Neutral Citation Number: **[2025] EWHC 35 (Comm)**

Case No: **CL-2022-000289**

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

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

Date: **10 January 2025**

Before:

Dame Clare Moulder DBE

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Between:

(1) Manchester Property Development Holdings	**Claimants**
(2) Stephen Beech	
- and -	
Kuit Steinart Levy LLP	**Defendant**

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Neil Hext KC, Hannah Daly and Alessandro Forzani (instructed by **Enyo Law LLP**) for the **Claimants**
Miles Harris and Charlotte Baker (instructed by **Clyde & Co LLP**) for the **Defendant**

Hearing dates: **10th January 2025**

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APPROVED JUDGMENT

Dame Clare Moulder **Friday, 10 January 2025**

(**12.35**pm)

Judgment by **DAME CLARE MOULDER**

Introduction

1. This is the Court's judgment on the application dated 9 January, 2025 of the defendant, Kuit Steinart Levy LLP ("Kuits"), to adjourn the trial in these proceedings by reason of the illness of leading counsel instructed in this matter for the defendant.
2. The application is supported by the witness statement of Mr William Glynn, a partner in Clyde & Co LLP, having conduct of the defence of this claim on behalf of the defendant, dated 9 January 2025.
3. The application is opposed by the claimants and the claimants rely on the ninth witness statement of Ms Anna Maxwell, partner in the firm of Enyo Law LLP, who acts for the claimants.
4. The Court has also had the benefit of written and oral submissions from counsel on each side.

Background

5. This is a claim for professional negligence against Kuits, a firm of solicitors based in Manchester. The first claimant, formerly known as Beech Holdings, is a wholly owned company of the second claimant, Stephen Beech ("Mr Beech"). Mr Beech is and was a property developer based in Manchester. Through Beech Holdings, Mr Beech carried out substantial property developments in and around Manchester City Centre.
6. In 2016, Mr Beech and Beech Holdings retained Kuits to act in connection with the negotiation and agreement of a substantial loan facility (the "Facility") with a private investment firm, Roundshield Luxembourg SARL ("Roundshield"). The claimants claim that Kuits acted in breach of contract and/or negligently in allowing the Facility to be drafted in the way that it was and/or failing to

advise them about it. In particular, the Facility provided for a minimum return fee which became payable in full at an early stage in the life of the Facility.

7. It is the claimants' case that Roundshield was able to rely on its rights under the Facility to deprive Beech Holdings and Mr Beech of the cash required to support developments and ultimately to force them to cede control over the business. The claimants' primary case is that had they been properly advised, the Facility would have been drafted to reflect their intentions, Beech Holdings would have been a profitable enterprise left with a substantial portfolio of city central investment assets, and Mr Beech would have retained a personal property portfolio. The loss claimed by Beech Holdings is pleaded at around £21 million for Beech Holdings and a further £11 million for Mr Beech.

8. The matter is currently listed for a trial commencing on 20 January 2025, with three days set aside for pre-reading on 14 to 16 January 2025. There are eight lay witnesses in total, and the parties each have three experts, all of whom will be called to give evidence. The experts are in the fields of property valuation, development evidence, and forensic accountancy.

Relevant law

9. The Court has a discretion whether to adjourn a trial under CPR 3.12(b). It is a power which the Court must exercise in accordance with the overriding objective, namely, to deal with cases justly and at proportionate cost.

10. The law was largely common ground between the parties. Both parties accepted the law as set out in *Bilta (UK) Ltd ((in Liquidation)) & Others v Tradition Financial Services Ltd* [2021] EWCA Civ 221 and I was referred to paragraph 30 of the judgment:

> "…the guiding principle in an application to adjourn of this type is whether if the trial goes ahead it will be fair in all the circumstances; that the assessment of what is fair is a fact-sensitive one, and not one to be judged by the mechanistic application of any particular checklist; that although the inability of a party himself to attend trial through illness will almost always be a highly material consideration, it is artificial to seek to draw a sharp distinction between that case and the unavailability of a witness; and that the significance to be attached to the

> inability of an important witness to attend through illness will vary from case to case, but that it will usually be material, and may be decisive. And if the refusal of an adjournment would make the resulting trial unfair, an adjournment should ordinarily be granted, regardless of inconvenience to the other party or other court users, unless this were outweighed by injustice to the other party that could not be compensated for." [emphasis added]

11. I also note at [49]:

> "Mr Scorey's propositions were as follows:
>
> …
>
> (3) When considering whether a particular outcome is fair, it should not be assumed that only one outcome is fair.
>
> This is established by the authorities: *Terluk* at [20], *Dhillon* at [33(b)]. But equally in some circumstances there is really only one answer: see *Teinaz* at [20] ("some adjournments must be granted").
>
> (4) Fairness involves fairness to both parties. But inconvenience to the other party (or other court users) is not a relevant countervailing factor and is usually not a reason to refuse an adjournment.
>
> This is again established by the authorities. As to fairness involving fairness to both parties, see Dhillon at [33(a)], Solanki at [35]. As to the requirements of a fair trial taking precedence over inconvenience to the other party or other court users, see Teinaz at [21]. But Mr Scorey acknowledged, as can be seen from the earliest cases, that uncompensatable injustice to the other party may be a ground for refusing an adjournment." [emphasis added]

12. The claimants also referred the Court to *Innovate Pharmaceuticals Ltd v University of Portsmouth Higher Education Corporation* [2023] EWHC 2394 at [3]. In that case, Mr Justice Constable enumerated the factors that the Court should take into account in the context of a late application to adjourn. They were:

> a. The parties' conduct and the reason for the delays;
> b. The extent to which the consequence of the delays can be overcome before the trial;
> c. The extent to which a fair trial may have been jeopardised by the delays;
> d. Specific matters affecting the trial, such as the illness of a critical witness and the like;
> e. The consequences of an adjournment for the claimant, the defendant, and the court."

13. I note that the facts in *Innovate Pharmaceuticals* were very different to the present case. I accept the submission for the claimants that the principles are capable of more general application, but clearly the weight to be given to the various factors identified need to reflect the circumstances of the particular case and the Court must exercise its power in accordance with the overriding objective.

Facts

14. Turning to the facts of what has occurred in this case leading to the application by the defendant to adjourn the trial. From the witness statement of Mr Glynn, it is apparent that he was told by one of the barrister's clerks on the morning of 8 January 2025 that the clerk in turn had been told on the evening of 7 January 2025 that the defendant's leading counsel had become unwell and could not appear at the forthcoming trial.
15. Mr Glynn states that the defendant took urgent steps to explore whether there were any credible options other than to apply to adjourn the trial. Mr Glynn states that the defendant has carefully considered whether it is possible fairly to proceed without the counsel who has been involved as leading counsel throughout the proceedings and was expected to appear as lead advocate at trial as he has at the two previous hearings in this matter.
16. Mr Glynn further stated that the defendant has considered instructing alternative leading counsel. However, given the proximity of the trial, its length, the quantum at stake, the complexity of the issues, and the volume of the material which would need to be digested, the defendant has concluded that instructing alternative leading counsel in the time available is not a realistic option and would not be a fair one. The relevant chambers have identified two junior counsel who could potentially be instructed for at least part of the trial to provide further assistance, but Mr Glynn stated that that would not be an adequate replacement for leading counsel.

Defendant's submissions

17. In his submissions for the defendant, Mr Harris submitted that he was seeking an adjournment until such time as the defendant was able to instruct new leading counsel. He noted the circumstances of the current case, that the application for the adjournment was due to the ill health of leading counsel, and it was not proposed by the defendant that the Court should wait for the particular leading counsel to recover.
18. Mr Harris stressed that the defendant had been deprived of the individual which they expected to advise and guide them through the proceedings and to present the most important aspects of the case. It was submitted that the defendant cannot obtain a replacement within the time suggested by the claimants (a delay of one week to the start of the trial). He submitted that the claimants' proposal to further delay the start of the trial for two or possibly three weeks would not give the defendant time to instruct new leading counsel.
19. It was submitted for Mr Harris that having him appear as the junior counsel would not be the same as having leading counsel: he was not the trial advocate chosen by the defendant or the trial advocate that they would have chosen. The defendant had recognised that they needed an experienced leader in the case, albeit supported by Mr Harris as a junior.
20. In addition, it was submitted that, in any event, Mr Harris as junior counsel does not have sufficient time to prepare. It was not intended that he would cross-examine the major witnesses or the forensic accountants, and although it was suggested that Mr Harris could use the notes that have already perhaps been prepared by leading counsel, Mr Harris submitted that it was not the case that he could simply "learn the lines" as if in a play. He noted that the proposal from the claimants that the Court could adopt a more compressed timetable which would allow more time for preparation at the outset would in fact add to the overall pressure by reason of the compressed the timetable thereby compressing both the time for witnesses and for the preparation of closing submissions.

21. In relation to the impact on the claimants, Mr Harris accepted the stress that an adjournment would place on the claimants. In relation to the additional costs, he submitted that these could and should be mitigated by the cessation of work and that parties should recognise that this was not an opportunity to make further applications.

22. In relation to the memory of witnesses, which the claimants had suggested would be prejudiced by any delay, Mr Harris submitted that these proceedings have been brought by the claimants on the cusp of limitation.

23. In relation to the availability of leading counsel for the claimants if the trial were to be adjourned, he noted that counsel for the claimants had indicated that he had prior commitments in relation to 2026.

24. In relation to the prejudice raised by the claimants as concerns their funding arrangements and the need for further costs to be incurred in relation to after the event insurance, Mr Harris submitted that he obviously did not know the precise funding position and thus was in a difficult position to gainsay the submissions of the claimants, but he questioned whether the funding arrangements were as tight and inflexible as the claimants indicated and why a funder would not be prepared to see the proceedings to close. He noted that the course of litigation is rarely smooth and that there would therefore likely be provision for unforeseen contingencies.

Claimants' submissions

25. For the claimants, it was submitted that they do not dispute the integrity of the reason given for the adjournment application. However, it was submitted by Mr Hext KC for the claimants that the prejudice that would be inflicted, were the application to be granted, is very substantial. It was submitted by Mr Hext that there would be a significant delay if the trial would be adjourned, given that it is likely that it could not be accommodated for many months, possibly not until the beginning of, or even later, in 2026. It was submitted that this is significant both emotionally for the claimants and financially. It was submitted that the matters referred to in the proceedings have already had a

catastrophic impact on Mr Beech personally and the claimants' business interests more widely, and an adjournment would therefore have a significant effect on Mr Beech.

26. As to the additional costs it was submitted that the time required for both sides to get back up to speed will be significant. It was submitted that there will be a need to prepare for trial all over again, there will be new brief fees, and the experts will need to re-familiarise themselves with the evidence and have meetings with the lawyers. Even if the claimants are ultimately successful, the costs would not be recoverable until after judgment.

27. Leading counsel referred to the constraints on his availability for an adjourned trial, having trials listed in March 2026 and in June and July 2026. That would mean that he was only available in the autumn of 2026. Mr Hext also indicated that he has existing commitments in the autumn of 2025.

28. Most significantly, Mr Hext submitted that there would be prejudice to the claimants in terms of their funding. It was submitted that the current budget will not be sufficient to accommodate further costs incurred on an adjournment and therefore the claimants would be obliged to go back to the funders to seek an increase in the budget. It was submitted that, given the overall economics of the case at this stage, it is not certain that the claimants would be able to secure further funding for the deferred hearing. Mr Hext stated that the claimants had already had to get further funding because the costs had already exceeded the original budget.

29. The consequence, it was submitted, of having to go back to the funders, could be that the claimants would be unable to pursue the claim to conclusion. That, it was submitted, would be grossly unfair and prejudicial and would deny the claimants' access to justice.

30. Mr Hext also raised the prejudice that, on the assumption that the costs of the adjourned trial would run into the high hundreds of thousands of pounds, the multiple which the funders would require, which is taken out of the damages recovered and is not recoverable in costs, would, in the estimate of Ms Maxwell, be nearly £2 million.

31. Mr Hext submitted that ATE cover has also been procured for this claim and may need to be

extended. Again, the premium payable would need to be funded and a multiple would also be applied to those funds. Ms Maxwell estimated that the premium for that additional element could itself run to several hundreds of thousands of pounds, depending on the level of additional cover needed, and an ATE premium is not recoverable in costs.

32. Turning to the potential impact on the defendant, Mr Hext submitted that the absence of leading counsel does not make a trial unfair. The trial is decided on the evidence and it is not always possible for parties to instruct leading counsel. It was submitted that Mr Harris, called in 2003, is an accomplished senior junior with significant experience of complex, high-value professional negligence cases. Mr Hext submitted that Mr Harris would have assistance. He could bring in other juniors who could take on discrete areas of the case. It was submitted that Mr Harris will already have a significant knowledge of the documents, he will have been involved in the preparation of the opening submissions and, turning to the trial, Mr Hext submitted that there would only be a need for a short opening and that Mr Harris has already been preparing for cross-examination of some of the witnesses.

33. It was submitted that whilst it may not be the defendant's preference to proceed without leading counsel, the Court has to weigh the relative prejudice to the parties involved in adjourning the trial or refusing an adjournment, and the fact that the defendant would be represented by a senior junior rather than leading counsel cannot bear too much weight.

Discussion

34. As referred to above in the authorities, the Court has to weigh the conflicting considerations; determining whether a refusal of the adjournment would make the trial unfair to the defendant, and if it would, whether that is outweighed by irremediable prejudice to the claimants.

35. The factors which the Court takes into account in this case are as follows.

Impact of delay

36. Firstly, the delay which will result if the trial is adjourned. The Court seeks to deal with matters expeditiously as the parties should be able to resolve their disputes as soon as practicable. It is unfair and unjust on both parties if proceedings drag on unnecessarily.
37. The Court acknowledges the huge stress that pending court proceedings place on witnesses, and more especially, those individuals who have a financial or personal interest in the outcome of the proceedings. It is also disruptive for other court users if trials are adjourned, as time allocated to this trial may not be capable of being fully utilised if adjourned, and time available in future for other court users will be reduced. Given the length of this particular trial, I accept that any delay if the trial is adjourned is likely to be significant. It would not be possible (as the parties suggested) merely to extend the trial window by a couple of weeks (to allow further time for junior counsel to prepare) or to relist the trial with a delay of only a couple of months (to allow new leading counsel for the defendant to be instructed). The Commercial Court cannot easily find space in the existing list to alter the trial window or to relist a case which will occupy court resources for over half a term.
38. I also accept the claimants' submission that if the trial were to be adjourned, significant logistical and financial challenges will impact both sides given the need to take into account the availability of the witnesses, the experts, and the legal teams. I note the issues raised by claimants' own leading counsel in terms of any relisting, both in 2025 and 2026, but it is of course not unknown for counsel teams to have to change in the course of long running matters or for diary commitments to change. That is wholly different from the situation in which the defendant now finds itself: the issue that is currently before the Court is the change of counsel given the imminence of the trial and whether, given those circumstances, an adjournment at this point should be ordered. The claimants' own position concerning its counsel in the future would not, in my view, amount to irremediable

prejudice at this juncture. Nevertheless, I take into the balancing exercise the fact that, if the trial is adjourned, there will be a considerable delay which will have the consequences discussed above and which is likely to be of many months before the proceedings can be relisted and thus resolved.

Witnesses

39. As to the impact on witnesses of any adjournment, it seems to me that, given the considerable period that has already elapsed – the issues date back to as early as 2016 – any further delay resulting from an adjournment is unlikely to have a material impact on the quality of the witness evidence and thus on the outcome of the proceedings. In my view, this is not a significant factor to weigh in considering whether or not to grant an adjournment.

Additional costs

40. As to the additional costs, if the trial is adjourned, there will inevitably be further costs. However, the witness evidence and expert evidence has been finalised, the skeleton for the claimants has been filed, and I understand that the defendant's skeleton is also in final form. I see no reason therefore why further significant costs would be incurred on an adjournment in relation to the existing evidence, or that there should be a need for any further or additional disclosure. Whilst it is not unknown that a particular document comes to light late and is disclosed even during trial, given the stage of the proceedings that has been reached, there is no reason to assume that, absent some unforeseen event, the Court would sanction additional disclosure requests prior to any adjourned trial which would involve any significant expense.

41. I do accept, however, that having to put down a matter and then pick it up again many months later, especially in a case as complex as this, would require additional work, as both lawyers and expert witnesses would have to refresh their memories in readiness for trial, and in this particular case, given the volume of material, this is a not insubstantial task. If new counsel is instructed on either

side, that will have additional costs as they are brought up to speed. However, in the circumstances where this case is ready for trial, I do not accept the submission for the claimants that the additional costs would be in the high hundreds of thousands.

Prejudice to the Defendant

42. Turning then to the prejudice to the defendant if the adjournment is refused. The claimant has proposed a delay to the start of trial by one week to allow junior counsel for the defendant a two-week period to prepare, and in the alternative, suggested a possible extension beyond the trial window, which would allow the defendant say, three weeks to prepare. As referred to above, in my view the latter option is not possible within the Commercial Court list.
43. Two versions of the draft timetable were before the Court at the PTR. The main difference between them is that one envisaged a week's break for written closings; the other saw written closings fitted in over the weekend break and required the Court to sit longer than usual on two days. At the PTR, the Court's decision was to adopt the longer timetable, but I accept that it would be possible to revert to a shorter and more compressed timetable. This would allow the trial to start a week later and still to finish as scheduled within the trial window.
44. However, even if the timetable was adjusted and compressed in this way, at most it would only give the defendant's junior counsel two weeks to prepare to cross-examine the entirety of the claimants' witnesses, both factual and expert. The compressed timetable was originally rejected by the Court because it compressed the timetable and placed unnecessary burdens on both parties. It would therefore, it seems to me, place greater stress on junior counsel (including in relation to the preparation of closing arguments) if the court were to adopt the compressed timetable within the trial window, even assuming that it allowed sufficient time to prepare for cross examination which in my view is does not. If notwithstanding the Commercial Court listing constraints referred to above, additional time were able to be found after the end of the trial window only for closings, this

could allow further time to prepare closings, but it would not assist junior counsel in terms of preparing for cross-examination.

45. The delay of a week or two weeks would not allow the defendant sufficient time to find alternative leading counsel. I accept that junior counsel for the defendant in this case is very familiar with the issues and therefore most probably the documents, that he is experienced, and is likely to have had a major role in the preparation of the written openings. I have also considered that junior counsel was going to cross-examine some of the witnesses, although the court has been told that they were not the major witnesses and did not extend to the forensic accounting evidence. Were junior counsel for the defendant now to take over the entirety of the cross-examination, he may obtain some assistance from the notes already prepared by the defendant's leading counsel, but I accept the defendant's submission that the notes are of limited assistance and do not come close to providing a complete answer to the issue of lack of time to prepare to carry out cross-examination and generally to take over leading the case.

46. In my view, it would not be fair to expect junior counsel, even an experienced junior counsel as in this case, to take over the cross-examination in this trial and to take it forward as the leader, either on the existing timetable or the slightly delayed timetable. I reached this conclusion not because of the ability of junior counsel, who is, as I have said, a senior junior; rather for the reasons that this is a long and a complex trial. I have in mind the three sets of expert evidence in this case and the issues which are covered in the expert reports, including the number of properties and the large number of variables which are in play in the forensic reports.

47. Although junior counsel is familiar with the documentation, it is not the same as being prepared to lead the case, and it is no answer to the difficulty to suggest that other juniors could be brought in to assist and that the defendant can be expected only to make a short opening. To have a fair trial, the defendant should have a proper opportunity to defend the case brought against it. Whilst I accept that there is no need to have leading counsel present in every case, this is a very substantial trial,

even in the Commercial Court. I note that the complexity of this matter resulted in counsel for the claimants recently seeking permission from the Court to file an opening skeleton of 90 pages rather than the usual Commercial Court limit of 50 pages and mindful of the issues which the Court had seen at the PTR, such permission was granted. It is a case in which it is to be expected that leading counsel would be instructed assuming that the party has the resources to do so, which, in this case, it appears to have.

48. The overriding objective requires that, so far as practicable, the parties should be on an equal footing. In this regard, I take into account that Kuits is the defendant in this case, which has therefore been obliged to defend itself against a claim brought against it. In my view to force the defendant to proceed with the junior counsel on the current timetable to trial, or even within the current trial window, would be unfair and the resulting trial would be unfair.

Prejudice to the claimants

49. The Court has to consider the prejudice to the claimants which would result from any adjournment and, in particular, the issue of the potential loss of funding and or the additional funding costs at which the claimants would incur, and whether this prejudice is such as to outweigh the unfairness to the defendant.

50. As to funding, I accept that the claimants do not currently have funding for any additional costs. I also accept that it is not certain that the claimants would be able to secure further funding. However, the merits of the claim have not changed by what has occurred. On that basis, there is no grounds to suppose that, for that reason alone, additional funding to allow the matter to be taken to its conclusion would not be likely to be forthcoming. In my view, it seems more likely that the funder would wish to see the matter to conclusion, and, as referred to above, in my view, taken in context of the overall costs of the proceedings to date, the additional costs should be relatively limited.

51. I accept that there is a risk that the delay and the need to apply for further funding may cause the funder to revisit the merits, but that would not be as a result of what has given rise to the application to adjourn. The risk is not enough to persuade me that the claimants will suffer irremediable prejudice should an application to adjourn be granted. As to the multiple, I accept that the period is extended; although, as I have already said, the risk is unchanged. The precise impact is unknown, given that the claimants understandably do not wish to give further details and have had little time to consider this issue given the imminence of the trial and the need for this application to be resolved quickly. As to the additional ATE premium, the need for this is also unknown as is the amount involved. Whilst therefore I do not discount it, it is again not enough to persuade me that the claimants will suffer irremediable prejudice.

Conclusion

52. Even if the claimants may (or will) suffer irremediable prejudice on an adjournment by reason of the funding implications, on the authorities referred to above, "*uncompensatable injustice to the other party may be a ground for refusing an adjournment*" [emphasis added] but does not require the Court to refuse an adjournment. In deciding whether to adjourn the trial, the Court must have regard to the overriding objective. It is extremely unfortunate that leading counsel has been taken ill at such a late stage but, as has been recognised, this is not the fault of either party. I am extremely reluctant to adjourn such a substantial trial, given the matters referred to above. However, our legal system is based on the oral presentation of evidence and submissions. Cross-examination plays a very significant role in our legal system in enabling the court to receive the best evidence from witnesses. Cross-examination of witnesses requires skill and extensive preparation.
53. Weighing the conflicting considerations discussed above, I find that in the circumstances, the defendant could not have a fair trial on the current trial timetable or within the current trial window and, on balance, I find that the prejudice to the defendant in refusing an adjournment outweighs the

other factors. I am not persuaded that the unfairness to the defendant is outweighed by any potential prejudice which may accrue to the claimants, and although I accept the potential funding implications for the claimants which may result from an adjournment, in my view, the balance in this case lies in granting the application to adjourn the trial.