 2020, Dean Norman met Nicholas Horton and Christine Horton at Select's offices to discuss cashflow issues. During this meeting Nicholas Horton asked Dean Norman if he could personally raise funds to pay Select's outstanding PAYE liability to HMRC. Dean Norman offered to use his and his wife's savings which came from a recent pay-out from critical illness insurance policy for his wife's cancer treatment, amounting to £75,000, to lend to Select to pay some of the PAYE liability to HMRC. Nicholas Horton and Christine Horton accepted this offer on behalf of Select. Nicholas Horton asked Dean Norman to pay £75,000 to HMRC via the HFR bank account, because HMRC would not accept a payment from Select's overdrawn bank account.
>
> 38. Dean Norman paid £75,000 to HMRC on behalf of HMRC on 3 February 2020."

88. The Horton parties do not admit that Dean paid £75,000 to HMRC on behalf of Select; and, if he did so, they deny that he did so at Mr Horton's request.

89. Dean's claim is supported by the following contemporaneous documents. The first is a bank statement dated 8 August 2019 for the Barclays account of Sarah Norman, Dean's wife. This shows:
(1) £80,078 being paid in on 19 July 2019 with the reference "LV Protection" – Dean's evidence is that it was a payment by LV Insurance under her critical illness policy in respect of stage 3 cancer;
(2) on the same day, £74,000 being transferred to another Barclays account with an account number ending in 5291.

90. The second document is an email dated 3 February 2020, from Mr Horton to Select's bank (AIB) stating:

> "Good morning Andy please see attached the letter from HMRC Dean has paid £75k today could the bank please assist with a further payment of £25k today we are expecting in £355k this week some on Thursday but mostly Friday I am so

sorry to ask but obviously this is business critical and is in the cashflow for next week"

91. The third document is a bank statement from Barclays account ending 5291 showing that, on 3 and 4 February 2020, a total of £75,000 was paid to HMRC from that account.

92. In the light of this evidence, the Horton parties have, in my judgment, no real prospect of disproving that:
    (1) Dean paid £75,000 to HMRC for Select's benefit;
    (2) Dean made the payment from funds made available to him by his wife;
    (3) The Horton parties knew both these facts.

93. It follows from the above that the Horton parties have no real prospect of establishing that the £75,000 paid by Dean on Select's behalf to HMRC is not a genuine loan for a legitimate business purpose, namely discharging Select's liability to HMRC.

Ivan's and the Crump claims

Receipt of monies

94. The starting point is whether the Horton parties have received the monies claimed to have been paid as loans. As to this:
    (1) Ivan's claim
    The Horton parties admit that the Partnership received a total of £500,000 under the reference "NORMAN IP + DSP IVAN"; but say that they have no knowledge of the origin of the payments (beyond the bank statement references) and no knowledge of their purpose: Response dated 1 February 2022 to Ivan's RFI;
    (2) Crump parties' claim
    The Horton parties accept that one of them received about £1.8 million from the Crump parties, and that about £1.2 million was paid by them to the Crump parties.

95. Insofar as the Horton parties deny or do not admit having received monies, those monies are not, in my judgment, relevant to the money laundering defence, since the Horton parties' case is that they have not had those payments.

Knowledge of receipt of monies

96. The Horton parties' case is that Mr Horton had no knowledge of any of the loans until about December 2018, when Dean orally revealed them.

97. As to this:
    (1) The Horton parties admit (in para 38 of their Defence to the Crump claim) that they received at the material times monthly summaries of their indebtedness, and financial spreadsheets, both prepared by Dean;

(2) Those monthly summaries and spreadsheets clearly record the Ivan and Crump loans on their face;

(3) In an email dated 14 January 2020 to AIB, Mr Horton referred to "the short term loans we have always shown in our accounts";

(4) In an email dated 2 March 2020, Mr Horton wrote
"in preparation for the meeting next week could you let me know what Select owe your dad and Steve please?"
Dean Norman responded on the same day attaching a PDF document entitled "Short term loans" and stating "Loans attached, these are in the monthly packs also so you will see the history of them from there".

98. Although the latter two emails were sent after December 2018, they acknowledge Mr Horton's knowledge of the loans before that date.

99. The Horton parties also plead (in para 58(1) of their Defence) in response to the Crump parties' unjust enrichment claim that they

> "ran their businesses, issued dividends and made investment decisions on the basis that the sums received were not loan monies, but rather the [Horton parties'] own money to treat as they wished".

This is in my judgment, inconsistent with being unaware of the receipt of the monies: if the Horton parties believed that these were their monies (and they do not explain how and why they had this belief), they must have been aware of their receipt. This passage highlights the difficulties in the Horton parties' case: they received the monies, they dealt with them as beneficial owners, and they do not allege that the monies were a gift. In those circumstances, they have in my judgment, no real prospect of showing that they are not (subject to the other matters that they rely upon as showing money laundering) under an obligation to repay them i.e. that the monies were lent to them.

100. In this context, I note that during period with which these claims are concerned, Select has paid the following dividends (totalling £1,358,189), notwithstanding its financial difficulties:

2016	£360,956
2017	£86,152
2018	£169,616
2019	£225,828
2020	£203,112
2021	£194,125
2022	£118,400

Acknowledgement of the Ivan and Crump loans and promises to pay

101. In addition, on 1 July 2019 at 09:31 Dean emailed Mr Horton:

> " [..] Without sounding clinical we need to discuss the current loans I have o/s with dad etc but I know this is never going to be an issue and there's no need to change the plan we have in place."

to which Mr Horton responded:

> "regarding the loans I agree that we need to talk but I agree we have a plan in place and I would like to progress with this".

102. On 7 August 2019 Mr Horton acknowledged the Crump loans in an email exchange (with Dean) in which he said:

> "I know the debt with [Mr Crump] mate I'm doing everything i can"

103. On 11 March 2020 Mr Horton emailed Ivan and Mr Crump, stating that "as soon as things are on a more secure footing I will present a payment plan".

104. On 13 August 2020 Mr Horton emailed Dean, saying

> "the debt to you and your family and friends weighs heavy on my mind and as soon as re financing is completed I will agree a payment plan that suits us all".

The Horton parties' financial position and need for the loans

105. In the Crump claim, the Horton parties do not admit that from around 2013 Select encountered liquidity difficulties and frequently exceeded its overdraft limit.

106. However, the evidence in this application establishes that:
    (1) In July 2015, Dean needed to seek approval from the Horton parties' bank (Santander) to pay a relatively small amount (£450);
    (2) Emails from February 2015 to September 2016 show the Horton parties' bank accounts frequently exceeding their overdraft limit;
    (3) In 2015, Select was put into corporate restructuring (special measures) by Santander and was thereafter subject to continuous close financial scrutiny, and as result the bank was involved in sanctioning payments on an almost daily basis.
    (4) Various professional advisors were also appointed by Select's banks:
        (i) FRP Advisory was appointed by Santander, and emails with FRP were in evidence;
        (ii) Duff & Phelps was appointed by AIB. A report by them in July 2019 showed a similar picture regarding the overdraft and also referenced the 'friends &

family loans'. Duff & Phelps even recommended seeking further funding from Ivan's and Mr Crump's companies: at page 26 of the report, they state:

"In the event that the Bank is unwilling to extend facilities beyond current limits, we would recommend that this is communicated to management immediately to allow them to consider alternate funding options. This includes further short term loans, support from BCP[1], APL or NH."

(iii) Orbis was also appointed and a report by them dated 27 August 2019 showed a similar picture regarding the overdraft.

107. The overwhelming evidential picture is of the Horton businesses lurching from financial crisis to financial crisis.

108. In my judgment therefore, the Horton parties have no real prospect of showing that:
(1) the funds were not received from Ivan and the Crump parties;
(2) they did not know that they were received at the relevant time;
(3) the Horton parties had no need of the funds.

109. It follows from the above that the Horton parties have no real prospect of showing that the "alleged loans" or "purported loans" were not in fact loans. They therefore have no real prospect of establishing this element of their case as to money laundering.

Hallmarks or indicia of money laundering

110. I turn therefore to the other matter relied upon by the Horton parties as founding their allegation of money laundering.

Ivan's claim

111. Ivan's claim is that a total of £500,000 loaned to the Partnership was transferred directly from his personal account to the Partnership's account. As noted above, the Partnership admits that these payments were received and the payment references – which include "NORMAN IP +DSP IVAN" for every payment. The Horton parties do not admit the origin of the payments. In my judgment, they have no real prospect of showing that they were not from Ivan.

112. The Horton parties do not (and could not) allege that these payments had most of the hallmarks of money laundering on which they otherwise rely. They rely on the fact that at a time when Black Country Pressings Limited ("**BCP**") was under Ivan's control, solicitors acting on its behalf (Thursfield Solicitors) wrote a letter dated 4 January 2021

[1] Black Country Pressings Limited – Ivan's company at the material time.

claiming that BCP was owed £623,155 plus interest by Select. The payments made by BCP are said to have the hallmarks of money laundering, and the terms of the loan relied upon in Thursfield's letter are said to be inconsistent with the claim now made.

113. However, Mr Care accepts[2] that this inconsistency is not, in and of itself, necessarily indicative of money laundering. In my judgment, none of these facts are relevant to or even begin to establish that the monies paid by Ivan, and now claimed, were paid as part of a money laundering scheme.

114. The only hallmark of money laundering alleged to have any application to Ivan's claim is that the loans were "undocumented, unsecured and on uncommercial terms". As to this, the agreement for the loans is alleged to be oral, but the payments, as noted, were made by bank transfer, not in cash. The agreed rate of interest is alleged to be 3.5%, and the loans were not secured. Ivan's evidence, in his witness statement dated 28 April 2023 at [10] is:

> "When Dean first approached me about lending money to Select and the Partnership, he thought that he was set for great things with the Hortons, so I believed by making the loans I would be helping him out and earning a modest return on the money."

and in his witness statement dated 18 April 2024:

> "23. … When I entered into these loan arrangements, I never for a moment expected that I would have to sue to recover my money or that I would have to rely on any written loan agreement. My primary assurance as to repayment was that Dean was arranging the loans on behalf of someone he knew and trusted. …
>
> …
>
> 25. As regards the lack of any security, and as explained above, I never thought when I entered into these loans that I would need to take enforcement action to recover my money. I agreed to make the loans because I wanted to help my son and because I believed he would not have asked me to lend the money unless he thought it would be repaid.
>
> 26. Regarding the rate of interest, I explained in my first witness statement that the ultimate source of the money that I lent to the Partnership was BCP (see paragraph 10). For many years, whenever BCP had any surplus money, it paid that money into its savings account and over the years, that built up into a substantial sum (paragraph 8). 3.5 per cent per annum may not be a vast amount of interest but the money would otherwise have continued to sit in the savings account, earning bank interest at a low rate. From my point of view, these loans served the twin purposes of helping Dean and earning a

[2] Care 1 at [43].

> slightly better rate of return. There were therefore perfectly legitimate reasons for the terms of the loans which had nothing to do with laundering money."

115. At trial, the Horton parties would of course be entitled to cross-examine Ivan on this evidence. However, even if his explanations were rejected, and the court held that the terms of the loans were uncommercial, that would in my judgment fall far short of justifying an irresistible inference that money laundering had taken place.

Crump claims

116. It is in relation to these claims that the Horton parties primarily rely upon the payments having the hallmarks of money laundering.

Circuitous payments through intermediate transferees: Defence para 43(1)

117. This allegation is the "central plank" of the Horton parties' case. They allege that the Crump payments (i.e. those payments to or from the Crump parties[3]) were frequently circuitous, in the sense that the purported loan 'advances' and 'repayments' passed through the accounts of many different entities which were not themselves said to be party to the relevant 'agreements', including (but not limited to) various accounts belonging to the Horton Parties, Dean's personal account, and the accounts of companies controlled by or otherwise relevantly connected to Dean, including those which belonged to Ivan and Mr Crump: see Defence at para 43(1) and the Horton parties' skeleton argument at [51].

118. Particular criticism was levied at the use of two companies: HFRUK Limited ("**HFR**") and CDS Holdings Limited ("**CDS**").

119. HFR was incorporated on 22 October 2015. Its directors and equal shareholders were Dean and John Psaras. It was dormant for the years ending 31 October 2017 and 31 October 2018, and was dissolved on 3 December 2019.

120. CDS was incorporated on 15 February 2016, with Dean as its sole director; and 3 equal shareholders: Dean, his brother Carl Norman, and Mr Crump. It was dissolved on 30 May 2017.

121. Dean's explanation is that these companies were used as intermediaries for payments in order work around Select's overdraft limit; and that Mr Horton was fully aware and approving of this[4].

---

[3] Listed in appendices 1 and 2 of the Crump PoC.

[4] Dean's first witness statement dated 5 July 2022 ("**Dean 1**") at [57].

122. Darren Kenny, the Crump parties' solicitor, explains it as follows[5]:

> "152. … Select was frequently overdrawn, in excess of its overdraft limit. This meant that, when Select needed to make payments but was in excess of its overdraft limit, it would have to borrow money. However, if it borrowed money and that money was paid into its own bank account, the money would be applied by the bank to reduce the overdraft down to its agreed level (£500,000). Payments therefore needed to be made circuitously, so that they did not pass through Select's bank account and that third parties (e.g. employees, suppliers, HMRC, etc) could be paid.
>
> 153. It is clear that the [Horton parties] were constantly firefighting, and this overdraft issue is also why there was a fluid cash-flow arrangement between the [Horton parties] (with money transfers between them, and payments to third parties by one Horton party on behalf of another Horton party) and why people other than the [Horton parties] would pay liabilities on behalf of the [Horton parties]"

123. Dean exhibits a chart[6] setting out Select's AIB bank account balance compared with its authorised overdraft limit (on a monthly basis, from July 2017 to June 2020) which shows that Select's balance consistently exceeded its overdraft limit in the period. This chart is unchallenged in the evidence in response on behalf of the Horton parties. Mr Horton accepts that he was aware that Dean used intermediary companies to pay suppliers for this reason, but only on "a handful of occasions", not routinely and not in connection with the loans which are the subject matter of these claims.

124. Plainly, the court cannot resolve the issue of Mr Horton's knowledge in these applications. However, an examination of the extent to which intermediary companies were used shows that the Horton parties' case is vastly overstated.

Payments to the Horton parties by the Crump parties

125. These are listed in appendix 1 to the PoC. There are 93 payments totalling about £3 million. Only 5 of these payments were made to CDS or HFR, 3 to CDS (all before its dissolution) and 2 to HFR. 11% of the payments are described as being to "HMRC for the benefit of Select". The Horton parties do not admit these payments, although it is difficult to see why they are unable to put forward a positive case as to them, when they could obtain the relevant information from HMRC. The remainder of the payments to third parties total 4, and are not plainly suspicious e.g. £18,783 to Quadzilla for the benefit of Horton Motorcycles.

---

[5] In his first witness statement dated 27 March 2024 ("**Kenny 1**").

[6] At DN1 to Dean 1.

Repayments to the Crump parties

126. These are listed in appendix 2 to the PoC. There are 131 payments in all, totalling about £1.66 million. Of these 22 (17%) were made by HFR totalling about £400,000; none were made by CDS. The remaining payments were made directly by the Horton parties.

127. This limited use of intermediaries, in the context of the financial difficulties of the Horton parties, and the substantial majority of the payments being made directly to or from the Horton parties, means, in my judgment, that the Horton parties have no real prospect of establishing that this is a hallmark of money laundering which would justify the irresistible inference they need to show.

Use of dormant/dissolved companies as intermediate transferees: Defence para 43(2)

128. Mr Care's evidence is that the use of dormant and dissolved companies as 'conduits' for 'loan monies' is indicative of money laundering because the

> "fact that such companies' accounts and bank statements would never be subject to independent audit reduces the chances of the transaction being investigated or queried"

129. As noted above, the use of CDS and HFR as intermediaries for payments was relatively small, and explicable by reference to the financial difficulties of the Horton parties. The use is insufficient in my judgment to provide the Horton parties with a real prospect of success in showing that this use was a hallmark of money laundering.

Fragmentation: Defence para 43(3)

130. The Horton parties plead reliance on the fragmentation of the payments in their claim against Dean - see draft re-am PoC in the Dean claim at para 23A(c). However, they did not rely on that factor for the purpose of these applications, so it is unnecessary to consider it further.

Revolving transactions

131. The Horton parties rely upon monies moving in and out of their accounts simultaneously, or within a very short period of time. These "revolving transactions", it is said, tend to contradict the plea that the payments were made pursuant to legitimate loan agreements. This is pleaded against Dean Norman in the re-am PoC (in the Dean claim): para 23A(c). It is not pleaded against the Crump parties.

132. However, the example put forward by the Horton parties involves APL Formwork:

Date	**Transferor**	**Transferee**	**Amount**
1 March 2017	APL Formwork	CDS	25,000

1 March 2017	CDS	Select Santander account	25,000
1 March 2017	Select Santander account	Select AIB account	25,000
6 March 2017	Select AIB account	APL Formwork	25,000

133. Mr Care's comment on this, adopted by the Horton parties, is that it is unlikely that the same sum would be repaid within 5 days pursuant to any legitimate loan. However, the relevant bank statements show:
    (1) On 1 March 2017 Select's debit balance on its AIB account was £393,829.29. It therefore had less than £8,000 available before it would exceed its £400,000 overdraft limit on that account.
    (2) Following receipt of £25,000 on 1 March, it made payments that day to trade creditors totalling £21,915.47, so that by the end of the day its debit balance was £390,744,76.
    (3) Further payments to trade creditors were made on 2 March 2017, bringing the debit balance to £394,415.39.
    (4) On 3 March 2017, a large payment (£48,633.09) was received from Wolverhampton County Council, one of Select's customers.
    (5) On 3-6 March 2017, other payments were received and trade creditors paid. After repayment of £25,000 to APL Formwork, Select's debit balance was £353,372.24 i.e. it had head room of about £47,000 before it would exceed its overdraft limit.

134. In my judgment, there is nothing inherently suspicious or requiring explanation in the fact that the £25,000 was repaid within that time scale in the light of the bank statements themselves, which appear not to have been considered by Mr Care. Unless and until the Horton parties carry out this type of analysis on the "revolving transactions" by reference to their own bank statements, they have not in my judgment any real prospect of success in showing that they are suspicious or indicate money laundering.

Uncommercial terms: Defence para 43(4)

135. The Horton parties' Defence refers to the lack of any meaningful interest or any security for the loans. The Crump parties' case as to interest is set out in para 11.8 of their PoC:

> "From time-to-time Mr Norman (acting on behalf of the Defendants) and Mr Crump (acting on behalf of the Claimants) would orally (in person and by telephone) discuss and agree the terms for the repayment of the loans, and whether or not interest would be payable:
>
> 11.8.1. At the outset, they agreed that the initial Loans would be repaid by monthly instalments of principal and interest of £3,722.

11.8.2. They later agreed that interest would not be payable so long as the sums advanced were repaid as soon as possible by the Defendants.

11.8.3. They later agreed that all Loans would be repaid by June 2020 and that interest would be payable at 3.5% per annum if they were not repaid in full by that date."

136. The Crump parties' evidence (in Kenny 1) acknowledges that Mr Crump was willing to accept terms in dealing with Dean that he might not have been willing to accept on the open market in dealings with third party institutions. He did not believe security was required because of (i) his close relationship with Dean, whose position and responsibilities with the Horton parties provided assurance to Mr Crump that the sums loaned would be repaid; and (ii) Mr Crump's understanding of the positive asset position of the Horton parties, who owned various valuable properties.

137. Mr Crump puts it this way, in Crump 1 at para 24:

> "Dean talked about the Defendants' financial difficulties and how he felt it was his responsibility to find funding to help it through its liquidity issues. Dean is my best friend and I trusted (and trust) him completely; he needed help and I was in a position to help."

138. The Horton parties would of course be entitled to cross examine Mr Crump on this statement with a view to showing that is untrue. However, as acknowledged by Mr Care, in Care 1 at para 41:

> "On their own, and pending further explanation from the parties, the existence of loans on these terms is not necessarily indicative of money laundering, although it may be one indication that the loans were part of a money laundering scheme. To determine whether the terms of a 'loan' give rise to suspicion when investigating suspected money laundering, all factors must be taken into consideration to give context."

139. Thus, as I have concluded in respect of the Ivan claim, even if the loans were on uncommercial terms, this would fall far short of justifying an irresistible inference of money laundering.

Source of the funds

140. In this context, the relevant background facts include the source of the funds provided for the Crump loans. The evidence includes a summary of APL's paid invoices for the period 30 November 2013 to 19 July 2018, showing its receipts at about £21 million net of VAT. The Crump parties submitted that during the relevant period, APL's business

was sufficiently substantial for there to be ample funds available to lend to the Horton parties. The notion that despite having these "clean" funds from an established and successful business, the Crump parties would nonetheless deal with "dirty" money by lending it to the Horton parties is in my judgment, wholly implausible, and has no real prospect of success.

141. Similarly, it is, in my judgment, fanciful to suggest that the Crump parties nonetheless included their "clean" money in a money laundering scheme run by Dean to help him launder the money of others. There is no obvious benefit, and there would be substantial risks in doing so.

Absence of proper documentation: Defence para 43(4), (7)

142. This is relied upon in paras 43(4) and (7) of the Defence to the Crump claim. It appears to be based on para 27 of Care 1, which refers to a lack of supporting documentation and an absence of an auditable and trackable record of payments. However, Mr Care accepts that the absence of formal loan agreements does not, in and of itself, indicate money laundering[7].

143. As to this, Mr Crump's evidence (in para 21 of Crump 1) is first, that neither Mr Care nor the Horton parties' lawyers have asked him if there was such a record; and secondly, that records were in fact kept; and he exhibits a spreadsheet showing the loans and repayments exchanged between him and Dean in the period 2 June 2017 to 26 May 2020.

144. There are also in evidence a number of informal email exchanges between Dean and Mr Crump, in which they are negotiating the amount and terms of loans, and the payments and repayments to be made. On the Horton parties' case, these emails would be a sham to cover up a scheme involving the proceeds of a criminal offence. As the Crump parties' counsel submitted, there is an absence of reality to such a supposition.

145. Finally, in Care 1 at para 33, Mr Care says that he has "not been presented with any information that suggests these payments were recorded on the business accounts of [APL]". Mr Crump again confirms that he has not been asked for this information by Mr Care or the Horton parties' lawyers. He exhibits documents showing that the loans were included in the "Trade Debtor" entry in the 2017-2019 accounts and in the "other Debtors" entry in the 2020 accounts onward.

[7] e.g. [30] of Care 3.

Inconsistent assertions about the terms of the loans: Defence para 43(5), (6), (7)

146. The Crump claim alleges that the Horton parties (jointly and severally) borrowed from the Crump parties. Before the claim was brought, it was articulated differently, in that sums were alleged to have loaned by each of the Crump parties to each of Select and the Partnership.

147. The Horton parties rely on this and the inconsistency of the current claim with two loan documents dated December 2018 and 14 June 2019 signed by Mr Crump as hallmarks of money laundering.

148. As to this, again, Mr Care accepts that inconsistencies in the amounts said to have been lent by the Crump parties to Select, do not, in and of themselves, indicate money laundering[8]. These inconsistencies do not in my judgment provide any basis for alleging money laundering let alone for the irresistible inference which the Horton parties must establish.

149. Finally, I mention that in the Dean claim, the Horton parties rely upon what they refer to as the "lies" told by Dean set out in paragraph 23A(g) to (i) of the re-am PoC:
    (1) that Mr Horton was aware of the loans and intimately involved in their operation – as I have held in paragraphs 96 to 104 above, the Horton parties have no real prospect of showing that Mr Horton was not aware of the loans at all material times;
    (2) that HFR and CDS were only used to hold loan monies for the Horton parties and "did not carry out any transactions of their own", whilst, the Horton parties say, the redacted bank statements for those entities indicate that they were both involved in transactions not involving the Horton parties – this was not pursued in written or oral submissions, and does not in my judgment have any real prospect of justifying of itself the irresistible inference of money laundering;
    (3) Dean's refusal to provide to the Horton parties the account sought by them - although the Horton parties obtained an order for an account, the fact that the claim for an account was defended on the basis that sufficient information had already been provided does not, in my judgment, justify the irresistible inference of money laundering.

150. In any event, the Horton parties accept that these matters would not justify an inference of money laundering on their own.

[8] Care 3, [32]

Conclusion

151. For the reasons set out above, therefore, I conclude that the Horton parties have no real prospect of establishing the defence of money laundering on which they seek to rely. It is not therefore necessary to determine whether their case is sufficiently particularised, and I shall not lengthen this judgment further by doing so.