Both Respondents appealed to the High Court (Administrative Court) against the Tribunal's findings, and the Second Respondent lodged a separate appeal against the Tribunal's sanction striking his name off the Roll of Solicitors. The appeals were heard by Mr Justice Jay on 10 to 13 December 2013 inclusive and Judgment was handed down on 13 January 2014. Both appeals were successful in part. Mr Shaw's appeal was upheld on the ground that the Tribunal's Findings were inadequately reasoned save as regards (a) paragraph 156.77 and the misuse of confidential information, falling short of dishonesty, and (b) the eighth affidavit. Mr Turnbull's appeal was upheld, save in one respect; the Tribunal's findings that he was in breach of various rules of the Code of Conduct stand or fall on or by the quality of the reasons applicable to Mr Shaw's case. Five other grounds of appeal were unsuccessful and Mr Turnbull's appeal against sanction also failed. Mr Justice Jay remitted Mr Logue's Application for rehearing before a differently constituted Division of the Tribunal in the light of his Judgment. The Tribunal understands that its orders striking the names of both Respondents off the Roll of Solicitors were quashed pending the rehearing. Costs of the appeal were reserved. Shaw and Turnbull v Logue [2014] EWHC 5 (Admin.)
On 2 September 2016 a differently-constituted Tribunal struck off the names of both Mr Shaw and Mr Turnbull from the Roll of Solicitors. Each was ordered to pay a contribution towards the costs of the SRA of £24,000 and £12,000 respectively. The First Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 2 September 2016 in respect of sanction. The appeal was heard by Mrs Justice Carr DBE on 27 July 2017 and Judgment handed down on 7 August 2017. The appeal was dismissed. Shaw v Solicitors Regulation Authority [2017] EWHC 2076 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10999-2012

BETWEEN:

GEOFFREY COLLINS LOGUE Applicant

and

ANDREW WILLIAM SHAW First Respondent

and

CRAIG STEPHEN TURNBULL Second Respondent

Before:

Mr J. N. Barnecutt (in the chair)
Mrs E. Stanley
Mrs V. Murray-Chandra

Date of Hearing: 4th - 8th, 11th and 14th February 2013

Appearances

John Wardell QC and Andrew Mold, Counsel, Wilberforce Chambers, 8 New Square, Lincolns Inn, London WC2A 3QP instructed by RadcliffesLeBrasseur Solicitors for the Applicant.

Justin Fenwick QC and Tom Asquith, Counsel, 4 New Square, Lincolns Inn, London WC2A 3RJ instructed by Mayer Brown International LLP Solicitors for the Respondents.

JUDGMENT

Allegations

The allegations against the Respondents were that they:

Contained in a List of Issues prepared by Mayer Brown International LLP Solicitors and agreed between the parties:

1. Disclosures regarding the New York Apartment at the Without Notice Hearing

1.1 Did Mr Shaw and/or Mr Turnbull:

1.1.1 Provide misleading information to the Court (or allow misleading information to be provided to the Court) as to whether Mr Logue still lived at the New York Apartment as at the date of the Without Notice Hearing; and/or

1.1.2 Suppress information regarding Mr Logue's place of residence as at the date of the Without Notice Hearing; and/or

1.1.3 Fail to disclose other relevant information relating to the questions of whether Mr Logue was evading service and/or whether there was a risk of dissipation?

1.2 To the extent that any of the allegations at paragraph 1.1 are upheld, does the Solicitors Disciplinary Tribunal (SDT) consider that this constitutes dishonest conduct or deliberate misconduct on the part of Mr Shaw and/or Mr Turnbull?

1.3 To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Rules 1.01, 1.02, 1.03, 1.06 or 11.01 of the Solicitors' Code of Conduct 2007 ("Code of Conduct")?

2. Disclosures regarding the involvement of Mr Candy/CPC at the Without Notice Hearing

2.1 Should the following matters properly have been put before the Court at the Without Notice Hearing:

2.1.1 Stewarts Law were acting for both the Liquidating Trust and Mr Candy/CPC;

2.1.2 The instruction of Stewarts Law by Mr Candy/CPC in connection with the US Proceedings and any relevant involvement or interest of Mr Candy/CPC in those proceedings;

2.1.3 The agreement of Mr Candy/CPC to provide certain funding and assistance to the Liquidating Trust in relation to the Freezing Order and/or in respect of the US Proceedings;

2.1.4 The dispute between Mr Candy/CPC and Mr Logue in respect of Mr Logue's/Hayden's acquisition of an apartment at One Hyde Park and that Mr Candy/CPC might, therefore, have an interest in the outcome of the application for the Freezing Order?

2.2 Does the failure to raise the matters set out at paragraph 2.1 at the Without Notice Hearing constitute a breach of the obligation of full and frank disclosure of material facts owed to the Court by Mr Shaw and/or Mr Turnbull, on the basis that these matters reasonably could be taken into account by the Court in deciding whether to grant the Freezing Order, or their duty not to mislead the Court?

2.3 Does the SDT consider that the failure to raise the matters set out at paragraph 2.1 was dishonest or otherwise constituted deliberate misconduct?

2.4 To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull in relation to this allegation, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

3. Disclosures regarding the merits of the US Proceedings at the Without Notice Hearing

3.1 At the Without Notice Hearing did Mr Shaw and/or Mr Turnbull:

3.1.1 Provide misleading information to the Court (or allow misleading information to be provided to the Court) as to whether the allegations made against Mr Logue involved actual fraud; and/or

3.1.2 Otherwise overstate (or allow to be overstated) the nature of the claims being made against Mr Logue in the US Proceedings; and/or

3.1.3 Fail to inform the Court as to defences that might be available to Mr Logue in the US Proceedings?

3.2 In any event, do the matters set out at paragraph 3.1 constitute a breach of the obligation of full and frank disclosure of material facts owed to the Court by Mr Shaw and/or Mr Turnbull, on the basis that these matters reasonably could be taken into account by the Court in deciding whether there was a good arguable case in the US proceedings and/or there was a risk of dissipation, or their duty not to mislead the Court?

3.3 Does the SDT consider that the matters set out at paragraph 3.1 constitute dishonest or deliberate misconduct on the part of Mr Shaw and/or Mr Turnbull?

3.4 To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

4. Use of confidential information regarding Mr Logue's assets

4.1 Did the transmission of information regarding Mr Logue's and/or Hayden's assets (acquired in accordance with the disclosure requirements under the Freezing Order) to Jones Day and/or Mr Candy/CPC (if and to the extent that this occurred) constitute:

4.1.1. A breach of an implied obligation of confidence and/or implied undertaking to the Court; or

4.1.2 A transmission other than for the purpose of the proceedings, such that there was a breach by Mr Shaw and/or Mr Turnbull of Civil Procedure Rule (CPR) 31.22?

4.2 If so, was there a deliberate or dishonest intention on the part of Mr Shaw and/or Mr Turnbull to breach an implied undertaking/obligation of confidence/CPR 31.22?

4.3 Was the application for the Freezing Order pursued with the avowed intention that information as to Mr Logue's and/or Hayden's assets should be passed to Mr Candy/CPC (as the Applicant asserts)? If so, was this an abuse of process?

4.4 To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02 1.03, 1.06 or 10.05?

5. Disclosures regarding the Liquidating Trust's funding at the Fortification Hearing

5.1 Were the statements given by Mr Onions QC at the Fortification Hearing (as recorded at lines 13-14 and 16-20 of the transcript) incorrect or misleading?

5.2 Was the evidence filed for the purposes of the Fortification Hearing misleading by failing to mention any funding that Mr Candy/CPC had provided to the Liquidating Trust?

5.3 In the case of any of paragraph 5.1 or 5.2 being answered affirmatively, did it constitute a breach of the obligation of Mr Shaw and/or Mr Turnbull to provide full and frank disclosure (in particular, did this duty remain in place at the time that this statement was given) or their duty not to mislead the Court?

5.4 Does the SDT consider that Mr Shaw and/or Mr Turnbull dishonestly permitted Mr Onions QC to give the statements referred to in paragraph 5.1 to the Court or permitted them to be made in the knowledge that the statements were incorrect?

5.5 Did Mr Shaw and/or Mr Turnbull fail to correct any incorrect or misleading statement made by Mr Onions QC as soon as they should have done?

5.6 Does the SDT consider that Mr Shaw and/or Mr Turnbull dishonestly or deliberately prepared misleading evidence for the Fortification Hearing?

5.7 To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

6. Disclosures regarding the New York Apartment subsequent to the Without Notice Hearing

6.1 Did Mr Shaw and/or Mr Turnbull provide misleading information to the Court (or allow misleading information to be provided to the Court) regarding Mr Logue's residency at the New York Apartment, subsequent to the Without Notice Hearing?

6.2 If so, did statements made after Mr Logue had put his own evidence before the Court as to the position in respect of the New York Apartment, constitute a breach of the duty of full and frank disclosure or their duty not to mislead the Court?

6.3 Did Mr Shaw and/or Mr Turnbull provide misleading information to the Court (or allow misleading information to be provided to the Court) as to when they were made aware of evidence which suggested that Mr Logue no longer lived at the New York Apartment (including the information provided by Messrs Kahn, Udvardy and Knuckey)?

6.4 If so, was this done deliberately and/or dishonestly?

6.5 To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

7. Mr McGrath

7.1 Did Mr Shaw and/or Mr Turnbull provide misleading information to the Court (or allow misleading information to be provided to the Court) as to:

7.1.1. The whereabouts of Mr McGrath; or

7.1.2 The Liquidating Trust's contact with Mr McGrath?

7.2 If so, was this done deliberately and/or dishonestly?

7.3 To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

8. The prospects of the default in the US Proceedings being vacated

8.1 Did Mr Shaw and/or Mr Turnbull inappropriately downplay to the Court the prospects of Mr Logue getting the default in the US Proceedings vacated or was the position stated by Mr Shaw a faithful account of the advice give by Mr Wiesner?

8.2 Was this in breach of any duty in circumstances where Mr Logue was in a position to make inter partes representations?

8.3 Was this conduct deliberate and/or dishonest?

8.4 To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

9. HM Land Registry searches exhibited to Mr Evans' first affidavit

9.1 Was an incorrect or incomplete explanation given by Mr Shaw as to why HM Land Registry searches were added to Mr Evans' First Affidavit after it had been sworn?

9.2 If so, was this deliberate/dishonest?

9.3 To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

Documents

10. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents which included:

Applicant:

- Application dated 25 May 2012;
- First witness statement of Applicant dated 25 May 2012 and exhibit "GCL1";
- Second witness statement of Applicant dated 30 November 2012 and exhibit "GCL2";
- Third witness statement of Applicant dated 23 January 2013 and exhibit "GCL3";
- Bundles C1- C7 and W1;
- Bundle of Authorities;
- Applicant's skeleton argument;
- Applicant's list of issues;
- Applicant's note on the oral evidence.

Respondents:

- First witness statement of First Respondent dated 19 October 2012 and exhibit "AWS1";
- Second witness statement of First Respondent dated 8 January 2013;
- Third witness statement of First Respondent dated 25 January 2013.
- First witness statement of Second Respondent dated 19 October 2012;
- Second witness statement of Second Respondent dated 25 January 2013;
- Bundle of authorities
- Respondents' skeleton argument;
- Respondents' list of issues;
- Respondents' note of evidence;

Preliminary Matter (1)

11. At the start of the hearing, the Chairman of the Tribunal advised the parties that Mrs Stanley had previously been a partner at the firm of Withers. The Chairman explained that as Withers had been mentioned in the papers, he considered that it was appropriate to raise this although Mrs Stanley had left the firm 20 years ago and did not feel that she needed to recuse herself from this case. Neither party objected to Mrs Stanley's continuing involvement.

Preliminary Matter (2)

12. The Tribunal asked the parties to confirm which version of the allegations should be used in this case as the wording of the allegations was different in the Applicant's first witness statement and in the Lists of Issues that had been prepared by each party and filed with the Tribunal. After some discussion, the parties agreed that the allegations that should be used were those set out in the List of Issues prepared by the Respondents' solicitors.

Preliminary Matter (3)

13. Mr Wardell QC told the Tribunal that following an order for disclosure of account ledgers which had been made by the Tribunal on 10 January 2013, an issue had arisen in relation to the payment of Counsel's fees for the discharge hearing. He said that there was now uncertainty over these fees and the First Respondent had claimed that Counsel had not submitted any fee notes for the work carried out in relation to the hearing. Mr Wardell said that the First Respondent's explanation had been met with a degree of scepticism due to the fact that there had been a great deal of misinformation about the payment of fees in this case and because the Respondents had refused to provide copies of the fee notes. He explained that a summons had now been issued requiring the clerk to Mr Onions QC and Hannah Brown to disclose the fee notes. The documents had been delivered to the Clerk to the Tribunal and were currently being held to order. Mr Wardell asserted that the fee notes should be released and copied and he invited the Tribunal to make an order in those terms. He claimed that it was necessary to ascertain whether Counsel had been paid for the discharge hearing for the purpose of these proceedings.

14. Mr Fenwick QC told the Tribunal that the fee notes and the details of the work that they contained may be privileged but this would depend on their contents and the degree of specificity. He said that the Applicant had been invited to make the appropriate application to the Tribunal but had failed to do so. He claimed that if the application had been made then it would have been his duty to defend the rights of the Respondents' clients to preserve any confidentiality and privilege that may exist in relation to the fee notes. He said that, unfortunately, he could not say any more as this would risk a conflict between the Respondents and their clients. It was a matter for Mr Wardell to deal with in the way that he saw fit.

15. In continuing submissions, Mr Wardell told the Tribunal that the Applicant relied on Rule 13(9) of The Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") in order to secure the attendance of Counsel's clerk and the production of the fee notes. Mr Wardell said that he was not trying to prevent Mr Fenwick from making submissions regarding privilege and confidentiality but he wanted to make sure that the fee notes were available if the Tribunal wished to see them. He claimed that he was not seeking to obtain any advantage and simply wanted to ensure that relevant information was before the Tribunal. He did not think that the fee notes contained privileged information but said that the notes could be redacted if necessary.

16. After further discussions between the parties, Mr Wardell stated that Mr Fenwick did not object to him seeing the fee notes. He said that it had been agreed that the notes would be copied and shown to him and, if he intended to rely on the documents in the

course of his cross examination of the First Respondent, then copies would be made available to the Tribunal. Mr Fenwick said that this was not quite correct as the fee notes were documents which belonged to the Respondents' former clients and so he could not make representations either way. He said that if an application had been made for the fee notes in his clients' possession to be disclosed then he would have asserted that they were privileged although, in the circumstances, there did not appear to be anything which would need to be redacted. He stated that he would also have claimed that the fee notes were confidential and so an order of the Tribunal would be required for their disclosure. He said that, other than making those points regarding privilege and confidentiality, the Respondents did not have any objection to the fee notes being disclosed.

17. Mr Fenwick told the Tribunal that he did not anticipate that he would raise any other separate argument if he were dealing with this matter on behalf of the Respondents' clients or Counsel's chambers. In the circumstances, he believed that it was sensible for the Tribunal to order that copies of the fee notes should be taken so that the notes could be inspected by both parties. Mr Wardell said that he appreciated that Mr Fenwick was being careful but there was no real objection to the fee notes being produced. He claimed that the fee notes were relevant to the case and he submitted that he was entitled to see them as he had issued the summons. He asked the Tribunal to direct that the Respondents should also produce their copies of the fee notes in case any other point should arise in relation to this matter.

Decision of the Tribunal

18. Having considered the submissions that had been made by both parties, the Tribunal ordered that the fee notes produced by Counsel's clerk and those in the Respondents' possession should be copied and made available to both parties.

Factual Background

19. The First Respondent was admitted as a solicitor on 15 June 1981. His name remained on the Roll of Solicitors. At all material times, the First Respondent was a partner in the commercial litigation department at Stewarts Law LLP, 5 New Street Square, London EC4A 3BF ("Stewarts Law").

20. The Second Respondent was admitted as a solicitor on 15 September 2006. His name remained on the Roll of Solicitors. At all material times, the Second Respondent was a solicitor in the commercial litigation department at Stewarts Law. The Second Respondent was no longer practising as a solicitor.

21. The Applicant was the sole beneficiary of Hayden Holdings Foundation ("Hayden") which was a Liechtenstein Stiftung that was formerly named Eden Holdings Foundation ("Eden"). In addition, the Applicant was the chairman and owner of 70% of the equity of Uno Ponterosso Srl ("Uno Ponterosso") which was a real estate development company based in Italy.

22. Private Retreats LLC was a fractional resort home ownership business established by Mr McGrath ("Mr McGrath"). The Applicant was employed in an executive capacity by Private Retreats LLC in October 2002.

23. Preferred Retreats LLC (a management company) and Complete Retreats LLC ("Complete Retreats") initially owned Private Retreats LLC and would ultimately own four other destination clubs ("the Retreats Group").

24. In January 2004, the Applicant invested $1million in start up funds for a new Retreats Group company. In mid 2004, the Applicant provided debt funding of approximately $13.82 million to the Retreats Group, via Mid-Atlantic, in order to facilitate the acquisition of apartments 1.22, 2.22, 5.06 and 8.10 at The Knightsbridge, London ("The Knightsbridge"), an apartment in Paris ("the Paris apartment") and a property in Umbria (collectively "the European properties") over which security was taken by Mid-Atlantic. Mid-Atlantic Capital Foundation ("Mid-Atlantic") was a Liechtenstein Special Purpose Vehicle ("SPV") established on 12 July 2004 to fulfil the Applicant's lending obligations to the Retreats Group under an agreement dated 1 July 2004. The Applicant was the sole beneficiary of Mid-Atlantic which was owned and controlled by him.

25. In January 2005, the Applicant informed Mr McGrath that he had decided to leave the Retreats Group. An agreement was reached between the Applicant and Mr McGrath regarding his separation from the company. On 24 January 2005, the Retreats Group paid the Applicant $3.65 million ("the January 2005 payment").

The 2005 Proceedings

26. In April 2005, Mr McGrath and the Retreats Group brought proceedings against the Applicant in Missouri ("the Missouri proceedings") and the Applicant then issued separate proceedings against Mr McGrath and the Retreats Group (collectively "the 2005 proceedings").

27. A settlement of the 2005 proceedings was reached on 14 September 2005 ("the 2005 Settlement Agreement"). Under the terms of the Settlement, both sets of 2005 proceedings were discontinued and Mid- Atlantic was granted:

- Ownership of the Paris apartment;
- The Retreats Group's rights and liabilities in respect of The Knightsbridge; and
- £185,000 in cash

28. The Applicant stated that under the terms of the agreement, Mid-Atlantic also gave up any contractual rights regarding the Umbria property.

29. Between 4 November 2005 and 6 January 2006, Hayden completed on the acquisition of three of The Knightsbridge apartments. At around the same time, Emma Logue, the Applicant's sister, acquired the fourth apartment.

The US Proceedings

30. On 23 July 2006, the Retreats Group filed for bankruptcy. On 31 December 2007, the Complete Retreats Liquidating Trust ("the Liquidating Trust") was established, pursuant to the liquidation of the Retreats Group. It was empowered to pursue any

course of action on behalf of the Retreats Group. The Trustee of the Liquidating Trust was Mr Evans ("Mr Evans") who was a partner at the US law firm Kroll, McNamara, Evans & Delehanty, ("Kroll").

31. On 22 July 2008, the Liquidating Trust issued proceedings against the Applicant and others in the United States Bankruptcy Court, District of Connecticut, Bridgeport Division ("the US proceedings"). The US proceedings related to transfers of funds and property made to the Applicant by Complete Retreats in January and September 2005.

32. According to the Respondents, the US proceedings were served in accordance with US procedural rules on the Applicant at his apartment in New York ("the New York apartment") by post and personal service on various occasions between July 2008 and January 2009.

33. According to the Applicant, he had not become aware of the US proceedings because from November 2005 onwards, he had spent most of his time in Europe. He said that he would occasionally stay at the New York apartment when he made trips to the city. He claimed that once he had known that he was going to be spending most of his time in Europe, he had arranged for important mail to be sent to London or to his family address in Northern Ireland. He said that after these arrangements had been made and at some point towards the end of 2007 or the beginning of 2008, he had stopped reviewing any accumulated mail at the New York apartment and discarded it. The Applicant stated that the Liquidating Trust had been aware that documents could be served on him by e-mail.

34. As the Applicant had not responded to the US proceedings, the US Bankruptcy Court entered a default against the Applicant and Mid-Atlantic ("the default"). On 21 September 2009, the Liquidating Trust made an application to convert the default into a default Judgment. Due to procedural failings, the application was denied.

Involvement of the Respondents

35. According to the First Respondent, he became aware of the Retreats Group in September 2006 when an existing client, Marcus Pedriks ("Mr Pedriks"), mentioned that he had invested the sum of $400,000 to become a member of the Group. Mr Pedriks considered that the investment may have been mis-sold to him by Mr McGrath. As a result of this, the First Respondent said that he became aware of the insolvency of the Retreats Group but not of the Applicant's involvement.

36. In 2009, Mr Smith of CPC Group Limited ("Mr Smith") made contact with the Liquidating Trust to discuss "areas of mutual interest". CPC Group Limited ("CPC") was a property development company founded by Mr Christian Candy ("Mr Candy").

37. In February 2010, the First Respondent was contacted by Mr Candy who had concerns in relation to the acquisition of an apartment at One Hyde Park ("One Hyde Park"). One Hyde Park was being developed by Project Grande (Guernsey) Limited ("PGGL") which was a joint venture between CPC and the Prime Minister of Qatar. The development was extremely high profile.

38. The Applicant had first visited the marketing suite for One Hyde Park in January 2007. He entered into a confidentiality agreement with PGGL ("the Confidentiality Agreement"). On 8 February 2007, Hayden entered into an Agreement for Lease ("the Agreement for Lease") to purchase apartment D.03.2 at One Hyde Park. Between 8 February 2007 and 29 April 2010, Hayden paid four deposits for the apartment.

39. In early 2010, the First Respondent met Mr Candy in the context of an unconnected dispute. In February 2010, Mr Candy contacted the First Respondent and discussed with him some issues which became a matter of public record. In brief, the First Respondent was told that:

- A dispute had arisen between PGGL and the Applicant about variations to the apartment under construction at One Hyde Park which had been purchased by the Applicant (through Hayden);
- That the Applicant had made demands of PGGL, which if not satisfied would result in him informing the press and others about his complaints;
- That Mr Candy had hired private investigators to allay any concerns about the Applicant in late 2009; and
- That Mr Candy was very concerned about the allegations being made against the Applicant in the US proceedings, in particular the possibility that the Applicant might seek to finance his purchase of the apartment with funds that PGGL might not be able to accept legally.

40. According to the Applicant, on 8 February 2010, Mr Candy telephoned him and made an allegation that he and his family had derived their "entire net worth" from "criminal activities". The Applicant stated that Mr Candy had then attempted to blackmail him by saying that he would report him to the police if Hayden did not agree to terminate the Agreement for Lease and accept a refund of part of the first three deposits that had already been paid for the apartment at One Hyde Park.

41. On 16 February 2010, the First Respondent first contacted Mr Evans and introduced himself.

42. On 19 February 2010, PGGL, acting through its solicitors SJ Berwin ("SJ Berwin"), wrote to the Applicant, through his solicitors Gordons ("Gordons"), stating that they had become aware that the Applicant was a defendant to proceedings in the US Bankruptcy Court. SJ Berwin expressed concern that, as the Applicant was the beneficial owner of Hayden, any monies received "may be from funds which are tainted" and asked for an explanation as to the source and provenance of the funds paid to PGGL.

43. In a letter dated 19 March 2010, Gordons provided SJ Berwin with assurances about Hayden and the probity of its funds. The letter informed SJ Berwin that the Applicant had received a call from a private investigator at Kroll informing him that "should *"he"* complete on the acquisition of *"his apartment at One Hyde Park",* the Apartment could be seized by a US bankruptcy administrator acting for a US based company with which our client has no relationship whatsoever". It did not respond to the suggestion that the Applicant was a defendant to the US proceedings.

44. On 1 March 2010, the First Respondent attended a meeting in Boston with, inter alia, representatives from CPC and US lawyers who were representing the Liquidating Trust in the US proceedings and which included Geoffrey Wiesner ("Mr Wiesner"). A representative of the Liquidating Trust participated for some of the meeting. According to Mr Smith of CPC, it was agreed at this meeting that lawyers for the Liquidating Trust and CPC would share information and strategy in the US proceedings "and that that information would remain confidential"

45. According to the First Respondent, Jones Day ("Jones Day"), CPC's Counsel in the US, assisted the Liquidating Trust on US bankruptcy and procedural matters.

46. On 5 April 2010, the Liquidating Trust filed its motion for entry of separate and final judgment against Mid-Atlantic and the Applicant. On 6 April 2010, a status conference took place before the US Court, at which an assessment of damages hearing was scheduled for 5 May 2010 ("the Quantification Hearing"). The Liquidating Trust was ordered to serve the Applicant and Mid-Atlantic with all evidence on which it intended to rely by 29 April 2010.

Instruction by the Liquidating Trust and Freezing Order Application

47. In or around mid April 2010, the Liquidating Trust formally instructed Stewarts Law. The final version of the retainer letter was dated 22 April 2010. Stewarts Law applied for a Freezing Order on behalf of the Liquidating Trust against the assets of the Applicant and Hayden. The application was supported by Affidavits from Mr Evans, Mr Wiesner and the First Respondent.

48. The Freezing Order was granted by Mr Justice Morgan ("Morgan J") at a Without Notice hearing on 29 April 2010 ("the Without Notice hearing"). The Liquidating Trust was represented by Mr Onions QC ("Mr Onions") and Hannah Brown ("Ms Brown").

49. According to the Applicant, Morgan J was not given information about recent reports in relation to the Applicant's residence at the New York apartment obtained by:

- a US process server Mr Khan ("Mr Khan") which included an e-mail sent by Mr Khan to Mr Wiesner on 12 April 2010 ("the Khan e-mail");
- a US private investigator Mr Udvardy ("Mr Udvardy"); or
- a UK private investigator Mr Knuckey ("Mr Knuckey")

50. On 19 May 2010, the Applicant filed an affidavit in support of his application to discharge the Freezing Order. The Freezing Order was discharged by Mr Justice Roth ("Roth J") on 23 July 2010 following a hearing that took place between 6 and 8 July 2010. The judgment made a number of criticisms of the way in which the application for a Freezing Order had been pursued.

Fortification Hearing

51. On 4 May 2010, the Liquidating Trust was advised that the Applicant had only become aware of the US proceedings on 30 April 2010 as a result of service of the Freezing

Order on Gordons Solicitors. Following an application by the Applicant, the Quantification Hearing before the US Court on 5 May 2010 was postponed.

52. On 17 May 2010, the Applicant made an application for fortification of the Liquidating Trust's cross undertaking in damages and for security for costs. The Fortification Hearing ("the Fortification Hearing") took place on 21 May 2010 before Mr Justice Norris ("Norris J").

Resolution of the US Proceedings

53. On 13 July 2011, the US Bankruptcy Court vacated the default in the US proceedings and the claim proceeded to litigation on the merits. A settlement was reached on 9 February 2012 which resulted in a payment to the Liquidating Trust by the Applicant.

Witnesses

The Applicant

54. Geoffrey Collins Logue, the Applicant, gave evidence and was cross-examined by Mr Fenwick. He confirmed that the contents of his three statements were true.

55. In cross-examination by Mr Fenwick, the Applicant confirmed that his statements represented his considered belief and said that nothing had been included that he was not fully comfortable with. He told the Tribunal that he believed that the Respondents had been dishonest in relation to a number of very material matters and that by the time of the Without Notice hearing, they had been acting dishonestly. He explained that initially he had thought that the US lawyers had been concealing information from the English solicitors but it had become evident to him during the US proceedings and especially after receiving extensive disclosure from Jones Day, that the entire situation had been "driven" by both Respondents. He had also concluded that the US lawyers had been acting dishonestly. He told the Tribunal that he believed that CPC and Mr Candy had an ulterior motive and had set out to use the proceedings in order to generate profit for themselves. He confirmed that he still intended to make a claim against CPC.

56. The Applicant told the Tribunal that it had taken him many months to obtain the original documentation and he had then spent a considerable amount of time going through the documents with his lawyers. He said that he had been "intimately involved" in the preparation of the case and he had not taken the decision to bring proceedings before the Tribunal lightly. He said that he understood the gravity of the allegations and he had not issued proceedings out of any kind of malicious intent. He had considered matters very carefully and believed that it was appropriate to make an application to the Tribunal.

57. In continuing cross examination, the Applicant confirmed that Complete Retreats had issued proceedings against him following a disagreement with Mr McGrath in 2005. He said that he had decided to bring his own proceedings against Complete Retreats because he did not think that Mr McGrath wanted to document the agreement that had been reached between them following his decision to leave the business. He explained that an agreement had been reached whereby he would receive the money

owed to him for his Class B bonds and would retain 50% of his shareholding. He explained that he had later received a letter from the company's solicitors stating that he had agreed to sell his entire stake which was untrue. The Applicant said that his salary had not been paid in full and he had decided to accept the retention of his 50% shareholding rather than wait to receive the salary that he was owed. He confirmed that the January 2005 payment had included $90,000 for redundancy which had been calculated on his basic salary of $180,000 together with a payment for his class B rights and his 50% shareholding. He said that he had agreed to forgo future dividend streams in return for this pay-out.

58. The Applicant agreed that he had referred to Mr McGrath being involved in a Ponzi scheme in his original complaint against Complete Retreats. He explained that although he had not thought that Mr McGrath had been operating such a scheme, this was the advice that he had been given at the time by his lawyers. He had asked his father to lend him money to invest in the business because he had so much faith in Mr McGrath who had been a close friend and he had felt positive about the business. He had been concerned that Mr McGrath was being imprudent but he had still believed in the business model and had thought that the business was flourishing.

59. In continuing cross examination, the Applicant confirmed that under the terms of the agreement that he had reached with Mr McGrath in January 2005, he would receive $3.65 million. He denied that he had made any threats towards Mr McGrath but conceded that the situation had not been particularly cordial. He confirmed that he had been party to a telephone call in which instructions had been given to wire the payment into his account. He explained that $1.41 million had been classified as "back pay" for 2003/2004 and $2.24 million dollars had been the return of his Class B investment. He denied that he had not been due to receive any "back pay" and told the Tribunal that he had been owed a considerable amount of money under other contractual agreements. He accepted that, perhaps, the payment should not have been defined as "back pay" and said that it might have been better to describe it as "distributions" instead. He acknowledged that the 2005 Settlement Agreement had not described any part of his payment as "back pay" and said that it probably should have done. He told the Tribunal that the "back pay" had been included in the total sum which he had received. He agreed that he had not filed a Defence to the Complete Retreats claim.

60. The Applicant accepted that during the course of the Missouri proceedings, he had made a number of complaints against Mr McGrath and others including alleging that funds had been withdrawn from the company in the guise of preferential salary distributions. He acknowledged that in his own complaint against the Retreats Group, he had alleged that his equity interest in Preferred Retreats had been damaged as a result of Mr McGrath's conduct. He accepted that his claim had included a list of "questionable" business practices which he believed that Mr McGrath had engaged in. He agreed that his claim had also included an allegation that Mr McGrath had been involved in "fraudulent activity" and he told the Tribunal that he felt that Mr McGrath had been fraudulent in his dealings with equity and share holders such as himself. He acknowledged that he had accepted the payment of $3.65 million after becoming aware of concerns regarding Mr McGrath's conduct and he confirmed that he had not reported these concerns to the authorities. He told the Tribunal that the business operated in an unregulated field and so he would not have been able to make any

formal complaint but he had discussed his concerns with the most senior people in the organisation.

61. The Applicant told the Tribunal that after reading Mr Wiesner's first affidavit, he had believed that he was being accused of fraud. He had not appreciated that the case against him was one of constructive fraud only as he was not a lawyer and had read the affidavit in the same way that any layperson would have done. He pointed out that at the Without Notice hearing, Morgan J had not understood that the Court was dealing with constructive fraud either and, in addition, Roth J had said that the Court had been led to believe that the case involved actual fraud. He stated that he could not possibly have picked up on the fact that he was being accused of constructive fraud if this had not been obvious to two High Court Judges.

62. In continuing cross examination, the Applicant agreed that Mr Onions had mentioned one likely defence at the Without Notice hearing but told the Tribunal that there were a number of other matters that should have been raised. He said that in the light of the evidence from Mr Udvardy, the Respondents should have told the Court that he was unlikely to be living at the New York apartment. He asserted that the Respondents had known that he was not spending much time in New York as he had been dealing with Mr Candy since the purchase of One Hyde Park in 2007 but they had decided not to mention anything that could lead to doubt as to whether he was still in New York. He said that if the Judge had been told that he might have left New York a year earlier then this would have given him a perfect defence in relation to service.

63. The Applicant told the Tribunal that the Respondents had believed that part of the January 2005 payment had been for "back pay" but they had failed to disclose this as a possible defence. He said that they were only now claiming that it had not been "back pay" based on what he had said himself about the payment. He stated that the Respondents had not mentioned the fact that he had a defence to the allegation that he had been an "insider" at the time of the January 2005 payment and he said that the First Respondent had not disclosed that he had been aware that Mr McGrath had disappeared to Kenya. He told the Tribunal that he was trying to recall all of the possible defences "on the hoof" but, with time, he was sure that he would be able to think of others. He believed that it had been the job of the Respondents, as solicitors, to think about such matters.

64. In continuing cross examination, the Applicant confirmed that he regularly stayed at either apartment 8.10 or 4.05 of The Knightsbridge when he was in London. He believed that he had been in London on 16 April and had stayed until the 21st. He told the Tribunal that he did not understand why Mr Knuckey had not left the documents at The Knightsbridge on 16 April when he claimed to have visited. He did not accept that Mr Knuckey had spoken to someone at 10 Lancelot Place and left a message asking him to call. He asserted that Mr Knuckey's evidence, save for the recorded message left on 23 April, had been entirely made up.

65. The Applicant agreed that Mr Knuckey had telephoned him on 23 April but said that this was once he had left London. He explained that Mr Knuckey had known that he was no longer in London because they had spoken on 15 April when Mr Knuckey, under the pretext of wanting to buy a garage, had elicited that he was spending two days a week in London and five days in Italy. He pointed out that the 15 April call

had been referred to in an e-mail sent to Jones Day by the Second Respondent. He told the Tribunal that Mr Knuckey had spoken to him again on 16 April when he had claimed to be calling on behalf of the Saudi Royal family. He said that it was during the course of this conversation that he was supposed to have told Mr Knuckey that he had known about the US proceedings. He stated that the First Respondent's assertion that he had no reason to doubt Mr Knuckey's evidence was impossible to reconcile with the fact that the First Respondent had known about the conversation on 15 April. He pointed out that the First Respondent had admitted, in his witness statement, that he had been aware that Mr Knuckey had used false pretences to try and secure a meeting. He said that this meant that the First Respondent had known about the call on 15 April but it had never been disclosed to the Court. He agreed that Mr Knuckey had claimed to have left a set of papers at The Knightsbridge in the 23 April message. He told the Tribunal that he had not received the papers then because he had been on his way back to Italy but he had obtained a copy from his lawyers shortly afterwards. He admitted that he had not wanted to contact Mr Knuckey because he had later discovered that Mr Knuckey may have been involved in some sort of criminality.

66. In continuing cross examination, the Applicant told the Tribunal that during their conversation on 8 February, Mr Candy had not identified the "US based" company which had been referred to in the correspondence from Gordons. He explained that the reason why his lawyers had said that he did not have a relationship with such a company was because Hayden had been set up as a SPV to buy The Knightsbridge apartments. It had not been an operating business and so could not have had any relationships with US based companies. He agreed that Hayden had become the beneficial owner of the remaining apartments at The Knightsbridge which had been transferred from the beneficial interest of Preferred Retreats. He did not accept that this meant that there was a very clear connection between Hayden and the Complete Retreats Group and pointed out that the apartments had originally been in his name. He said that he had not even been thinking about Complete Retreats at this point anyway as he had left the business in 2005 and it would not have occurred to him that the "US based" company could have been a reference to Complete Retreats.

67. The Applicant told the Tribunal that he had a part time address in London which was apartment 8.10 at The Knightsbridge but he was not registered on the electoral roll there. He stated that the First Respondent had effectively ignored the evidence which indicated that he was no longer living in New York. He said that this included the contents of the e-mail sent by Mr Khan, the report from Mr Udvardy and the conversation with Mr Knuckey. He pointed out that Mr Candy had known that he did not live in New York and Mr Candy had been the First Respondent's main client. He told the Tribunal that the credit search could not be relied upon and stated that his telephone number and e-mail address had been readily available. He said that he had concluded that the First Respondent had disregarded all of this in order to maintain a case that he was trying to evade service. He stated that Mr Onions had also told the Court that he remained a resident of New York at the Without Notice hearing. He told the Tribunal that the Respondents had been present in Court when that submission had been made and had known that there was evidence that he had moved out of the New York apartment a year earlier.

68. In answer to questions from the Tribunal, the Applicant stated that he had ceased to be a US resident in November 2005 when his visa had expired. He had then spent time

travelling and by 2010 he had been living in Italy. He told the Tribunal that his domicile in 2010 was "an issue" as he had been "transitioning out" of the US but he would probably say that he had been domiciled in Italy for tax purposes although he had not taken any income from the Italian company and so had not filed a tax return there.

69. The Applicant claimed that the Respondents had wanted to delay service of the documents in order to give him as little time as possible to meet the deadline for the Fortification Hearing. He said that this was the reason why Mr Knuckey had not left the documents at The Knightsbridge on 16 April. He told the Tribunal that he stood by his assertion that Mr Wiesner and Mr Evans as well as the First Respondent had misled the Court, given untrue affidavits and fabricated a story that he had been attempting to evade service. He stated that the Respondents had manipulated the legal system and both Mr Evans and Mr Wiesner had submitted their affidavits on advice from the Respondents.

70. In continuing cross examination, the Applicant said that he had never tried to evade Mr Knuckey in London as he had not known that Mr Knuckey had been trying to serve him until the telephone call on 23 April. He accepted that the First Respondent had also made attempts to serve him at other addresses and said that he had not deliberately left this information out of his witness statement. He said that, in any event, this had no bearing on what the First Respondent had allowed the Judge to be told about his residency at the New York apartment. He agreed that, on face value, the Respondents had been trying to ensure that the proceedings had come to his attention but said that if this was the case then he did not understand why Mr Knuckey had not left the documents on 16 April. He accepted that the Judge had been told that he stayed at The Knightsbridge when he was in London but maintained that this did not alter the fact that the First Respondent had failed to tell the Court about the evidence concerning the New York apartment.

71. The Applicant told the Tribunal that his only dealings with Mr Candy/CPC had been in relation to the purchase of the apartment at One Hyde Park. He had been told that CPC operated in "underhand" ways and he did believe that there had been a conspiracy between the First Respondent, the Liquidating Trust and CPC as CPC had wanted to obtain funds relating to One Hyde Park. He asserted that the Liquidating Trust had been under-funded and its US lawyers had got themselves into an impossible situation. He stated that the lawyers had tried to keep everything confidential but Mr Evans and Mr Wiesner had become concerned that they could be held liable for substantial damages if it was discovered that they had behaved inappropriately in the UK.

72. In continuing cross examination, the Applicant stated that he had been based in New York until mid November 2005 although he had retained the lease on the apartment after that time. He had visited the apartment for a matter of weeks in 2008 and after April of that year, he had not been in New York again until January 2009. He agreed that a substantial amount of mail had arrived in his absence after November 2005 and he had decided to stop reviewing the mail after some time. He accepted that mail had been deposited in a "cage" at the apartment building but stated that he did not agree with the doorman's evidence that documents relating to the US proceedings had been collected on his behalf by his mother. He said that he had spoken to his mother about

this and she did not remember collecting any mail. He believed that the doorman, who had been an elderly gentleman, had been trying to recall events from some years previously and could not possibly have remembered who he had given the mail to at the time. He stated that there would have been no reason for him to fail to respond to the proceedings. He would have instructed his lawyers and issued a defence. He accepted that the evidence indicated that he had been served in 2008 but said that this was limited to information from Mr Wiesner, confirming that he had mailed the US complaint to the New York apartment and instructed a process server.

73. The Applicant told the Tribunal that he believed that there had been an agreement in place between Mr Candy/CPC and the Liquidating Trust before the application for the Freezing Order had been made and which provided for CPC to obtain a share of any recovery in return for providing funding for the application. He did not have any evidence to show that the First Respondent had been involved in this. He did not accept the First Respondent's assertion that CPC had become engaged with the Liquidating Trust because they had been concerned about money laundering. He said that if this was the case then CPC could have made a report to the appropriate authorities and he reminded the Tribunal that CPC had accepted payment of the fourth deposit on 29 April. He said that the money laundering explanation could not possibly be true and CPC would not have been prepared to spend a considerable sum on applying for a Freezing Order if they had simply been concerned about the provenance of his funds.

74. In continuing cross examination, the Applicant confirmed that he did not have any evidence to show that information had been passed directly to CPC by either of the Respondents but he said that information had definitely been presented to CPC prior to the return date and before the Fortification Hearing. He said that it was clear that Hayden's UK asset schedule had been given to CPC as they had been able to value his assets. He stated that there was no dispute that information had been passed to Jones Day and, as they were CPC's lawyers, he had to assume that they had passed this information on to their clients. He told the Tribunal that it was obvious that CPC had intended to obtain information about his assets by way of the disclosure provisions involved in the application for the Freezing Order and he maintained that this had been their intention from the outset.

75. The Applicant confirmed that as part of the terms of the settlement that he had reached with the Liquidating Trust in February 2012, the Trust was not able to co-operate with Stewarts Law in relation to any material matter. He explained that the settlement had not specifically targeted Stewarts Law but the clause had been included so that the Trust could no longer have any dealings with CPC or anyone connected with them. As Stewarts Law had been one of CPC's legal advisers, it had been necessary for the firm to be included in the agreement as part of the overall terms for settlement. He pointed out that he had been prepared to waive the operation of this clause for the purposes of these proceedings.

76. In continuing cross examination, the Applicant confirmed that he still intended to make a claim against CPC but stated that he had not yet had the time to prepare the application. He did not accept that the allegations that he had made against the Respondents would be included in his proposed action but conceded that the allegations were related. He told the Tribunal that he was not going to let the

Respondents get off "Scott-free" simply because he had decided to issue a claim against CPC. He said that he was bringing these proceedings because he believed that the Respondents had abused the Court to whom they owed a duty. He stated that he did not stand to gain in any way from the outcome of these proceedings and he had decided to pursue the matter himself rather than refer it to the Solicitors Regulation Authority ("SRA") because he believed that his legal team was best placed to deal with the case.

77. In re-examination by Mr Wardell, the Applicant confirmed that the payment schedule contained in a Consulting Agreement between the Retreats Group and himself had encompassed "back pay". He told the Tribunal that he had understood that the submissions made by Mr Onions at the Without Notice hearing referred to actual fraud and he believed that Roth J had reached the same conclusion.

78. The Applicant told the Tribunal that he had made an error earlier on in his evidence and he had, in fact, left London on 22 April. He had been in Italy on the 23 April when Mr Knuckey claimed to have left the documentation at The Knightsbridge. He pointed out that if Mr Knuckey had really been carrying out surveillance on him then he would have known that he had left London on that day. He confirmed that the account that he had given about Mr Knuckey's involvement had been included in his first affidavit which had been before Roth J at the discharge hearing. He told the Tribunal that he had first learned of Mr Khan's failed attempt at service as part of the disclosure in the US proceedings and he stood by his criticism that the Liquidating Trust and its legal advisers had deliberately attempted to suppress the Khan e-mail.

<u>The First Respondent</u>

79. The First Respondent gave evidence and was cross-examined by Mr Wardell. He confirmed that, subject to one correction in paragraph 155.2 of his first witness statement where the date September 2011 rather than September 2010 had been included in error, the contents of both his first and second witness statements were true.

80. At the date of signing his third witness statement, the First Respondent believed that Counsel had not delivered any additional fee notes for time incurred after 2 July 2010. He explained that he had now discovered that Stewarts Law had received a fee note at some point in 2011 but no additional money had been paid to Counsel by the firm. He said that more recently, he had seen fee notes produced by Counsel's chambers which showed that Counsel's fees had been zero rated for VAT purposes and there also appeared to have been some adjustment in the amount of the fees. He believed that nothing further had been paid to Counsel other than the amounts shown on the ledgers that had been already been disclosed to the Applicant and the Tribunal and CPC had not paid any more money towards Counsel's fees. He confirmed that, subject to these matters, the content of his third witness statement was true.

81. In lengthy and extensive cross examination, the First Respondent confirmed that he had been in practice for more than 30 years and he specialised in commercial litigation. He was aware of his duty to provide full and frank disclosure and of the need for balance in the evidence that was presented to the Court. He confirmed that he did not disagree with Roth J's summary of the law in relation to the scope of the

duty of full and frank disclosure and he agreed that he had a duty of utmost good faith. He accepted the need to be entirely fair and transparent with the Court and he agreed that materiality was something which should be decided by the Court and not by individual solicitors. He told the Tribunal that although it was necessary to identify relevant matters and likely defences, this was limited to the extent that a without notice hearing did not, by its very nature, involve a detailed analysis of all the facts and material.

82. The First Respondent did not agree that his obligation to provide full and frank disclosure had been a continuing one and told the Tribunal that he believed that this only applied to the without notice part of the hearing. He acknowledged that the wording which had been included in his third and fourth affidavits could have implied that he had been under a continuing duty to provide full and frank disclosure and he told the Tribunal that this wording had been included inadvertently. He said that, in any event, he would never knowingly mislead the Court and he accepted that if the Court had been misled then he would have been under a duty to correct the position as soon as possible. He explained that this was what he had been endeavouring to do when he had sworn his seventh and eighth affidavits. He accepted that he should not have made any allegations of fraud unless he had appropriate material before him with which to substantiate such an allegation.

83. In continuing cross examination, the First Respondent accepted that, when viewed in its entirety, his first affidavit had implied that the Applicant was a "shady" character who was not to be trusted and who was attempting to evade service of proceedings and dissipate his assets. He told the Tribunal that this had been his view at the time. He agreed that if there had been evidence that the Applicant was not difficult to contact then he would have highlighted this. He said that he would not have asserted that it was hard to contact the Applicant if this had not been the case. He explained that he had been trying to track him down as he wanted to serve him with the documentation for the Quantification Hearing so that the proceedings would be effective. He said that if he had known where the Applicant was then he would have contacted him and arranged for him to be served.

84. The First Respondent denied that he had failed to highlight the fact that the Applicant was no longer living in the New York apartment. He claimed that there was a distortion in the way that this issue was being presented. He told the Tribunal that he had made it clear that the New York apartment either "is or was" the Applicant's address in his first affidavit. He had also stated that the Applicant's current address was 8.10 The Knightsbridge on at least two occasions. He had said that Mr Knuckey had told him that the Applicant was in London and he asserted that Morgan J had been in no doubt that the Applicant was not in New York as at April 2010. He told the Tribunal that there had been no attempt to mislead anyone. He had honestly not known if the New York apartment had still been the Applicant's permanent address or whether the Applicant had let it out, sold it on or transferred it to one of his offshore companies. That was why he had said "is or was" in his affidavit. He had made sure that Mr Wiesner and Mr Evans had said the same thing and they had all been of the same mind. He commented that it was not until he had spoken to Mr Knuckey that it had become apparent that the Applicant was spending time in Italy.

85. In continuing cross examination, the First Respondent accepted that he had not mentioned the fact that the doorman at the New York apartment had said that the Applicant had moved out. He acknowledged that this information should probably have been included in his affidavit but he had not deliberately omitted to mention it. He said that if he had analysed the information properly then this could have been quite helpful to the team but everything had been done in a rush. He told the Tribunal that he did not think that it would have made much difference to the outcome of the application anyway because it had been known that the Applicant was no longer in New York at the time that his first affidavit had been sworn. He said that had he thought about the matter, he would have included the information as evidence that the Applicant did not wish to submit to US jurisdiction following successful service of the US proceedings in 2009. He accepted that he may have been wrong in this assumption, as he now knew much more about the Applicant but said that this would have been his understanding at the time. He said that he wished to apologise to the Applicant for any wrong that may have been done to him.

86. The First Respondent agreed that he should have highlighted any evidence that he had to confirm that the Applicant was not evading service or dissipating his assets and that he should have made sure that any possible defences were identified. He agreed that these were duties owed by him pursuant to his obligation of full and frank disclosure but told the Tribunal that this had also applied to the entire legal team. He explained that all of the information had come from the Americans. He had not drafted the entire affidavit himself although he accepted overall responsibility. He explained that the affidavit had been produced following input from various sources including the affidavits of Mr Wiesner and Mr Evans. He believed that the affidavit had probably been drafted by the Second Respondent and was certainly checked by Counsel.

87. The First Respondent did not accept that his affidavit had failed to give a balanced and fair presentation. He said that it had been factual and had been based on the information given to him by the Americans. He could not provide any examples to demonstrate that he had introduced balance without considering the document in its entirety but said that he had put forward what he had believed the evidence to be at the time. He claimed that it was usual for such balance to be introduced at the hearing itself and during discussions with the Judge. He said that Mr Onions had presented the case by reference to all the primary documentation, including the US complaint, and had not just relied on the affidavit. He told the Tribunal that the transcript of the hearing would show that there had been discussions between Morgan J and Counsel and the Judge had accepted that there had been potential defences. He maintained that it was only necessary to establish a credible case and there had been no attempt to "pull the wool" over the Judge's eyes.

88. In continuing cross examination, the First Respondent did not accept that the Liquidating Trust had failed to investigate the underlying merits of the US proceedings. He said that the Trust had obviously looked at some of the documents in order to be able to make its complaint. He told the Tribunal that the Trust had relied on the pleadings and other documents relating to the 2005 proceedings but had not gone beyond that because they had limited resources and did not think that this would be an appropriate use of their funds. He said that it had been made clear in the affidavits and during the hearing itself that there had not been an in-depth investigation but Morgan J had still been satisfied that there was a credible case. He

denied that he had failed to tell the Court about the lack of an investigation in his own affidavit and stated that the scope of the Trust's enquiries had been made clear in Mr Evans' evidence. He told the Tribunal that, in any event, Mr Onions had emphasised to the Court that the case relied on the documentation in the 2005 proceedings. He said that if the position had not been made clear enough in the affidavits then it had certainly been made very clear during the course of the hearing.

89. During the course of continued cross examination, Mr Wardell suggested that anyone seeking to comply with their duty of full and frank disclosure would have told the Court that the 2005 Settlement Agreement had been entered into at arm's length. The First Respondent stated that this was a rather simplistic analysis as the Settlement Agreement had been settling the pre-existing claims. He pointed out that the claims made by the Retreats Group had included allegations of economic duress and so the Settlement Agreement had been settling issues that related to fraud. He told the Tribunal that there had been something strange about the transfers of property in September 2005. The properties had supposedly been bought for Complete Retreats but had been purchased in the name of the Applicant and one of the accusations contained in the 2005 proceedings was that the Applicant had bought the properties in his own name without consent. The First Respondent told the Tribunal that even though there had been retrospective consent, he was not sure if he had ever seen consent from Complete Retreats prior to the purchase.

90. Mr Wardell asserted that there was no evidence that the Settlement Agreement had been procured by blackmail. The First Respondent told the Tribunal that the team had had the pleadings and could not artificially separate one from the other. He said that if the proceedings were tainted then so was the Settlement. He had been suspicious about the Settlement and took the view that it could still be set aside if entered into for an improper purpose. He agreed that if the Settlement had been negotiated at arm's length then this was a potential defence available to the Applicant.

91. The First Respondent was asked to consider his fifth affidavit in which he had claimed that he considered it "highly likely" that the Applicant's "blackmail" continued until the time of the Settlement Agreement. He agreed that "blackmail" might be too strong a word and suggested that this was why he had included it in inverted commas but he maintained that there had been a strong case of economic duress. He told the Tribunal that the Applicant had entered into a contract with Complete Retreats, through Mid-Atlantic, to lend money to buy the European properties. The terms of that contract had been pretty onerous and it had turned out that the European properties had been bought without authority which had been obtained later. He explained that there had been restrictive covenants in relation to some of the properties making them unsuitable for holiday lets. He said that there had been correspondence from Mr McGrath at that time stating that Complete Retreats had been "stuck" with the arrangement with Mid-Atlantic and had therefore felt it necessary to agree a settlement. It had seemed to him that the Applicant had orchestrated a situation that put Complete Retreats in a difficult position.

92. The First Respondent accepted that Roth J had stated that there was no basis for an assertion that the Settlement Agreement had been obtained by blackmail. Mr Wardell suggested that evidence as to what the parties had known before a settlement could not be relied on to question the veracity of the settlement itself. The First Respondent

did not agree and asserted that neither the Applicant nor Mr McGrath had been "whiter than white". They had both been defendants in proceedings brought by the Liquidating Trust on behalf of creditors. He said that it would have been open to the trustee to take a different view as to the Settlement as the trustee had been appointed on behalf of the creditors. He told the Tribunal that Stewarts Law had been acting for the creditors who had lost a great deal of money and they had been looking after their interests.

93. In continuing cross examination, the First Respondent confirmed that he had known that the Applicant had agreed to purchase One Hyde Park. He had been aware of a dispute about the layout of the apartment but was unsure as to whether this was still ongoing at the time that he had become involved. He had not asked to see the correspondence relating to the dispute as this had not been his concern. He said that if he had discovered that Mr Candy/ CPC had become involved with Complete Retreats out of a grudge then he would have considered this to be improper but Complete Retreats had been the claimant and it was their reasons for seeking a Freezing Order that had been important.

94. The First Respondent did not accept that he had failed to tell Morgan J that Mr Candy had not experienced any difficulty in contacting the Applicant. He told the Tribunal that he had exhibited the correspondence between Gordons and SJ Berwin to his affidavit and this spoke for itself. He said that it was obvious that Mr Candy had the Applicant's telephone number and there had been no attempt to conceal this from the Judge. He accepted that his affidavit had been wrong to assert that the Applicant had appeared to "be very difficult to make contact with" and conceded that it would have been more accurate to say that there had been difficulties in making "personal" contact instead. He agreed that it was apparent from the e-mail sent by Mr Candy to the Applicant on 23 November 2009 that Mr Candy had the Applicant's mobile number and e-mail address but commented that this e-mail was being presented to him as if he had seen it at the time which was not the case. He told the Tribunal that he had been focussed on serving the Applicant and being able to call or e-mail him was neither here nor there. He said that a great deal of time and money would have been saved if he had been able to physically locate the Applicant.

95. In continuing cross examination, the First Respondent stated that he had "probably not" known that the Applicant had a telephone number registered at The Knightsbridge notwithstanding that a print out from "Directory Enquiries" had indicated this to be the case. He told the Tribunal that he had not been involved in this sort of "granular detail", which had been a matter for the private investigators. He would not necessarily have told the Court about the telephone number as he was not sure that this would have been relevant. He had identified the Applicant's properties and had informed the Court that the Applicant's current address was The Knightsbridge.

96. The First Respondent accepted that his first affidavit had not gone into great detail in relation to Mr Knuckey's evidence but stated that it had set out the "gist" of what had been going on. He denied that he had been trying to create a false impression that the Applicant had been a difficult man to contact and did not agree that his purpose had been not to serve him. He told the Tribunal that the entire reason for instructing Mr Knuckey had been to effect service. He accepted that Morgan J had never been told

about Mr Knuckey's conversation with the Applicant on 15 April. He absolutely refuted the assertion that he had deliberately withheld information which was inconsistent with his "thesis" that the Applicant was a "shady" individual who was difficult to contact. He told the Tribunal that Mr Knuckey's evidence had only been relevant in establishing whether the Applicant had been physically present in New York. He said that he had not known whether the Applicant had retained an interest in the New York apartment until he had received an affidavit from the Applicant himself showing that he had terminated the lease in April 2009.

97. In continuing cross examination, the First Respondent told the Tribunal that he believed that the information contained in the Uno Ponterosso search was revised annually but he was not sure about his state of knowledge at the time. He accepted that his first affidavit had referred to "credit searches" when in fact only one search had been exhibited. He said that any questions about this issue would be better directed to the Second Respondent. He had a vague memory that three different searches had been undertaken, perhaps by telephone or on- line and he was pretty sure that a search had been done on the website of another company. He did not necessarily agree that the disclaimer in the credit search should have been brought to the Court's attention. He said that it was generally known that credit searches may not be accurate and, in any case, the search had been exhibited to his affidavit. He pointed out that the last known address for the Applicant had been the New York apartment but he had known that the Applicant was not physically present there and this had been the reason for wanting to serve him at either The Knightsbridge or on Hayden's solicitors (Gordons). He said that the credit search was the best evidence available to show the Applicant's connection with the New York address. He denied knowing that the telephone number found in the credit search was not in service.

98. The First Respondent told the Tribunal that he had not been aware that the Applicant spent time in Italy until after he had instructed Mr Knuckey on 15 April. It was Mr Knuckey who had told him this. He denied that he would have obtained this information from Mr Candy and explained that he had rarely met with Mr Candy. He told the Tribunal that the only information that he had connecting the Applicant to Italy was the fact that the Applicant owned a company in Trieste and had met Mr Candy in Milan in November 2009. He said that he had really had no idea as to where the Applicant lived.

99. The First Respondent admitted that there had been a concern that the Applicant would take steps to dissipate his assets once he had been served with the Liquidating Trust's evidence for the Quantification Hearing. He said that this was probably the reason why a decision had been made to hold off on service pending the preparation of the application for the Freezing Order although, in fact, efforts had been made to serve the Applicant notwithstanding that the application had not been ready. He said that there had been a risk that the Applicant might have dissipated his assets in the intervening period and he claimed that the Applicant had done exactly that by selling two of his properties by way of private sale. He did not accept that a decision had been taken to abandon the allegation concerning dissipation of assets at the discharge hearing but acknowledged that, by that stage, more information had come to light and the risk of dissipation had diminished considerably.

100. In continuing cross examination, the First Respondent stated that there had been no discussions about Mr Knuckey adopting a pretext when he spoke to the Applicant. He told the Tribunal that this was standard procedure used by many process servers as, generally speaking, people did not wish to be served with court papers. He had made it clear that Mr Knuckey should not do anything improper or illegal but he did not have a problem with him using the pretext of wishing to purchase a garage if this had resulted in him being able to meet with the Applicant and effect service. He did not know why the story about the garage had not been mentioned in Mr Knuckey's report. He had no recollection of having spoken to Mr Knuckey after their meeting on 15 April and believed that the story about the garage may have come from the Second Respondent but he did not really know. He told the Tribunal that he could only rely on what had been included in Mr Knuckey's affidavit for confirmation as to what had been done. He acknowledged that the Applicant had disputed Mr Knuckey's version of events but said that Mr Knuckey had been a former senior member of the Metropolitan Police and there would have been no reason for him to lie about these matters and he had certainly not asked him to do so. He accepted that it appeared that Mr Knuckey had spoken to the Applicant on 15 April but said that the first time that Mr Knuckey had mentioned a call was on the 16 April. He said that this had not been pointed out to him at the time and he had not noticed the different date.

101. Mr Wardell suggested that the information included in the Khan e-mail strongly indicated that the Applicant was not resident at the New York apartment. The First Respondent said that the e-mail suggested that the Applicant was no longer *in* residence which was different. He pointed out that the Applicant had residences all over the world and he had not known whether the Applicant had permanently given up the New York apartment by that stage. He accepted that he must have read the e-mail but he did not recall doing so. He received hundreds of e-mails every day and he had failed to attach any importance to it. He told the Tribunal that the e-mail had only gained any prominence later when approaching the discharge hearing. He said that it was clear that the e-mail had been forgotten and that was apparent from the exchange of correspondence between the Second Respondent and Mr Wiesner in July. He explained that the e-mail had not been overlooked in its entirety as he had focussed on the fact that the Applicant was no longer in New York but the rest of the message had not appeared significant at the time.

102. In continuing cross examination, the First Respondent accepted that the attempted service in April 2010 at the New York apartment was relevant to the grant of the Freezing Order and that the Judge would have wanted to know about this. He acknowledged that the Second Respondent's e-mail of 12 April 2010 had specifically asked for enquiries to be made of the doorman at the New York apartment building in order to ascertain whether the Applicant was still resident there. He agreed that by the time that he had sworn his third affidavit on 12 May 2010, he had been aware that the Applicant's telephone number was no longer in service. He did not know if the only source of information about the number had been the Khan e-mail. He told the Tribunal that he may have got the information from the doorman but he was not very clear as to the sequence of events.

103. In continuing cross examination, the First Respondent acknowledged that Mr Wiesner had sent the documents that the Liquidating Trust had been trying to serve to the Applicant by mail in April 2010 and was tracking this. He said that he did not know

what the term "undeliverable as addressed" as shown on a US postal service tracking document meant other than its plain meaning. He said that this was probably the first time that he had seen this document. He told the Tribunal that he had known that it had not been possible to serve the Applicant in New York but he had not focussed on this level of detail as he had about 20 cases on at any one time with up to three teams of lawyers. He did not accept that his duty of full and frank disclosure would have applied to the contents of a US postal service tracking document.

104. The First Respondent told the Tribunal that he had not considered that the e-mail from Mr Udvardy which had been sent in April 2010 had been hugely significant in relation to the issue of service in 2009. He believed that the e-mail would have been processed by the team but it had not been scrutinised in any great detail. He stated that the affidavits prepared for the Without Notice hearing had confirmed that the Liquidating Trust had tried, but failed, to serve the Applicant in New York. He accepted that he had not mentioned what the doorman had said to either Mr Khan or Mr Udvardy in his affidavit as he had not focussed on this as being particularly important or relevant. He agreed that his affidavit had not referred to the Khan e-mail, the Udvardy e-mail or the telephone conversation between Mr Knuckey and the Applicant on 15 April.

105. Mr Wardell asserted that the only time that the First Respondent had mentioned any possibility of the Applicant no longer living at the New York apartment was in paragraph 8 of his first affidavit. The First Respondent said that it had been referred to elsewhere but he could not remember the detail without reading the entire document. He told the Tribunal that reference to "considerable difficulties" in locating the Applicant which had been included in his affidavit had to be seen in context. There had been attempts to serve proceedings in 2008/2009 when the Applicant had not submitted to jurisdiction and papers had been returned. He said that locating the physical whereabouts of the Applicant had not been straightforward and he refuted the assertion that he had been attempting to give a misleading picture to the Court. He said that it had been made clear that the Applicant was in Italy or London. He told the Tribunal that the fact that the Applicant was not physically present in New York did not mean that he had permanently moved out. It was usual for people to make arrangements for documents to be forwarded on if they were abroad for long periods of time. He maintained that at the time of the affidavit, he had thought that the Applicant was evading service.

106. In continuing cross examination, Mr Wardell suggested that it was misleading for Mr Onions to have referred to the New York apartment as "where he [the Applicant] resides". The First Respondent said that this depended on what was meant by "resides" and he conceded that these were "loose words" and that reference should perhaps have been made to the Applicant's "last known address". He said that he did not know whether he had shown Mr Onions the Khan and Udvardy e-mails or whether he had told Mr Onions that Mr Knuckey had spoken with the Applicant on 15 April 2010. He told the Tribunal that, with the benefit of hindsight, these issues may have assumed more importance than they did at the time. He said that he was putting himself in the mindset that he had as at 29 April 2010 which was very different to the one that he had in July of that year when he knew more from the Applicant and the US team. He asserted that the fact that Mr Onions had used the term "usual or last known address" pointed to the fact that the team was looking at the issue of service.

The First Respondent accepted that Roth J had been critical of the lack of information regarding the attempted service on 9 April. He commented that he did not necessarily agree with the Judge's conclusions but he acknowledged the criticisms and had taken these on board.

107. Mr Wardell asserted that the First Respondent had been wrong to say in his seventh affidavit that the firm "was not aware of Mr Khan's affidavit or its contents... prior to the ex parte hearing". The First Respondent said that the answer to this was both "yes and no". In one sense it was "no" because Mr Khan's affidavit had not been created until 30 April and so was not in existence at the time of the Without Notice hearing on 29 April. He explained that in another sense, the answer was "yes" because it seemed that Stewarts Law should have been aware of the information in the Khan affidavit which was essentially the same as that of the e-mail which had been sent to the firm on 12 April 2010. He told the Tribunal that there had been no deliberate attempt to mislead the Court. He accepted that the affidavit had been unhelpful but said that it had not been deliberately misleading. There had been an issue about the mix up of dates due to a problem with the fax machine which made it appear as if the Khan affidavit had been sent before its actual date. He explained that he had been trying to address the serious allegation that the Khan affidavit had been deliberately post dated. He accepted that by using the words "or its contents" his affidavit was, in one sense, factually inaccurate but said that this was not deliberately so. It had just been a turn of phrase and if it had been misleading then he was very sorry.

108. The First Respondent acknowledged that the e-mail sent by the Second Respondent to Mr Wiesner on 6 July 2010 had made reference to the fact that the Khan e-mail of 12 April had been overlooked. He did not accept that an attempt had been made to "pass the buck" by asking Mr Wiesner to swear an affidavit explaining why this information had been omitted. The First Respondent denied that he had provided a false explanation in paragraph 15 of his eighth affidavit as to why Mr Wiesner had not mentioned the material set out in the Khan affidavit. He said that he had discussed the matter with the Second Respondent and the Second Respondent would have drafted his affidavit and told him what answer Mr Wiesner had given and he would have accepted this. He denied that he was seeking to blame Mr Wiesner and said that they had been trying to explain the state of Mr Wiesner's knowledge. He accepted that the explanation may have been "cack-handed" but said that it was not meant to be misleading. He accepted that with the benefit of hindsight, a Judge may have formed the belief that Stewarts Law had known nothing about the facts deposed to by Mr Khan but said that there had been no intention to mislead. He acknowledged that he had not written to Roth J to correct the error but said that this was because he was still thinking in terms of the Khan affidavit rather than the earlier e-mail.

109. In continuing cross examination, the First Respondent confirmed that, generally speaking, he understood the distinction between actual and constructive fraud but he did not know if it was the same in US law. He had relied on Jones Day and Mr Wiesner for advice about this. Mr Wardell suggested that the First Respondent had inserted a reference to the Liquidating Trust believing that the Applicant had "acted with fraudulent intent" at paragraph 21 of Mr Wiesner's first affidavit. The First Respondent said that this was Mr Wiesner's affidavit and not his. It had been checked and approved by Mr Wiesner and probably by Jones Day. Mr Wardell challenged the First Respondent's use of the words "the US proceedings allege that Mr Logue

obtained property through fraud" contained in paragraph 53 (iii) of his first affidavit. The First Respondent said that the US proceedings had referred to fraud and also indirectly to the alleged Ponzi scheme since they relied on both sets of 2005 proceedings.

110. Mr Wardell suggested that it had been clear from the US proceedings that the allegations against the Applicant were ones of constructive fraud only and that this would have been apparent to an English lawyer. The First Respondent said that he wished to highlight the words "fraudulent transfers" in the US proceedings. He stated that Mr Wiesner had explained the test in his affidavit and had believed that there was fraudulent intent. He explained that the Second Respondent had produced a draft of Mr Wiesner's affidavit which distinguished between constructive and actual fraud and the US lawyers had struck out the words "constructive fraud". They had obviously included what they had thought was correct. He pointed out that Jones Day had approved the document and Counsel had looked at it. He said that that it would have been wrong for him to "second guess" Mr Wiesner's evidence. He said that the case had been presented in accordance with the evidence that had been given. He told the Tribunal that the allegations of fraud had come from the client and from the documentation received. He said that the client had clearly addressed his mind to the issue and the US attorneys had known what they were doing. In addition, the Liquidating Trust had gone one stage further by having everything checked by Jones Day. He questioned what more could have been done.

111. The First Respondent accepted that the amount of due diligence that had been carried out was not as extensive as he would have liked. He said that if the Court had not been happy with the documentation then the legal team would have accepted this. He told the Tribunal that he had not just relied on the allegations in order to assert that there had been blackmail. He pointed out that there had been contemporaneous documents between Mr McGrath and his lawyer to evidence the allegations made in the pleadings. He said that Mr Wiesner had been the first to draw this conclusion as otherwise he would not have issued proceedings. He told the Tribunal that the Liquidating Trust had believed wholeheartedly in the allegations that had been made against the Applicant.

112. In continuing cross examination, Mr Wardell referred to the First Respondent's fifth affidavit and asserted that the Court had not been told previously that there had been no investigations by the Liquidating Trust. The First Respondent disagreed and referred to Mr Onions' submissions at the Without Notice hearing. He said that it was clear that the only documents that were being relied on were those before the Court at that stage and it had been obvious that the 2005 proceedings were the sole basis for the allegations. Mr Wardell asserted that Mr Evans, in his deposition, had stated that he had no idea about the underlying merits of the case and had relied on the Trust's lawyers. The First Respondent said that he had no idea about this. He had only spoken to Mr Evans on a few occasions when he had been first instructed and the rest of his dealings with the Liquidating Trust had been through their lawyers. He told the Tribunal that he had made sure that he had put "alleged" before "fraud" in his affidavit. He denied that he had put his own interpretation on the pleadings and said that he had presented the facts as they were and it had been for the Court to decide.

113. The First Respondent denied that he had said that the 2005 Settlement Agreement had been entered into as a result of blackmail. He observed that the original payment of $3.65 million had been made following threats to report the existence of a Ponzi scheme to the media. He acknowledged that paragraph 37 of his fifth affidavit had referred to the "blackmail" continuing until after the time of the Settlement Agreement. He said that the Agreement had been a settlement of two sets of pre-existing Court proceedings, one of which related to blackmail, and so the blackmail had continued until the claim had settled. He told the Tribunal that the purchase of the European properties by the Applicant had placed Complete Retreats in a difficult economic position and Mid-Atlantic had been pressing for payment. He suggested that the "menace" involved in the Settlement was to foreclose on the loan agreements which were very onerous. He accepted that perhaps he should have referred to "continuing economic duress" rather than "blackmail" but said that he had believed that there was "strong and credible" evidence that the Applicant had blackmailed Mr McGrath and the entire legal team had felt that way. He did not think that the Judge had been right to say that there was no evidence to justify the allegation of blackmail. He stated that he did not consider it necessary to bring to the Court's attention a defence based on the fact that the Settlement Agreement had been entered into at arm's length. He said that if there had been a duty, then it was a duty on the entire team. No defence had been filed in the 2005 proceedings and so they could not speculate as to what defences might be raised.

114. In continuing cross examination, the First Respondent accepted that there had not been direct reference to a defence based on "back pay" in the application for a Freezing Order. He said that it would have been mentioned indirectly because the team had been relying on the 2005 pleadings and he believed that the issue had been raised there. In addition, the pleadings had been exhibited to his affidavit. He told the Tribunal that he had seen a report from accountants saying that there was no evidence of any "back pay" and that the payments were in respect of investments. He said that even though the report had been written the day after the Without Notice hearing, he was pretty certain that the accountants had raised this issue prior to the hearing. He said that he had included the statement that the Applicant had failed to provide any fair value in his first affidavit on the basis of instructions from the US clients. He had drawn the Court's attention to what Mr Wiesner had said about this and he pointed out that Mr Wiesner had set out the constituent elements for this defence. He acknowledged that the legal team had not gone into detail as to all the possibilities but said that Mr Onions had not discounted any possible defences. He said that the team had thought it unlikely that the Applicant would have a proper defence, given that the company had been insolvent and the Applicant had been preferring himself to other creditors. He suggested that this issue should be put to the Second Respondent as he may have discussed it with Counsel.

115. The First Respondent did not accept that he had mischaracterised Mr Wiesner's advice given in an e-mail of 19 May 2010 concerning the prospects of vacating the default in the US proceedings in his fifth affidavit. He claimed that this assertion was based on a single e-mail and that there had been conversations with the US lawyers in which they had referred to having a much stronger case.

116. In continuing cross examination, the First Respondent said that it was pejorative for Mr Wardell to suggest that he had encouraged the Liquidating Trust to apply for a

Freezing Order. He had advised the Trust on the availability of such an order as he believed that the Trust's US lawyers may not have had the requisite knowledge. He told the Tribunal that CPC's motivation for becoming involved was related to the provenance of the Applicant's funds and a Freezing Order would not necessarily have benefited them. He explained that in the course of obtaining the Order, the disclosure obligations imposed upon the Applicant would have given CPC an assurance as to whether the Liquidating Trust would need to go against One Hyde Park. He said that this was of indirect benefit to CPC who had wanted to know whether they were free to accept money from the Applicant. He said that there had been no deal and no firm assurances. CPC had wanted to make sure that no money could be clawed back.

117. The First Respondent confirmed that PGGL had been anxious about money laundering. He did not accept that any concerns on the part of PGGL or CPC could have been resolved by filing a Suspicious Activity Report. He said that he knew what had happened in relation to this issue but he did not know whether he could give evidence about it as he did not want to be accused of committing a "tipping off" offence. He said that CPC had been concerned about a civil "claw back" claim in relation to One Hyde Park in respect of any monies that had been put into the apartment by Hayden. He told the Tribunal that CPC was a high profile company and sensitive to negative publicity. He could not answer as to their motivation as he just followed instructions. He denied that he had been at pains to keep CPC's involvement a secret. He told the Tribunal that CPC and the Liquidating Trust had wanted to keep their discussions confidential but if there had been anything relevant then this would have been disclosed.

118. The First Respondent conceded that CPC had paid for the valuation of the apartments at The Knightsbridge which had been obtained on behalf of Mr Pedriks as a creditor of the Liquidating Trust. He denied that the valuation of the Paris apartment had been organised through a French law firm in order to keep CPC's identity hidden and told the Tribunal that he always used that particular firm whenever he needed work carried out in France. The First Respondent accepted that he had been aware of the risk of CPC being ordered to pay costs in the UK proceedings from "day one". He told the Tribunal that prior to the Without Notice hearing, the funding arrangement had been very loose. He acknowledged that by April 2010, CPC had been paying Stewarts Law's costs and Counsel's fees but said that they had not paid anything towards the costs of the US lawyers.

119. In continuing cross examination, the First Respondent told the Tribunal that he did not know whether the Liquidating Trust thought that they would get a "free ride" in the English proceedings by getting CPC to cover their costs. He said that initially, the Liquidating Trust had not thought that there would be any great expenditure but the arrangement had developed into something more. He denied that there had been any plan for CPC's funding to be repaid to them in the event that a costs order was obtained against the Applicant. He said that the Liquidating Trust would have been under no obligation to pay CPC back although he would have hoped that they would have been prepared to do so. The First Respondent claimed that he did not know whether Mr Evans had only been prepared to sign the retainer letter with Stewarts Law once he had received confirmation from Jones Day that CPC would be providing funding. He said that he did not consider the letter from Jones Day to be particularly binding as it was not a well-defined contract. He would describe it as confirmation of

what was, in effect, a "gentleman's agreement". He pointed out that the letter did not set out how much funding would be forthcoming or how long the funding would be provided for.

120. The First Respondent said that it was not correct to state that CPC were paying all of the costs of the UK proceedings because the US lawyers had to meet their own disbursements. He did not accept that the Court should have been told that CPC had an interest in the outcome of the Freezing Order and were funding it. He said that funding was privileged and this applied whether it was an *inter partes* hearing or a Without Notice application. He said that the obligation of full and frank disclosure was intended to create a "level playing field" and therefore anything that was privileged at an *inter partes* hearing would remain so at the Without Notice stage. He said that he had dealt with a lot of cases involving third party funding and, even if this had constituted a conventional third party funding arrangement, he relied on the case of Abrahams v Thompson to state that any enquiry about third party funding should be made at the end of the proceedings. He told the Tribunal that he did not think that he had done anything improper. He had been honouring his client's privilege. He said that he did not have authority from CPC or any party to put up money for security for costs or fortification. He denied that the Court had been misled as to the evidence filed because there had been no agreement that CPC would ever give any undertaking and the Liquidating Trust had been aware of that. He agreed that Morgan J had been given the impression that the Liquidating Trust had limited funds but said that this was true, as by that stage, the Trust had about $135,000 in cash. He denied that he was adding a "gloss" to matters or that there was no evidence that the Trust had been spending any money on disbursements.

121. The First Respondent agreed that it would have been improper for CPC/Mr Candy to receive information that had been disclosed in relation to the Applicant's assets and he said that, as far as he was aware, this had not happened. He stated that Mr Smith had already worked out the value of the Applicant's assets and had ascertained that there would be enough to satisfy the claim without the Liquidating Trust having to go against One Hyde Park. He said that he had also spoken to CPC and informed them that the Liquidating Trust would probably not need to take enforcement action against the One Hyde Park apartment. He said that he had not disclosed any of the information obtained and CPC had not been interested in that level of detail anyway. He denied that he had failed to mention this in his witness statement or that he had been "cagey" about this issue.

122. In continuing cross examination, the First Respondent acknowledged that disclosed documentation had been sent to Jones Day by e-mail. He said that, in an ideal world and with the benefit of hindsight, this would not have happened. He explained that Jones Day had been on the e-mail list of US advisors and had not been removed. He pointed out that although CPC had been Jones Day's client, the Liquidating Trust had also been advised by them and he had no reason to believe that Jones Day had used the information for any improper purpose. He denied that there had been any breach of CPR 31.22 but said that if there had been then he was very sorry and this had not been done intentionally.

123. The First Respondent denied that his witness statement dated 20 May 2010 and which had been served for the Fortification Hearing had been misleading. He did not accept

that reference to "litigation costs, legal fees" would have been understood to include Stewarts Law's own fees. He claimed that he had meant to refer to the US disbursements. He acknowledged that the firm's time recording records showed that he had allowed two hours as "preparation for and attending hearing" and he told the Tribunal that preparation could include almost anything and had probably involved him reading the skeleton arguments in advance and considering the issues before attending Court. He insisted that he had only been present at Court for perhaps the last of the closing submissions and then the Judgment and said that it was ridiculous to suggest that he had been there any earlier.

124. In continuing cross examination, the First Respondent accepted that Mr Onions' submissions that there was no third party funding and that legal costs were being paid from the $135,000 held by the Liquidating Trust had been misleading. He said that he was very sorry that this had occurred. He told the Tribunal that it had been his fault as he should have been there and could then have stopped this from happening. He said that confusion had arisen regarding third party funding in respect of past costs and funding going forward. He told the Tribunal that he had no recollection of the Second Respondent passing him notes informing him that misleading statements had been made and he denied that he had been aware that the Court had been misled at the time. He said that he had not picked up on anything untoward when he had listened to the Judgment. He accepted that it may appear obvious now that the Judge had been misled but pointed out that it was easier to see this when the Judgment was looked at in black and white. He said that at the time, he had missed some of the "nuances" of what had been said. He told the Tribunal that once he had registered the error, he had ensured that he co-operated fully with the Applicant's solicitors with regard to costs recovery and the Applicant's costs had been recovered in full. He said that it had not occurred to him to write to the Judge to correct the error so long after the event. He had never heard of a lawyer doing such a thing but conceded that perhaps he should have done so. He denied that he had backdated the Conditional Fee Arrangement (CFA) that Stewarts Law had entered into with the Liquidating Trust and said that it was acceptable for a CFA to take effect from a retrospective date.

125. Mr Wardell referred the First Respondent to the letter from Withers, the Applicant's solicitors, dated 2 June 2010, in which a request had been made for clarification as to the precise position regarding the $135,000. The First Respondent denied that this letter had alerted him to the fact that the Judge had been misled at the hearing. He told the Tribunal that he had been trying to explain what had happened to the money in his reply of 9 June 2010. He had said that $55,997.62 had been expended on fees in the US and an additional $30,000 had been set aside for disbursements. He denied that he had known that the question raised by Withers concerned the costs of the UK proceedings only but conceded that his letter "could be read as misleading". He admitted that he had used "inappropriate wording" but said that he had certainly not been intending deliberately to mislead.

126. The First Respondent confirmed that CPC had paid Stewarts Law's fees before 21 May but said that no fees had been paid by them after that date and the firm had then entered into a CFA with the Liquidating Trust. He accepted that he had said that by the time of the Fortification Hearing, CPC's involvement was "largely historic" and conceded that these were "slightly unfortunate words". He accepted that CPC had remained interested in knowing the outcome of the matter but denied that they had

remained involved throughout. He accepted that the letter from Withers of 5 August 2010 had referred to the allegation that the Court had been misled and acknowledged that he had never told Withers that they had been right in their assumption.

127. In continuing cross examination, the First Respondent told the Tribunal that the information that he had as to the whereabouts of Mr McGrath had been given to him by the US attorneys and was contrary to the Applicant's evidence on this issue. He said that he remembered that Mr Pedriks had wanted to sue Mr McGrath for misrepresentation and Mr Pedriks had thought that Mr McGrath could be in Kenya. He said that Mr Peters, another lawyer who had represented the Liquidating Trust, had told him that Mr McGrath was back in the US and he could make contact with him. He denied that he had made this evidence up in his fifth affidavit and told the Tribunal that there was no reason why he would have done such a thing. He did not accept that it was inconceivable that Mr Evans would not have known of Mr McGrath's whereabouts. He explained that Mr Evans had been a professional Trustee and he delegated everything to his lawyers.

128. The First Respondent explained that updated official searches dated 28 April 2010 had been obtained for The Knightsbridge properties before the Without Notice hearing in order to ensure that the information provided to the Court was up to date. He explained that, inadvertently, the new searches had been included in the exhibit to Mr Evans' first affidavit which had referred to the earlier searches dated 21 April 2010. He said that nobody had spotted the mistake as the two sets of searches were identical save for the date and it was ridiculous to suggest that he had lied about this matter.

129. In re-examination by Mr Fenwick, the First Respondent told the Tribunal that in a case of this nature, it had been very important to involve Counsel in the drafting. He said that he would not have sworn any affidavit without receiving the "green light" from Counsel. He said that it would have been the role of Counsel to draw the Court's attention to key points and all opposing arguments and this was what he saw as the "balancing exercise" that Mr Wardell had referred to earlier.

130. The First Respondent told the Tribunal that he had not regarded the Settlement Agreement as having been entered into at arm's length as it had not been signed by legal representatives and had followed negotiations during which the parties had been trying to resolve matters for themselves. He confirmed that a copy of the 12 February 2010 letter between Gordons and SJ Berwin and which referred to the conversation between the Applicant and Mr Candy on 8 February had been before the Court at the Without Notice hearing. He agreed that the Uno Ponterosso company search had been updated in March 2010 and told the Tribunal that this was the most up to date information that could be obtained.

131. In continuing re-examination, the First Respondent confirmed that the final version of Mr Wiesner's affidavit had referred to actual fraud. He told the Tribunal that this information had been included by Mr Wiesner himself. He stated that it was Mr Onions who had included the allegation of blackmail in his skeleton argument and he had not instructed him to do this. The allegation had been drawn from the primary documentation. He told the Tribunal that reference in the 2005 proceedings to the fact that some of Complete Retreats' members were redeemed notwithstanding that

Complete Retreats was insolvent had been relevant to his consideration of the allegation of a Ponzi scheme. He acknowledged that Mr Wiesner's first affidavit had made it clear that the Applicant was still living at his New York apartment in December 2008 and so he would have had no concerns about the validity of the service of the US proceedings.

132. The First Respondent told the Tribunal that he had not been dishonest. He accepted that some errors had occurred and said that, very unusually in the course of his career, it had been necessary for him to send additional affidavits to the Court in order to correct those mistakes. He maintained that all of the errors in this case had been inadvertent. He said that he particularly regretted the errors made at the Fortification Hearing which should not have happened. He told the Tribunal that he felt responsible because had he been there then these mistakes would not have occurred. He said that he had trusted the Second Respondent and did not think for one moment that the Second Respondent would have deliberately misled the Court. It had all been very regrettable. He said that such things happened in even the best managed cases and he wished to apologise for what had gone wrong. He accepted that this had not been his "finest hour" but reiterated that he had done nothing deliberate or dishonest.

133. In answer to questions from the Tribunal, the First Respondent confirmed that he had probably dealt with about six applications for Freezing Orders over the course of his career. He said that this particular application had been more complex because it had dealt with foreign law issues and had been based on three sets of pre-existing proceedings. He had been very much dependent on others for information coming from the US. He said that the Second Respondent had done most of the time recording in relation to the matter and he had been responsible for overall supervision.

<u>The Second Respondent</u>

134. The Second Respondent gave evidence and was cross examined by Mr Wardell. He confirmed that the contents of his first and second witness statements were true to the best of his knowledge and belief.

135. In cross examination by Mr Wardell, the Second Respondent said that he would still describe himself as relatively inexperienced in 2010. He confirmed that he had relied on the First Respondent's views but pointed out that Counsel had also been very involved in the case. He told the Tribunal that he had dealt with one other application for a Freezing Order previously and he was aware of the disclosure obligations required at a Without Notice hearing. He said that he could not really remember the day to day detail of the case but he had reviewed the First Respondent's statement in order to remind himself of what had happened and he had been "at the coal face" at the time. He told the Tribunal that he had considered the First Respondent's statement but he had not "blindly" followed whatever the First Respondent had said.

136. The Second Respondent told the Tribunal that he had not attended the meeting in Boston with Mr Wiesner and others in March 2010 and so he could not say what had been discussed. He accepted that he had been aware that CPC had concerns about tainted funds but said that he was not able to comment on CPC's strategy. He had felt that CPC was concerned about their reputation in relation to One Hyde Park and had not wanted any bad publicity. He thought that CPC had considered the Applicant to

be a "trouble maker" and believed that "it may have been convenient" to them if the funds had been tainted as he said that, truthfully, he did not believe that CPC had wanted the Applicant in One Hyde Park. He could not say if CPC had been looking to gain a commercial advantage as this was not something that had been discussed with him. He believed that CPC had been genuinely concerned about tainted funds.

137. In continuing cross examination, the Second Respondent confirmed that he had been aware that the case against the Applicant had been built upon the allegations in the 2005 proceedings. He said that Stewarts Law had been dependant on the US lawyers who had believed in the allegations. He said that he had no experience of US law himself but Counsel had all the primary documentation and was aware of the position. He said that he believed that Morgan J had been informed that reliance was being placed on the 2005 proceedings and he told the Tribunal that the allegations had not been made up. He said that he did not know who had raised the issue of "back pay". He had no firm recollection as to how the matter had been resolved but believed that there was evidence to suggest that there had not been any "back pay" owed to the Applicant. He pointed out that the issue had been considered and no attempt had been made to disguise this as a possible defence.

138. The Second Respondent said that he could not specifically recall whether the US lawyers had seen the 2005 Settlement Agreement at the time that he had prepared the draft affidavits. He told the Tribunal that Stewarts Law may have had the Agreement but he did not know. He acknowledged that Mr Wiesner had expressed concern that he was having to swear an affidavit in respect of matters within his own knowledge when the US complaint only contained allegations. He pointed out that Mr Wiesner had sworn the affidavit and he had not been put under any pressure to do so. The Second Respondent told the Tribunal that the allegation of blackmail had been based on contemporaneous documents and Counsel had been satisfied with the evidence. It had not been invented and the team had thought that there was a strong case. He conceded that the evidence of blackmail in September 2005 was "more thin" than it had been in January but asserted that if the blackmail allegation had been hopeless then Mr Onions would not have run with it. He said that what he had thought was not that significant as he had only been part of the team.

139. The Second Respondent told the Tribunal that he believed that the First Respondent had been careful to ensure the accuracy of his affidavits. He acknowledged that criticisms had now been made but pointed out that they had been acting under time pressure. There had been a genuine belief that the Applicant would dissipate his assets. He explained that a great deal of work had been carried out in relation to quantification and he believed that the team had been very careful about how the claim was quantified. He acknowledged that Roth J had been critical of Stewarts Law but said that they had genuinely believed that the Applicant was evading service. He accepted that the Applicant had been portrayed as a "shady" individual but told the Tribunal that that was what they had felt at the time.

140. In continuing cross examination, the Second Respondent accepted that the Court needed to be presented with a full picture in relation to any application and agreed that it had not been up to Stewarts Law to be selective about the material that was disclosed. He told the Tribunal that he had been aware of the dispute between PGGL and the Applicant regarding the apartment at One Hyde Park and he acknowledged

that e-mail correspondence made it clear that Mr Candy had the Applicant's e-mail address and mobile telephone numbers. He confirmed that Stewarts Law had been trying to locate the Applicant and he knew that private investigators had been instructed. He had been aware that the Applicant had a business in Italy and that Mr Candy had met the Applicant in Milan. He could not disagree with the assertion that the Applicant appeared to be a man who was open and transparent as to his whereabouts.

141. The Second Respondent told the Tribunal that Stewarts Law had not telephoned the Applicant because they had thought that he was evading service and believed that he had given a disingenuous response in Gordons' letter of 19 March 2010. He said that the legal team were doing their best to serve the Applicant because they wanted him to participate in the US proceedings. He explained that the only documents that they wanted to delay serving related to the Applicant's connection with Hayden and this had been due to the risk of dissipation. They had not wanted to delay serving notice of the Quantification Hearing. He acknowledged that it may have appeared as if the Applicant had not been a difficult man to contact but said that this had not been the impression at the time. He told the Tribunal that Stewarts Law had not written to Gordons as SJ Berwin had already done so and had received Gordons' reply of 19 March. He said that he had not noticed the Italian office address given in the search result for Uno Ponterosso and had only noted that the New York apartment address had been given. He said that, at the time, he had not considered that there was any material difference between the words "believe" and "know" in the First Respondent's first affidavit with reference to the Liquidating Trust's awareness of the fact that the Applicant was working in Italy. He said that Stewarts Law had really believed in the evidence that they had filed and had not set out to create a misleading picture. They had tried to serve the Applicant in New York and London.

142. In continuing cross examination, the Second Respondent said that he could not remember being conscious of the disclaimer warning found on the credit search. He had been informed that three other positive credit searches had been obtained and said that, although he had not had the documents to support the searches, he had no reason to believe that they had not been carried out. He acknowledged that it was possibly because of the apparent history of the Applicant evading service that an e-mail from Ms O'Neil at Jones Day on 2 April 2010 had said that she assumed it likely that the Applicant would not be at the New York apartment when service was attempted.

143. The Second Respondent agreed that he had asked for enquiries to be made of the doorman at the New York apartment building in an e-mail to Ms O'Neil on 12 April 2010. He accepted that the e-mail had been sent in an attempt to locate the Applicant and serve him. He told the Tribunal that he would have read the Khan e-mail at the time that it had been sent but he had overlooked the significance of the content which had not registered with him at the time. He believed that it was highly probable that he had discussed the e-mail with the First Respondent but said that the legal team had not found it determinative either way. He stated that the e-mail had only assumed huge significance later. He told the Tribunal that he accepted that the e-mail should have been referred to in the affidavit but at the time he had genuinely thought that the Applicant was in New York, based on the credit searches and the Uno Ponterosso search in particular.

144. In continuing cross examination, the Second Respondent told the Tribunal that he thought that the words "returned as undeliverable under separate cover" found in Ms O'Neil's e-mail of 13 April 2010 could have meant that the Applicant had returned the documents. He said that reliance had been placed on these words and it was only later that he had discovered that the documents had not been delivered. He accepted that he had not asked for a copy of the tracking results and said that this had not occurred to him at the time.

145. The Second Respondent told the Tribunal that he had no particular recollection of the e-mail sent by Mr Udvardy on 14 April 2010. He accepted that the e-mail should have been disclosed to the Court in April but said that he had not attached enough significance to it at the time. He explained that the legal team had been processing a lot of information and were unsure where the Applicant was. He said that there had been no deliberate attempt to omit it and he had never had any conversations with the First Respondent where they had said "Do not put this in the affidavits". He stated that if he had spoken to Mr Knuckey then he would have told the First Respondent and probably vice versa. He did not think that the team had considered that Mr Knuckey's evidence meant that the Applicant had definitely left New York. He said that he had no reason to doubt Mr Knuckey who had been head of a money laundering division at the police. He said that he had drafted Mr Knuckey's affidavit but this had also been sent to Counsel. He had worked from Mr Knuckey's notes and explained that, as Mr Knuckey's telephone conversation with the Applicant on 15 April 2010 had not been included in the notes, it had not been mentioned in the affidavit. The Second Respondent accepted that, in retrospect, a more balanced picture should have been given to the Court but said that any failure to do so had not been deliberate. He pointed out that there were factors which had made the legal team genuinely believe that the Applicant still had the New York apartment including the credit searches, the company search and the letter to SJ Berwin when the Applicant had tried to dismiss any connection between him and Hayden as well as the evidence from Mr Knuckey. He said that they had believed that there were grounds for dissipation and they had made it clear to the Court that they did not know where the Applicant was.

146. The Second Respondent told the Tribunal that at the time of the discharge hearing, Stewarts Law knew that they had overlooked the Khan e-mail and he accepted that the e-mail should have been disclosed to the Court at the Without Notice hearing. He had exchanged e-mails with Mr Wiesner on 6 July 2010 in which he had confirmed that the Khan e-mail had been overlooked and he told the Tribunal that he would have discussed the July e-mails with the First Respondent at some point. He said that both he and the First Respondent had thought that Mr Wiesner was dealing with the issue. He said that although they had been made aware of the fact that the Khan e-mail had been overlooked, they had not thought about it consciously when the First Respondent's seventh affidavit had been drafted. He told the Tribunal that he had deferred to the First Respondent to decide what to do. He said that Mr Wiesner had believed, as a result of Mr Knuckey's evidence, that the Applicant was in London rather than New York by the time that he had sworn his affidavit. He accepted that Mr Wiesner may not have been the right person to give that evidence and conceded that, in retrospect, things could have been dealt with differently.

147. In continuing cross examination, Mr Wardell asserted that the Second Respondent had known that it was misleading for the First Respondent to assert in his seventh affidavit

that he had not been aware of the contents of Mr Khan's affidavit and he suggested that the Second Respondent had been trying to extricate himself from this by inviting Mr Wiesner to say something that was also misleading. The Second Respondent told the Tribunal that, rightly or wrongly, it had been felt that Mr Wiesner should mention the issue as he had been dealing with Mr Khan. Mr Wardell asserted that this was not an honest explanation. The Second Respondent stated that he did not think that it was "wholly dishonest" but it was for the Tribunal to decide. He accepted that the explanation in the seventh affidavit could be seen as disingenuous but said that there had been logic to it at the time. He agreed that the First Respondent's eighth affidavit could be criticized for failing to say that Stewarts Law had already received the Khan e-mail and he admitted that he had felt uncomfortable during the hearing on 8 July when the evidence had been put before the Court.

148. The Second Respondent told the Tribunal that he knew that CPC had approached the US lawyers due to their concerns about the Applicant. He said that CPC had found out about the case brought by the Liquidating Trust but he did not think that they had been the driving force behind the decision to apply for a Freezing Order. He said that he had not been particularly involved in fees or strategy and it was the First Respondent who had dealt with the funding arrangements. He could not recall if bills had been sent to CPC or to the Liquidating Trust. He had known that the Americans did not have much money and that it was likely that CPC was paying all or most of the fees involved in obtaining the Freezing Order. He told the Tribunal that he had believed that it had been right for the Liquidating Trust to seek a Freezing Order as this was a legitimate claim but CPC's involvement and their reasons for funding the application had not been entirely clear to him. He said that he had understood that CPC had concerns about tainted funds but he could not speak for CPC and he did not really understand their strategy. He confirmed that, as far as he was aware, CPC had not undertaken to give funding.

149. In continuing cross examination, the Second Respondent accepted that any documentation that had been disclosed should only have been used for the purposes of proceedings. He said that he had not thought about what information CPC could properly receive. He agreed that he had sent the e-mail to Jones Day but pointed out that Jones Day had been part of the legal team and were certainly advising the Liquidating Trust.

150. The Second Respondent acknowledged that he had not mentioned the note which he had passed to the First Respondent at the Fortification Hearing in his first witness statement. He explained that he had not thought that the note was particularly significant at the time that he had prepared his statement. He told the Tribunal that what had happened at the Fortification Hearing had been his mistake and was not the fault of the First Respondent. He was quite sure that the First Respondent had arrived close to the end of the hearing but before the Judgment had been delivered. He did not accept Mr Wardell's assertion that anybody reading the First Respondent's fourth affidavit would have thought that the Liquidating Trust was using its cash reserves to pay its English lawyers. He said that he did not think that the affidavit was entirely clear but he would probably agree that nobody would think that the Trust's costs were being funded by somebody else.

151. In continuing cross examination, the Second Respondent told the Tribunal that he had not dealt with any third party cases before but he knew what third party funders were. He did not think that CPC would have been classified as a third party funder, as he thought that the phrase referred to a party who would share in the proceeds or recovery. He acknowledged that the concept of third party funding was wider than that but said that he had not appreciated this at the time. He stated that he had not been told that CPC was concerned about an adverse costs order being made against them. He told the Tribunal that reading a transcript was very different to being in Court and at the time, he had not been at all clear as to whether prospective or retrospective costs were being discussed. He could recall Mr Onions asking him if there was third party funding and he had thought that the question was about prospective funding. He said that he had answered instinctively and he was sorry if he had been wrong. He accepted that when considering the transcript now, it was clear that reference was being made as to how the Liquidating Trust had funded its costs so far. He conceded that he had been uncertain at the time as to whether he had made a mistake and acknowledged that it had all been very regrettable.

152. The Second Respondent told the Tribunal that he had discussed this issue with the First Respondent at around the time of the correspondence from Withers at the latest. He could not say for sure whether he had seen the letter from Withers dated 2 June 2010 and he did not think that he had seen the letter in reply of 9 June. He confirmed that he had discussed his uncertainty about what had gone on at the Fortification Hearing with the First Respondent but he had not told him that he was absolutely sure that the Court had been misled. He said that he may have discussed Withers' letter of 5 August 2010 with the First Respondent but he was not sure and he did not know if he had discussed the reply of 13 August 2010 either. He could not recall reviewing the transcript with the First Respondent.

153. In re-examination by Mr Fenwick, the Second Respondent stated that he was unsure when he had discussed his concerns about the Fortification Hearing with the First Respondent. He thought that it was most likely to have been in June following receipt of the letter from Withers. He told the Tribunal that he had always been honest. He had thought that he was doing his best in this case but accepted that this had not been good enough. He wished to apologise to the Applicant and to the Tribunal and reiterated that he did not think that he had ever been dishonest.

154. In answer to a question from the Tribunal, the Second Respondent confirmed that he had not been responsible for the strategy in this case. He had been involved in the preparation of documents, he had obtained information and then reported back but any strategic decisions had been made by the First Respondent.

Findings of Fact and Law

155. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

156. **(1) Disclosures regarding the New York Apartment at the Without Notice Hearing:**

Allegation 1.1: Did Mr Shaw and/or Mr Turnbull:

1.1.1 Provide misleading information to the Court (or allow misleading information to be provided to the Court) as to whether Mr Logue still lived at the New York Apartment as at the date of the Without Notice Hearing; and/or

1.1.2 Suppress information regarding Mr Logue's place of residence as at the date of the Without Notice Hearing; and/or

1.1.3 Fail to disclose other relevant information relating to the questions of whether Mr Logue was evading service and/or whether there was a risk of dissipation?

Allegation 1.2: To the extent that any of the allegations at paragraph 1.1 are upheld, does the Solicitors Disciplinary Tribunal (SDT) consider that this constitutes dishonest conduct or deliberate misconduct on the part of Mr Shaw and/or Mr Turnbull?

Allegation 1.3: To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Rules 1.01, 1.02, 1.03, 1.06 or 11.01 of the Solicitors Code of Conduct 2007 ("Code of Conduct")?

(2) Disclosures regarding the involvement of Mr Candy/CPC at the Without Notice Hearing:

Allegation 2.1: Should the following matters properly have been put before the Court at the Without Notice Hearing:

2.1.1 Stewarts Law were acting for both the Liquidating Trust and Mr Candy/CPC;

2.1.2 The instruction of Stewarts Law by Mr Candy/CPC in connection with the US Proceedings and any relevant involvement or interest of Mr Candy/CPC in those proceedings;

2.1.3 The agreement of Mr Candy/CPC to provide certain funding and assistance to the Liquidating Trust in relation to the Freezing Order and/or in respect of the US Proceedings;

2.1.4 The dispute between Mr Candy/CPC and Mr Logue in respect of Mr Logue's/Hayden's acquisition of an apartment at One Hyde Park and that Mr Candy/CPC might, therefore, have an interest in the outcome of the application for the Freezing Order?

Allegation 2.2: Does the failure to raise the matters set out at paragraph 2.1 at the Without Notice Hearing constitute a breach of the obligation of full and

frank disclosure of material facts owed to the Court by Mr Shaw and/or Mr Turnbull, on the basis that these matters reasonably could be taken into account by the Court in deciding whether to grant the Freezing Order, or their duty not to mislead the Court?

Allegation 2.3: Does the SDT consider that the failure to raise the matters set out at paragraph 2.1 was dishonest or otherwise constituted deliberate misconduct?

Allegation 2.4: To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull in relation to this allegation, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

(3) Disclosures regarding the merits of the US Proceedings at the Without Notice Hearing:

Allegation 3.1: At the Without Notice Hearing did Mr Shaw and/or Mr Turnbull:

3.1.1 Provide misleading information to the Court (or allow misleading information to be provided to the Court) as to whether the allegations made against Mr Logue involved actual fraud; and/or

3.1.2 Otherwise overstate (or allow to be overstated) the nature of the claims being made against Mr Logue in the US Proceedings; and/or

3.1.3 Fail to inform the Court as to defences that might be available to Mr Logue in the US Proceedings?

Allegation 3.2: In any event, do the matters set out at paragraph 3.1 constitute a breach of the obligation of full and frank disclosure of material facts owed to the Court by Mr Shaw and/or Mr Turnbull, on the basis that these matters reasonably could be taken into account by the Court in deciding whether there was a good arguable case in the US proceedings and/or there was a risk of dissipation, or their duty not to mislead the Court?

Allegation 3.3: Does the SDT consider that the matters set out at paragraph 3.1 constitute dishonest or deliberate misconduct on the part of Mr Shaw and/or Mr Turnbull?

Allegation 3.4: To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

(4) Use of confidential information regarding Mr Logue's assets:

Allegation 4.1: Did the transmission of information regarding Mr Logue's and/or Hayden's assets (acquired in accordance with the disclosure requirements under the Freezing Order) to Jones Day and/or Mr Candy/CPC (if and to the extent that this occurred) constitute:

4.1.1 A breach of an implied obligation of confidence and/or implied undertaking to the Court; or

4.1.2 A transmission other than for the purpose of the proceedings, such that there was a breach by Mr Shaw and/or Mr Turnbull of Civil Procedure Rule 31.22?

Allegation 4.2: If so, was there a deliberate or dishonest intention on the part of Mr Shaw and/or Mr Turnbull to breach an implied undertaking/obligation of confidence/CPR 31.22?

Allegation 4.3: Was the application for the Freezing Order pursued with the avowed intention that information as to Mr Logue's and/or Hayden's assets should be passed to Mr Candy/CPC (as the Applicant asserts)? If so, was this an abuse of process?

Allegation 4.4: To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02 1.03, 1.06 or 10.05?

(5) Disclosures regarding the Liquidating Trust's funding at the Fortification Hearing:

Allegation 5.1: Were the statements given by Mr Onions QC at the Fortification Hearing (as recorded at lines 13-14 and 16-20 of the transcript) incorrect or misleading?

Allegation 5.2: Was the evidence filed for the purposes of the Fortification Hearing misleading by failing to mention any funding that Mr Candy/CPC had provided to the Liquidating Trust?

Allegation 5.3: In the case of any of paragraph 5.1 or 5.2 being answered affirmatively, did it constitute a breach of the obligation of Mr Shaw and/or Mr Turnbull to provide full and frank disclosure (in particular, did this duty remain in place at the time that this statement was given) or their duty not to mislead the Court?

Allegation 5.4: Does the SDT consider that Mr Shaw and/or Mr Turnbull dishonestly permitted Mr Onions QC to give the statements referred to in paragraph 5.1 to the Court or permitted them to be made in the knowledge that the statements were incorrect?

Allegation 5.5: Did Mr Shaw and/or Mr Turnbull fail to correct any incorrect or misleading statement made by Mr Onions QC as soon as they should have done?

Allegation 5.6: Does the SDT consider that Mr Shaw and/or Mr Turnbull dishonestly or deliberately prepared misleading evidence for the Fortification Hearing?

Allegation 5.7: To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

(6) Disclosures regarding the New York Apartment subsequent to the Without Notice Hearing:

Allegation 6.1: Did Mr Shaw and/or Mr Turnbull provide misleading information to the Court (or allow misleading information to be provided to the Court) regarding Mr Logue's residency at the New York Apartment, subsequent to the Without Notice Hearing?

Allegation 6.2: If so, did statements made after Mr Logue had put his own evidence before the Court as to the position in respect of the New York Apartment, constitute a breach of the duty of full and frank disclosure or their duty not to mislead the Court?

Allegation 6.3: Did Mr Shaw and/or Mr Turnbull provide misleading information to the Court (or allow misleading information to be provided to the Court) as to when they were made aware of evidence which suggested that Mr Logue no longer lived at the New York Apartment (including the information provided by Messrs Kahn, Udvardy and Knuckey)?

Allegation 6.4: If so, was this done deliberately and/or dishonestly?

Allegation 6.5: To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

(7) Mr McGrath:

Allegation 7.1: Did Mr Shaw and/or Mr Turnbull provide misleading information to the Court (or allow misleading information to be provided to the Court) as to:

7.1.1. the whereabouts of Mr McGrath; or

7.1.2 the Liquidating Trust's contact with Mr McGrath?

Allegation 7.2: If so was this done deliberately and/or dishonestly?

Allegation 7.3: To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

(8) The prospects of the default in the US Proceedings being vacated:

Allegation 8.1: Did Mr Shaw and/or Mr Turnbull inappropriately downplay to the Court the prospects of Mr Logue getting the default in the US Proceedings

vacated or was the position stated by Mr Shaw a faithful account of the advice give by Mr Wiesner?

Allegation 8.2: Was this in breach of any duty in circumstances where Mr Logue was in a position to make inter partes representations?

Allegation 8.3: Was this conduct deliberate and/or dishonest?

Allegation 8.4: To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

(9) HM Land Registry searches exhibited to Mr Evans' first affidavit:

Allegation 9.1: Was an incorrect or incomplete explanation given by Mr Shaw as to why HM Land Registry searches were added to Mr Evans' First Affidavit after it had been sworn?

Allegation 9.2: If so, was this deliberate/dishonest?

Allegation 9.3: To the extent that the SDT considers that there was any failing on the part of Mr Shaw and/or Mr Turnbull, does this constitute a breach of Code of Conduct Rules 1.01, 1.02, 1.03, 1.06 or 11.01?

Submissions on behalf of the Applicant

156.1 In his opening submissions, Mr Wardell told the Tribunal that the allegations in this case arose from litigation which had been badly conducted by the Respondents. In summary, there had been a catalogue of errors and the Respondents had failed to comply with their duty of full and frank disclosure. Mr Wardell stated that the Respondents had misled the Court regarding critical information at the Without Notice hearing, the Fortification Hearing and at the discharge hearing. He said that the Respondents had put forward excuses as to why this had happened and, in particular, had blamed the US lawyers for mischaracterising the case and failing to draw the Court's attention to relevant defences. He told the Tribunal that the Respondents had also claimed to have overlooked key e-mails and the First Respondent had said that he was not present in Court when an untrue statement had been made about the funding arrangements between CPC and the Liquidating Trust and he had been unable to recall a note passed to him by the Second Respondent which had alerted him to this issue. In addition, Mr Wardell stated that the Second Respondent had given an incorrect answer to Counsel regarding the Liquidating Trust's funding whilst in a state of panic during the Fortification Hearing.

156.2 The Tribunal was told that the Respondents had claimed that they were impeded in their defence because of a restriction contained in the settlement agreement between the Applicant and the Liquidating Trust. Mr Wardell reminded the Tribunal that the Applicant had offered to lift that restriction but this offer had not been taken up. He stated that the First Respondent's approach to the conduct of the litigation had been in deliberate disregard of his duties as a solicitor and the Second Respondent had been complicit in this. He pointed out that the Respondents had been under an obligation

to comply with the provisions of the Code of Conduct. He asserted that the Guidance Notes to Rule 11.01 were particularly important in this case as these illustrated the fundamental duty not to mislead the Court and made it clear that where a Court had inadvertently been misled, then this should be corrected immediately. Mr Wardell told the Tribunal that the Respondents also owed a duty of full and frank disclosure in relation to the application for the Freezing Order and he reminded the Tribunal that this duty had been summarised by Roth J following the discharge hearing and set out in Memory Corporation plc v Sidhu (No 2) [2000] 1 WLR 1443 when it had been said that:

> "Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Once that confidence is undermined he is lost"

Mr Wardell said that, fundamentally, it was a matter of trust and the Respondents had been under a duty to put all relevant information before the Court. He asked the Tribunal to consider the various criticisms that had been made in relation to this matter by Roth J at the discharge hearing. He pointed out that the most damaging evidence against the Respondents had only come to light following the US disclosure and so when the Judge had made these criticisms, he had been unaware of the full extent of the Respondents' culpability.

156.3 In continuing submissions, Mr Wardell asserted that the Respondents had misled the Court and withheld relevant information about the New York apartment. He submitted that there were a whole series of factors which showed that the Applicant no longer had a New York residence. He referred the Tribunal to the First Respondent's affidavit, which, he said, gave the clear impression that the Applicant continued to live at the New York apartment. He told the Tribunal that the First Respondent had relied on difficulties that the private investigators had experienced in contacting the Applicant in the US and England contained in Mr Knuckey's evidence together with the return of documents from the New York address to give the impression that the Applicant was evading service and was likely to dissipate his assets. He said that this had been taken up Mr Onions at the Without Notice hearing and the Judge had been told that the Applicant resided in New York and that the inference to be drawn from the return of the documents was that the Applicant was trying to evade service.

156.4 Mr Wardell told the Tribunal that the Respondents had failed to disclose to the Court that Mr Khan, the US process server, had been unsuccessful in attempting to serve the Applicant with documents in the US proceedings at the New York apartment on 9 April 2010. His e-mail of 12 April 2010 had stated the following:

> "Fri evening around 7pm I spoke with the doorman who seemed sincere – no games and said what's that name again and was not familiar with him. He asked for the apt. number, which I gave him but after looking at his tenant list said not known. Ive check [sic] the tel directory and called a number for him...but it is no longer in service..."

Mr Wardell said that this was compelling evidence that the Applicant no longer lived at the apartment and should have been put before the Court as it undermined the theory that the Applicant was trying to evade service.

156.5 In addition to the information obtained from Mr Khan, Mr Wardell told the Tribunal that the Respondents had failed to bring to the Court's attention a report from Mr Udvardy, the US private investigator who had been hired to investigate the Applicant and which stated that:

> "Initial info from location is that Logue moved out about a year ago no other info".

Mr Wardell said that further corroboration of what both Mr Khan and Mr Udvardy had said had been provided by the Second Respondent who had reported a conversation with Mr Knuckey, the UK investigator, and where the Second Respondent had said:

> "our UK investigator [Mr Knuckey] has spoken to Logue and was told that he [Logue] was spending two days a week in London (usually Thursday and Friday), with the remainder of his time in Trieste, Italy. It is unclear whether Logue is staying in a hotel in London, or at one of the apartments in The Knightsbridge or Lancelot Place. The investigator is going to make some further enquiries..."

Mr Wardell said that these three e-mails painted an entirely different picture and indicated that it was unlikely that the Applicant continued to have a residence in New York. In addition, he said that the Respondents would have known that Mr Candy had not experienced any difficulties in contacting the Applicant in relation to their commercial dispute. He pointed out that Mr Candy had the Applicant's e-mail address and both his UK and Italian mobile telephone numbers and he had met the Applicant in relation to the dispute concerning One Hyde Park. Mr Wardell told the Tribunal that none of this information had been presented to the Court.

156.6 Mr Wardell said that the Respondents did not deny knowledge of the reports from Mr Udvardy and Mr Knuckey and it was inconceivable that they had "overlooked" the Khan e-mail. Mr Wardell referred the Tribunal to the 12 April 2010 e-mail sent by the Second Respondent to Ms O'Neil at Jones Day in which he had stated:

> "Please could you confirm that Logue was served on Friday evening at his New York address.
>
> We also understand that a paralegal from your firm would be making discreet enquiries with the doorman in order to check that Logue was still resident at the New York address. Please confirm whether such enquiries had been made".

Mr Wardell said that it was clear that, even before receipt of the Khan e-mail, there had been some doubt as to whether the Applicant continued to reside at the New York apartment and up to date information had been required. Mr Wardell said that following the Second Respondent's query, the Khan e-mail had been forwarded to

both Respondents by Mr Wiesner. It had also been included in another e-mail sent by Jones Day to both Respondents on the same date. Mr Wardell said that the Second Respondent had then replied to both Mr Wiesner and Jones Day later on that day. He had told Mr Wiesner "... we agree that you should instruct an investigator as a [sic] soon as possible". Mr Wardell stated that the Second Respondent must have understood why an investigator was being instructed. He pointed out that the Second Respondent had exchanged e-mails with Ms O'Neil on 13 April and he had asked for "...the final version of the documents which the process server recently attempted to serve on Logue". Mr Wardell said that the Second Respondent could only have been aware of this recent "attempt" from the contents of the Khan e-mail and so it could not possibly have been overlooked.

156.7 In continuing submissions, Mr Wardell asked the Tribunal to consider the e-mail exchange with the Second Respondent on 6 July 2010 in which Mr Wiesner had stated:

> "I received an email from Khan on about April 12. I exchanged emails with you and Jennifer O'Neil... around that time as to whether Logue had been served. Because Logue was no longer at his address we discussed hiring a skip tracer and an investigator to try to find him. I believed that everyone was aware at that time that Logue was no longer living at Park Avenue, which is why we were having those conversations. At that point, an investigator was already at work in England, and we believed he would be served".

Mr Wardell said that whatever residual scepticism the Respondents may have had as to whether or not this information was entirely reliable, there was no excuse for not telling the Court about it. He reminded the Tribunal that the First Respondent had informed the Court that the package delivered to the New York apartment had been returned as "undeliverable". He stated that the First Respondent had used this as further evidence that the Applicant was attempting to evade service by suggesting that someone had received the package and sent it back. Mr Wardell said that if the First Respondent had thought that this was relevant then he could not have been in any doubt that other evidence concerning the New York apartment was also relevant and should have been disclosed to the Court.

156.8 Mr Wardell asserted that even after the Without Notice hearing, the Respondents had continued to mislead the Court on this issue. He told the Tribunal that on 11 May 2010, Mr Wiesner had provided the Second Respondent with evidence from Bronoco Crnobrnja, the doorman at the building in which the New York apartment was located, which confirmed that the Applicant had moved out of the apartment. Mr Wardell pointed out that the Second Respondent had not seemed surprised by this information and had specifically asked "Is Bronco [sic] able to be more specific as to when Logue moved out of 737 Park Avenue?" Mr Wardell said that this evidence had been excluded from Mr Wiesner's second affidavit sworn on 12 May 2010 and from the First Respondent's third affidavit which had been sworn on the same date.

156.9 In continuing submissions, Mr Wardell claimed that the situation had become much more serious by the time of the discharge hearing. He reminded the Tribunal that the First Respondent's seventh affidavit had dealt with Mr Khan's affidavit which had been discovered by then and said:

> "My firm was not aware of Mr Khan's affidavit or its contents but it is accepted that the Liquidating Trust should have had access to Mr Khan's affidavit prior to the ex-parte hearing. I apologise on behalf of the Liquidating Trust for the fact that the Court was not made aware of the contents of Mr Khan's affidavit"

He said that it was untrue for the First Respondent to say that his firm was not aware of the contents of Mr Khan's affidavit prior to the Without Notice hearing as the affidavit was, to all intents and purposes, identical to the Khan e-mail which the Respondents had received on 12 April. Mr Wardell stated that even if the Khan e-mail had been overlooked, the Respondents had been reminded of it in the exchange of e-mails between the Second Respondent and Mr Wiesner on 6 July. He said that the Second Respondent had then appeared to encourage Mr Wiesner to swear an affidavit stating that the reason for the omission of this information was because he [Mr Wiesner] thought that the Applicant was in London rather than New York and that this had been made clear to the Court. Mr Wardell said that this was not the correct explanation at all. He told the Tribunal that the First Respondent's eighth affidavit had made no reference to the fact that Stewarts Law were aware of the contents of Mr Khan's affidavit by virtue of the fact that they had received the Khan e-mail containing the same information. He stated that Roth J had proceeded on the basis that Stewarts Law knew nothing about it and the Respondents had failed to correct this serious misapprehension on the part of the Judge despite the fact that they had been under an obligation to do so.

156.10 The Tribunal was told that the Liquidating Trust had no intention of applying for a Freezing Order until they had been contacted by Stewarts Law and CPC and been encouraged to make the application. Mr Wardell reminded the Tribunal that the Respondents had claimed that CPC were concerned about tainted funds but it was difficult to see how a Freezing Order could have resolved this issue. He suggested that the Freezing Order had been sought for an improper purpose, namely to give Mr Candy and CPC a commercial advantage by forcing the Applicant to forfeit the deposits at One Hyde Park and obtain the significant uplift in the value of the apartment which had accrued since the date of the Agreement for Lease. Mr Wardell said that the Respondents had gone to lengths to ensure that Mr Candy/CPC's role had been kept secret. He referred the Tribunal to the e-mail sent to the Liquidating Trust's US lawyers by the Second Respondent on 5 August 2010 which had made it clear that Mr Candy/CPC had "...made resources available to assist in obtaining the freezing order in England". Mr Wardell said that the Judge should have been told that the idea of making the application had come from someone who was in a commercial dispute with the defendant as this was information which needed to be evaluated by the Judge.

156.11 Mr Wardell said that the Liquidating Trust had only been prepared to proceed with the application once it had received a letter from Jones Day on 22 April 2010 confirming that Mr Candy/CPC would fund the costs. He told the Tribunal that this was a binding contract despite the First Respondent's insistence that the payment of fees had been an informal arrangement. Mr Wardell stated that when it came to the question of fortification of the undertaking in damages to be given by the Liquidating Trust under the Freezing Order, there had been no mention of the fact that the Liquidating Trust's

costs were being funded by a third party. Mr Wardell said that there was a duty on a litigant who could not afford to make good his undertaking to say whether or not he could raise the money from somewhere else. He said that given that Mr Candy/CPC were funding the Liquidating Trust's costs, this was clearly a matter which the Court needed to know about and it was extraordinary for the Respondents to claim that the issue was not relevant.

156.12 In continuing submissions, Mr Wardell told the Tribunal that the First Respondent had provided evidence at the Fortification Hearing that the Liquidating Trust was not able to provide security for the Applicant's costs and that, effectively; an order for security would stifle the claim. He said that no reference was made to the fact that the Liquidating Trust's costs were being funded by a third party. He stated that Mr Onions, on instructions, had informed the Court that "there is no third party funding these proceedings" and in answer to a direct question from the Judge as to how the Liquidating Trust was being funded had replied "...using the $135,000 ". Mr Wardell said that, in fact, Stewarts Law had already received a substantial payment from CPC and there was a binding obligation on CPC to make payment. He asserted that, fundamentally, the Court had been misled. He stated that the First Respondent had claimed that he had not given the instructions although there was some doubt about this. Mr Wardell stated that notwithstanding that, the First Respondent would have known that the Court had been misled and he had done nothing to rectify the position. In fact, he had continued the misrepresentation in correspondence. Mr Wardell reminded the Tribunal that the letter from Withers of 2 June 2010 had raised the apparent inconsistency between the First Respondent's witness statement and the submissions made by Mr Onions at the Fortification Hearing. He said that the response from the First Respondent did not correct the position and made no reference to the fact that funding had been provided by Mr Candy/CPC.

156.13 Mr Wardell said that the allegations against the Applicant in the US proceedings had been based on an allegation of constructive fraud only but the Respondents had put forward evidence that it was a case of actual fraud. He stated that they had sought to blame Mr Wiesner for this and had claimed that they were entitled to rely on the US lawyers. Mr Wardell said that the Respondents had been aware of the distinction between actual and constructive fraud and, as English lawyers, they had known that they should not make allegations of fraud unless these were supported by appropriate material. He claimed that the Respondents had been under a duty to make the true position clear.

156.14 In conclusion, Mr Wardell explained that the Applicant had brought this case because he believed that the Respondents' conduct had involved persistent and wilful breaches of their obligations and he considered that they had been dishonest in certain key areas. He pointed out that if the Applicant had not been so well resourced then he could have lost a substantial proportion of his assets on the basis of a prejudicial and misleading case. Mr Wardell said that the First Respondent was trying to assert that he was the innocent victim who was "caught in the crossfire" between the Applicant and the Candy brothers. Mr Wardell said that this was not so and the Applicant was simply pursuing his grievances against the Respondents. He told the Tribunal that these proceedings should not be seen as a "stepping stone" in support of the Applicant's claim against CPC/Mr Candy. He said that the complaint was being

brought because documentation disclosed in the US showed that the Court had been seriously misled.

156.15 Mr Wardell stated that it had been suggested by Mr Fenwick that the Tribunal should not consider any alleged breach of an undertaking to the Court on account of paragraph 31 of the Guidance Notes to Rule 10.05 of the Code of Conduct. He explained that the policy behind paragraph 31 was that the SRA would not be concerned with a breach of an undertaking if the Court had not made a complaint. He said that this made sense but presupposed that the Court had been made aware of it and had the chance to consider the matter which was not the case here. He submitted that it was unrealistic to expect the Applicant to go back to Court and raise the matter now and there was, in fact, no procedure open to him to do so. Mr Wardell asserted that the Guidance Notes referred only to the SRA and did not stop an individual from raising the point or restrict the jurisdiction of the Tribunal. He pointed out that the complaint was not limited to breach of an undertaking anyway as he claimed that the Respondents had helped CPC to obtain an injunction for an improper purpose. In addition, the provision of documents to Jones Day/CPC was a breach of CPR 31.22 and not a formal undertaking.

156.16 Mr Wardell accepted that it would be necessary for the Applicant to prove his case to the criminal standard. He asserted that the relevant test for dishonesty was the two stage test set out in Twinsectra Ltd v Yardley [2002] 2 AC which required the Tribunal to consider whether the Respondents had acted honestly by the ordinary standards of reasonable and honest people and whether the Respondents were aware by those same standards that they had acted dishonestly. Mr Wardell said that even if the Tribunal did not consider that the Respondents had been dishonest, they had still committed wilful breaches of a serious nature or alternatively had shown a reckless disregard of their obligations as solicitors.

156.17 In his closing submissions, Mr Wardell referred the Tribunal to the Applicant's Note on the Oral Evidence on which he intended to rely. He said that it was fundamental to the administration of justice that solicitors acted honestly at all times. He told the Tribunal that it was essential that a full and honest account was given at any Without Notice hearing as English law was fairly unusual in allowing one litigant to freeze the assets of his opponent purely on the basis of his own representations to the Court. He stated that in order to take advantage of this "potent" form of relief, a litigant and his legal team must set out the evidence fully and fairly as a failure to do so could lead to serious consequences. Mr Wardell reminded the Tribunal that it was only because the Applicant was well resourced and prepared to "fight his corner" that he had not suffered any loss as a result of the application for a Freezing Order. He said that it was no answer for the First Respondent to say that there had been no real loss to the Applicant and therefore simply to offer an apology. He stated that the apology from the Second Respondent had been given with "proper grace" and had been duly noted.

156.18 Mr Wardell said that full and frank disclosure was fundamental to any Without Notice application and the First Respondent, as an experienced litigator of 30 years, would have been aware of that. He pointed out that the First Respondent had claimed that he had carefully reviewed his affidavits but, if that was the case, then he should have appreciated that the impression that he had given regarding the New York apartment and the difficulties in contacting the Applicant was grossly misleading and partial.

Mr Wardell said that nobody reading the First Respondent's first affidavit and knowing the information that the Respondents had access to at the time would consider that the affidavit gave a balanced view. He accepted that the Second Respondent had been more junior and had been acting under the supervision of the First Respondent. He had not been responsible for strategy and had not sworn any affidavits himself. Mr Wardell said that there had been a marked difference in demeanour between the Respondents in evidence and, for the most part, the Second Respondent had been trying to be helpful and had been willing to acknowledge valid criticisms. However, notwithstanding this, he asserted that the Second Respondent had breached his regulatory obligations and, in one instance, had acted dishonestly.

156.19 In continuing submissions, Mr Wardell pointed out that the First Respondent had claimed that the Khan e-mail had been overlooked. He said that the Second Respondent had also said this but, when tested in evidence; it had transpired that the e-mail had not been overlooked at all. It had informed decisions going forward and it had been seen and discussed. He suggested that the Respondents could not have been criticized for basing the case against the Applicant on the fact that he had not responded to the original proceedings and provided that they had qualified what they had said about the Applicant's whereabouts. He said that instead, the Respondents had jumped to a particular conclusion and had not mentioned any evidence that pointed the other way. He reminded the Tribunal that the Second Respondent had wanted to know what the doorman had to say and he stated that the fact that the doorman had not recognised the Applicant's name or found his details on the list of tenants strongly suggested that the Applicant no longer lived at the New York apartment. This had been reinforced by the fact that the telephone number was out of service. Mr Wardell said that the First Respondent had tried to argue that the Court had not really been misled and, in evidence, had asserted that it was up to Counsel to "level the playing field" and then for the Judge to ask the appropriate questions. Mr Wardell said that this could not be right as the primary duty was on the deponent of the affidavit to ensure that what was said was balanced.

156.20 Mr Wardell asserted that the First Respondent's explanation for overlooking the Khan e-mail was not convincing. He pointed out that, in his oral evidence, the First Respondent accepted that he had read the e-mail. Mr Wardell said that this change in story was not credible in the light of the Second Respondent's express request (in his e-mail of 12 April 2010) that enquiries be made of the doorman about whether the Applicant still lived at the New York apartment. He stated that the Respondents were clearly interested in this information. He told the Tribunal that the change in the First Respondent's explanation was also inconsistent with paragraph 165 of the First Respondent's witness statement in which he had admitted that at the time of swearing his third affidavit, he had been aware that the Applicant's telephone number was no longer in service. Mr Wardell said that at the time, this piece of information was only contained in the Khan e-mail and had not come from anywhere else. It was corroborative evidence that far from overlooking the Khan e-mail, the First Respondent had it in mind and had considered its significance and relevance.

156.21 Mr Wardell said that the First Respondent could not explain why he had failed to bring the contents of the Udvardy e-mail to the Court's attention. He suggested that the First Respondent's claim that he had not really thought about it at the time was not plausible. Mr Wardell asserted that the Khan e-mail, the Udvardy e-mail and the fact

that Mr Knuckey had spoken to the Applicant on 15 April 2010 were all at odds with the suggestion that the Applicant was difficult to contact and should have been disclosed to the Court. He claimed that no satisfactory explanation had been given as to why this information had been omitted. In addition, he pointed out that the Respondents had failed to explain why the Court had not been told that there had been no difficulties with the Candys contacting the Applicant.

156.22 In continuing submissions, Mr Wardell stated that it was unfortunate that the First Respondent had still tried to characterise the Applicant as someone who could not be trusted. He said that it was remarkable for the First Respondent to assert that the Applicant had dissipated his assets when this was contrary to Roth J's findings and Mr Onions' acceptance at the discharge hearing that there was no proper ground for any concern. Mr Wardell pointed out that there was nothing unusual in high-end central London properties being sold through another vehicle and no inference should be drawn from the fact that the Applicant had sold some of his apartments to buyers using off-shore companies.

156.23 Mr Wardell said that given the failure to bring the Khan e-mail to the Court's attention, the First Respondent's subsequent explanations to the Court appeared even more serious. He observed that the Second Respondent had obviously felt very uncomfortable about what had happened between 6 and 8 July. Mr Wardell told the Tribunal that the First Respondent had continued to misrepresent the position on oath and had tried to get Mr Wiesner to take the blame when this issue had nothing to do with him. He said that the assertion made by the First Respondent in his seventh affidavit that he had not been aware of Mr Khan's affidavit or its contents was "mere sophistry" designed to try and draw a distinction between the Khan affidavit and e-mail which were, to all intents and purposes, identical. Mr Wardell said that he accepted that by 6 July, the Second Respondent had overlooked the e-mail and had then been reminded of it but he did not make the same concession in relation to the First Respondent who had failed to give a straightforward explanation in response to the allegation that the Liquidating Trust had deliberately suppressed evidence at the Without Notice hearing.

156.24 In continuing submissions, Mr Wardell said that the Second Respondent had been rightly concerned about the fact that the Khan e-mail had not been disclosed to the Court. He told the Tribunal that by the time that the First Respondent came to swear his eighth affidavit, he had known about the Khan e-mail in April because this had been the subject matter of his seventh affidavit and he could not have forgotten about the contents of an affidavit which had been sworn only two days earlier. Mr Wardell said that, despite this, the First Respondent had failed to correct the Court's misapprehension. He pointed out that it was clear that Roth J thought that the First Respondent did not know about what had happened at the attempted service on 9 April. In addition, he stated that the First Respondent had provided a false explanation in paragraph 15 of his eighth affidavit by suggesting that Mr Wiesner had wrongly taken the decision to exclude the material in the Khan e-mail from his affidavit. He reminded the Tribunal that, in evidence, the Second Respondent had admitted that what he had been asking Mr Wiesner to say in the e-mail exchange of 6 July had not been "wholly dishonest". Mr Wardell said that this was not an issue which Mr Wiesner needed to address as his affidavit did not deal with the question of the Applicant's residence or attempted service. He claimed that it had been for the

First Respondent to deal with the matter because the original omission had been in his evidence. Instead, he had continued to perpetuate the misunderstanding by putting in a false affidavit. Mr Wardell said that the First Respondent must have known that he was being dishonest in not correcting the position. He told the Tribunal that he accepted that the Second Respondent had been junior and had deferred to the First Respondent but he should not have remained silent knowing that the Court was being seriously misled as to his firm's state of knowledge.

156.25 Mr Wardell asserted that CPC's alleged motive for funding the Freezing Order was not credible. He reminded the Tribunal that the Second Respondent had said that he had not really understood CPC's motive and strategy. He reminded the Tribunal that according to the First Respondent, CPC already knew prior to the Freezing Order that the Applicant has sufficient equity to pay for One Hyde Park with clean funds. He claimed that it was extraordinary that CPC had been prepared to spend so much money in funding the application in order to satisfy themselves about something, which they already knew. He said that it had not been up to the First Respondent to evaluate whether or not CPC were motivated by a grudge or whether their commercial dispute was influencing their decision. He maintained that the Court would have been concerned about CPC's true motivation and their interest in the case should have been disclosed from the outset.

156.26 In continuing submissions, Mr Wardell said that the First Respondent had not been right to characterise CPC as a "pure funder". He asserted that there had been a binding contract in place and reminded the Tribunal that the First Respondent had conceded that this had probably been the case. He said that, in any event, the First Respondent could not possibly claim that CPC were acting gratuitously and assert that their funding was a pure gift. He stated that it was clear that CPC expected their costs to be repaid in the event that the Applicant was ordered to pay costs to the Liquidating Trust. Mr Wardell told the Tribunal that the First Respondent had changed his case in relation to the alleged breach of CPR 31.22. He said that the First Respondent was now claiming that he had personally given a loose "assurance" to CPC that the Liquidating Trust would probably not need to take enforcement action against One Hyde Park but he had not mentioned this in his first witness statement.

156.27 In relation to the Fortification Hearing, Mr Wardell said that the evidence was inconclusive as to whether the First Respondent had been present when Mr Onions had made his submissions as to how the litigation was being funded. He said that, in any event, the Court had been seriously misled and it was clear that the Judge had been told that the $135,000 had been used for fees to date and that there was no third party funding. Both of these statements had been wrong. Mr Wardell said that the Respondents had tried to justify this by setting out what they had understood by third party funding in their witness statements but the First Respondent had not stood by this in evidence. Mr Wardell said that the Second Respondent should not have got this so badly wrong and it was a serious breach of the Code of Conduct for a solicitor who had been qualified for three years by that stage. He accepted that the Second Respondent had been concerned about the issue and he suggested that the First Respondent should have been just as concerned after receiving the notes passed to him by the Second Respondent. Mr Wardell said that the First Respondent had known that none of the $135,000 had been spent on Stewarts Law's fees or on Counsel. He had known that the Liquidating Trust had signed the retainer letter on

the basis that they would not be paying anything towards their own costs. Mr Wardell said that nobody in the First Respondent's position could have been in any doubt that the Court had been misled.

156.28 Mr Wardell said that the First Respondent had continued the deception in his correspondence with Withers. He claimed that the First Respondent must have known that the questions raised by Withers concerned the UK legal costs and he could not have believed that his letter of 9 June had been honest. He had known that none of the $135,000 had been spent on the firm's fees or on Counsel. He had tried to justify the position by "muddying" the difference between costs and disbursements and had done so on the basis that the US lawyers had spent money on an expert's report which had been used primarily for the Quantification Hearing. Mr Wardell pointed out that the letter from Withers of 5 August had included the transcript of the hearing and there could have been no doubt that the Judge had been told that fees had been met from the $135,000. He asked the Tribunal to consider the First Respondent's reply when he had said that Withers' interpretation of the transcript "... does not fully accord with our recollection of what was being discussed and the context in which those words were said". Mr Wardell said that this explanation was extraordinary and showed that the First Respondent had continued to mislead the Court.

156.29 In continuing submissions, Mr Wardell told the Tribunal that the First Respondent had also backdated the CFA. He pointed out that the Notice lodged with the Court suggested that the CFA had been dated 24 May 2010 and Withers had been told the same thing. He stated that the distinction between an agreement which took retrospective effect and an agreement that had been backdated was important as the Tribunal had made clear in its decision in Pulman et al [9903-2008]. Mr Wardell said that the First Respondent must have known that the agreement had only been signed on 27 May and not on the 24th. He claimed that this was part of a deliberate decision to mislead the Court and Withers about the question of funding.

156.30 Mr Wardell stated that the First Respondent had accepted that he needed to have reasonable material in order to make allegations of fraud. He said that, in fact, the First Respondent had no such material and had relied only on the allegations in the US proceedings. Mr Wardell said that it was clear from the evidence that the US lawyers had not carried out any real investigation into the underlying claims. He pointed out that the Respondents had been keen to emphasise the role played by Counsel in the preparation of the affidavits but there was no evidence that Counsel had been told that there had been no investigation into the underlying claims and that all that was being relied on were the allegations in the US proceedings. Mr Wardell said that the First Respondent had been insistent that Morgan J had been told that these were mere allegations but this was not so. He reminded the Tribunal that the Court had been informed that the debtor's records were in "a bit of a mess" but this was completely different from saying that there had been no investigation at all.

156.31 In his continuing closing remarks, Mr Wardell stated that the First Respondent had no credible explanation as to why an allegation of blackmail had been made against the Applicant in respect of the 2005 Settlement Agreement. He said that the idea that this was because the proceedings themselves had involved allegations of blackmail was nonsensical and a clear breach of the First Respondent's obligations under Rule 11.01.

Mr Wardell said that Mr Onions could not be criticised for doing his best at the hearing but it was clear that he had not thought that there was "strong or credible" evidence in support of the point and Roth J had concluded that there was no basis whatsoever for the assertion of blackmail in relation to the September 2005 settlement. He told the Tribunal that the fact that the Settlement Agreement had been signed by the parties against whom such allegations had been made was neither here nor there.

156.32 Mr Wardell observed that the First Respondent appeared to think that potential defences would be obvious to a Judge and so there had been no need to raise them. He said that this was contrary to the entire principle of full and frank disclosure and the Judge should have been told about possible defences involving "back pay" and the "insider" point and he should have been informed that there was no evidence to impact on the settlement. Mr Wardell asserted that the First Respondent had taken a gamble that the Applicant would not resist the Freezing Order and so none of this would come out. He said that it was only because the Applicant had pressed for disclosure in the US proceedings that these matters had come to light.

156.33 In conclusion, Mr Wardell said that the Applicant had been honest and measured. He did not think that everyone had conspired against him and he was not motivated by an irrational vendetta. He had endured a horrific experience as a consequence of the Freezing Order and it was only because he had been well resourced that he had been able to withstand the attack. Mr Wardell claimed that the Respondents had committed numerous breaches of the Code of Conduct. He said that the First Respondent's conduct showed a remarkable catalogue of errors which had continued up to and including at the discharge hearing and had been compounded by the evidence which he had given to the Tribunal. He confirmed that the allegations of dishonesty against the First Respondent were maintained in full. He stated that for the most part, the Second Respondent had been trying to be helpful and the Applicant was prepared to give him the benefit of the doubt save for his involvement in the preparation of the First Respondent's seventh and eighth affidavits and his failure to speak out at the hearing on 8 July when he knew that the Court had been misled.

156.34 In response to a request for clarification from the Tribunal, Mr Mold confirmed that dishonesty continued to be alleged against the Second Respondent in relation to allegation 6.3 only. The Tribunal considered that the term "deliberate misconduct" which had been included in the allegations was close to, if not akin to, dishonesty. Mr Mold agreed that "deliberate misconduct" was synonymous with dishonesty and asserted that if the Tribunal found that there had been deliberate misconduct then this would equate to dishonesty.

Submissions on behalf of the Respondents

156.35 In his opening submissions, Mr Fenwick stated that this was an unusual case as the proceedings were not being brought by the regulator in the usual way. He told the Tribunal that the Applicant had decided not to refer this matter to the SRA and so he was putting himself in the position of prosecutor. He said that as the Applicant was both the complainant and the prosecutor in this case, the Tribunal should be aware that the balance that would be expected from an impartial prosecutor may not always be present.

156.36 Mr Fenwick suggested that the Tribunal should exercise caution in this case as the allegations in these proceedings appeared to be the same as those that were to form the basis of the Applicant's claim against CPC and Mr Candy. He asserted that it was important to distinguish between the roles of all the individuals concerned when dealing with such a large number of allegations. He stated that the Respondents should not be expected to answer for any default on the part of the US lawyers, Mr Candy, CPC, Jones Day or Counsel. He told the Tribunal that the Respondents were not responsible for the acts of each other except to the extent that they had known and approved of those acts and he asked the Tribunal to consider what the Respondents had known and believed at the time in order to assess their conduct and their state of knowledge.

156.37 In continuing submissions, Mr Fenwick stated that it was easy to criticise the conduct of any litigation with the benefit of hindsight. He pointed out that an application for a Freezing Order always involved time pressures and a degree of uncertainty. He invited the Tribunal to consider what an honest solicitor, acting properly, might have believed to be material to the application at the time. He accepted that it was not for solicitors to decide what may be relevant to a case but told the Tribunal that a solicitor always had to use his own understanding of what may or may not be in issue and the Respondents should be assessed in the context of their knowledge as at the date of the Without Notice hearing as this may have been different once further matters had come to light.

156.38 Mr Fenwick advised the Tribunal that it needed to be very aware of the evidence that had been filed in this case. He said that the Applicant had placed great weight on what had been said by Roth J but a distinction needed to be drawn between the role of the Judge and that of the Tribunal. He said that it would be wrong for the Tribunal to base its decision on the fact that Roth J had found something to be unacceptable. He pointed out that Roth J had not been making findings of fact but had been exercising his jurisdiction to decide whether or not the continuation of the Freezing Order could be justified. He said that it was clear that Roth J had been under a certain misapprehension regarding, for example, what had been said to Morgan J about possible defences and what was really at issue regarding the merits of the case but he had made his decision based on what was before him at the time.

156.39 Mr Fenwick pointed out that these were extremely serious allegations which involved ones of dishonesty. He reminded the Tribunal that the criminal standard of proof applied and stated that it would be necessary for the Tribunal to consider the two stage test set out in Twinsectra in order to decide whether the Respondents had been dishonest. He asked the Tribunal to ensure that a proper *prima facie* case had been established against the Respondents in relation to each of the allegations.

156.40 In his closing submissions, Mr Fenwick referred the Tribunal to his Note on the Evidence upon which he intended to rely. He stated that although the First Respondent had been a very experienced partner, it should not be assumed that he had been aware of every step that had been taken in relation to this matter. He pointed out that the Second Respondent had been relatively junior and did not have the same knowledge, understanding and experience as that of the First Respondent. He advised the Tribunal that both Respondents needed to be assessed in different ways and

considered in the light of their relative experience, seniority, role and background and he asked the Tribunal to consider the character references which had been filed on behalf of both Respondents. He stated that the Respondents could only defend themselves on the basis of material to which privilege had been waived and he advised the Tribunal to be cautious when judging the Respondents simply on the documentation contained within these proceedings. He reminded the Tribunal that it had been said in Medcalf v Mardell [2002] 3 All ER 721 that the role of the lawyer who was subject to the privilege of others had to be looked at with great care.

156.41 Mr Fenwick stated that these proceedings relied on the same duty of fairness as any that might be brought by the SRA. He submitted that at the heart of this complaint was the Applicant's fixed idea that there had been a conspiracy between the Respondents, the US attorneys and Mr Candy/CPC. Mr Fenwick said that he completely rejected the Applicant's assertion that these proceedings had nothing to do with Mr Candy or CPC. He pointed out that the Respondents' Article 6 Rights were engaged and stated that the Tribunal, as an independent and impartial body, should judge the Respondents against fair standards and not against someone else's preconceived ideas as to conduct and motive. He reminded the Tribunal that Roth J had not heard evidence and the case had not been put before him in the same way as it would have been presented to a Tribunal such as this. He submitted that it would be wrong for the Tribunal to simply accept what Roth J had said without any proper scrutiny.

156.42 In continuing submissions, Mr Fenwick accepted that an application for a Freezing Order involved a duty of disclosure but reminded the Tribunal that the case would be in its infancy at that stage and decisions as to what might be relevant had to be made quickly. He said that the Respondents had not had the time or the resources to pore over every document, consider what might be relevant and then investigate it at great length in the way that the Applicant and his legal team had now done. He said that the Respondents had been busy and the First Respondent, in particular, had been involved in a number of cases with many e-mails coming and going throughout the course of a day. It could not be assumed that he would have remembered the detail of each and every e-mail and it was unrealistic to suggest otherwise. It could not be said, for example, that the First Respondent had been dishonest simply because, when considering Mr Knuckey's notes, he had failed to remember that there had been an e-mail indicating that a conversation had taken place between Mr Knuckey and the Applicant on 15 April.

156.43 Mr Fenwick told the Tribunal that the Respondents should only be judged against the existing allegations and not against those that had been "dreamt up" during the course of these proceedings. He asserted that it was now being said that the First Respondent had been dishonest in relation to the dating of the CFA and he claimed that this allegation had not been put to the First Respondent in a proper manner. Mr Fenwick said that it had been alleged that both Respondents had acted dishonestly right from the start by deliberately suppressing material and giving a misleading impression to the Court in the preparation for the Without Notice hearing. He stated that it was extraordinary that such an allegation had been made against either Respondent but this was particularly so in relation to the Second Respondent who, it was suggested, had conspired with the First Respondent from day one. He asked the Tribunal to consider what motive the Respondents could have had for acting dishonestly as they

had not stood to gain anything. He questioned why an experienced solicitor, such as the First Respondent, would have dishonestly "beefed up" the evidence of evading service and dissipating assets in order to procure some form of advantage for his clients.

156.44 It was suggested by Mr Fenwick that, generally speaking, experienced solicitors acted honestly and would need to have a good reason for acting dishonestly, even if so inclined. Mr Fenwick asked the Tribunal to take this assumption as the starting point in this case. He said that given what the Respondents had known about the facts of the case and the allegations against the Applicant, it was apparent that a proper explanation could be given for their conduct at the Without Notice hearing. He stated that if, on the other hand, it was accepted that there had been a conspiracy with Mr Candy/CPC to "do down" the Applicant then it was possible to see a reason for the Respondents having done all of this.

156.45 Mr Fenwick told the Tribunal that it was clear from the letter before action sent to the Candys in September 2012 that the case against them was based on an assertion that they had entered into a conspiracy to damage the Applicant by the very means that were being asserted against the Respondents in these proceedings. He submitted that the Applicant was using these proceedings, at least in part, to bolster the evidence in his prospective claim against Mr Candy/CPC and the Applicant's view that there had been a conspiracy from day one had coloured the way in which these allegations had been brought. He suggested that the correct approach for the Tribunal to take was to look at the situation as an honest solicitor might have considered it when first instructed. He pointed out that the Respondents had been asked to assist the Liquidating Trust and the Trust had brought a claim which it believed to be sound in order to protect its right to enforce by way of a Freezing Order. Mr Fenwick stated that there had been nothing wrong with the Respondents making such an application on behalf of the Liquidating Trust.

156.46 In relation to the disclosures concerning the merits of the US proceedings, Mr Fenwick told the Tribunal that it was important to remember that the US lawyers had identified the nature of the claim in the US and dealt with any relevant legal issues. He said that the First Respondent had set out the facts as he understood them but Counsel had considered and approved the affidavit evidence, prepared the skeleton arguments and presented the case to the Court. Mr Fenwick reminded the Tribunal that there had been no suggestion of any misconduct on the part of Counsel and Mr Onions had not been the subject of any criticism. He pointed out that the role of Counsel was to bring to the Court's attention any particular features of the evidence and to identify any possible defences. He told the Tribunal that it was clear from the evidence that Mr Onions had made the allegations, including the alleged blackmail, on the basis of instructions and because he considered that there was credible evidence to support such allegations.

156.47 Mr Fenwick reminded the Tribunal that the Applicant had claimed that there was no evidence of blackmail. He pointed out that the US proceedings had referred to fraud and to an allegation that "...the Debtor's members were redeemed, notwithstanding the fact the Debtor was insolvent" which the Applicant's lawyers had considered to be an allegation of a Ponzi scheme. He said that the US proceedings had included the allegation that the Applicant had "...threatened to expose various forms of

mismanagement to the media unless McGrath authorised a wire payment to him to redeem his entire ownership interest in the Debtor". Mr Fenwick stated that demanding money with menaces was effectively blackmail. He told the Tribunal that these allegations had been known to Mr Onions and he had shown the Judge what was being alleged in the US complaint. He said that Counsel's own skeleton argument had included the word "blackmail" and he pointed out that Counsel would not have made such an assertion unless he had been satisfied that there was *prima facie* evidence to support this. He said that it was outrageous to suggest that the First Respondent had been dishonest in his affidavit whilst saying nothing about the skeleton argument produced by Mr Onions.

156.48 In continuing submissions, Mr Fenwick reminded the Tribunal that it had been claimed that there was no allegation of actual fraud and that this was something which should have been put to the Court. He referred the Tribunal to Mr Wiesner's first affidavit in which he had stated that the Liquidating Trust believed that the Applicant had "...acted with fraudulent intent...". Mr Fenwick said that Mr Wiesner had been the US lawyer who had been largely responsible for the conduct of the proceedings. He had set out what the Liquidating Trust had believed and the First Respondent had been entitled to rely on this in his own affidavit.

156.49 Mr Fenwick stated that the 2005 Settlement Agreement had not been a settlement at arm's length as it had been signed, on behalf of the debtor, by Mr McGrath, who was the person said to be responsible for the alleged wrong doing. He told the Tribunal that it did not matter if a lawyer had been acting on behalf of the Applicant or not as the Applicant had decided to compromise a claim by agreeing to accept money in exchange for not pursuing allegations of mismanagement against Mr McGrath and it was Mr McGrath who had signed the agreement and paid the money. Mr Fenwick said that this had been a transaction where the continued threats by the Applicant to pursue these matters had resulted in a payment and so it could not be said to be at arm's length.

156.50 In continuing submissions, Mr Fenwick reminded the Tribunal that at the time of the discharge hearing, Counsel had referred to the fact that the Retreats Group had been insolvent. In addition, Counsel had mentioned that the Applicant had a senior and important role with Complete Retreats, thereby dealing with the "insider" point, and he had also referred to the allegation of blackmail and the alleged Ponzi scheme. Mr Fenwick stated that this showed that, as at July 2010, Counsel had still felt it appropriate to make the allegations which had been included from the outset and he would not have done so if he had felt that those allegations could not properly have been made. Mr Fenwick pointed out that Counsel had set out all of the evidence supporting the allegation of blackmail in his skeleton argument and so it could not be said that the First Respondent had relied only on the uncorroborated evidence of Mr McGrath when making these allegations. He said that the fact that Roth J had been persuaded to make critical comments did not mean that Mr Onions had been wrong to put the case forward or still less that the Respondents had been dishonest in allowing him to do so.

156.51 Mr Fenwick said that it was not surprising that no-one was clear as to how the issue of "back pay" had eventually been dealt with. He pointed out that there had been no suggestion of "back pay" anywhere and the Applicant had accepted this in his second

affidavit. Mr Fenwick stated that there was also a report from accountants making it clear that the Applicant had not been owed any "back pay" at the time. He told the Tribunal that the term "insider" was not precisely defined as the First Respondent had made clear in his witness statement. He said that both Mr Wiesner and Mr Evans had believed that the Applicant had been an "insider" at the time that the preferential transfers of property had been made and it was clear that the Applicant had exercised influence with the Retreats Group after January 2005 and through his continued involvement with Mid-Atlantic.

156.52 Mr Fenwick stated that Mr Onions had made it clear that the Applicant might have defences and all relevant information had been put before the Court. There had been nothing to suggest that the First Respondent had suppressed anything. He pointed out that the Applicant had not entered an appearance in the US proceedings and so his potential defences were not known. Mr Fenwick claimed that it was clear from Mr Onions' skeleton argument that he knew that there was a shortage of material. He reminded the Tribunal that it had been said that the First Respondent had been dishonest in not telling the Court that there had been no investigation. Mr Fenwick said that there must have been an investigation because it was apparent that those preparing the US complaint had considered the 2005 proceedings. In short, Mr Fenwick stated that the allegations that the Respondents had misrepresented the merits of the case and failed to draw attention to possible defences could not possibly be substantiated.

156.53 The Tribunal was asked to consider the complaints that had been made against the Respondents in relation to the alleged non-disclosure at the Without Notice hearing. Mr Fenwick suggested that if this matter was stripped of the "cloak of conspiracy" then what was being claimed was that the Respondents had not disclosed the failed attempt at service, had not told the Court that the Applicant's telephone had been switched off and had asserted that the Applicant had been difficult to contact when he had spoken to Mr Candy and then to Mr Knuckey in a telephone conversation on 15 April.

156.54 Mr Fenwick referred to the First Respondent's first affidavit in which he had stated that the Applicant "...is, or was formerly a resident of the state of New York..." Mr Fenwick said that if the First Respondent was trying to be dishonest by hiding the fact that the Applicant may no longer live in New York then this was really quite subtle. He said that, alternatively, if the First Respondent was trying to tell the Court what he knew that was relevant then this statement was accurate. He pointed out that the First Respondent had made it clear that the legal basis of the claim had been set out in Mr Wiesner's affidavit and Mr Wiesner had explained that the Applicant had failed to respond to the US proceedings which had been served at his New York address. Mr Fenwick told the Tribunal that the First Respondent had also mentioned that the Applicant and Mr Candy had been in contact with each other. He stated that the documents disclosed showed that Mr Candy had been able to telephone the Applicant in Italy and that he had been able to contact the Applicant's solicitors through SJ Berwin. Mr Fenwick told the Tribunal that an honest solicitor would have known that a default had been obtained and that there was evidence that proceedings had been properly served at a time when the evidence was that the Applicant was living in New York but had simply not responded. He reminded the Tribunal that the First Respondent had also been aware that the US proceedings had been drawn to the

Applicant's attention in the letter from SJ Berwin to Gordons of 19 February 2010 but the Applicant had denied that Hayden had any connection with the US-based company. In the light of all of this, Mr Fenwick told the Tribunal that it was important to see the context in which the evidence had been given and to consider what would have been in the mind of an honest solicitor at the time.

156.55 In continuing submissions, Mr Fenwick stated that it was not at all clear, from the Applicant's evidence, as to where he was actually domiciled. He pointed out that it had been necessary to serve the Applicant at his last known address as he had not been domiciled in the United Kingdom. He stated that the New York apartment had been the Applicant's address and the most contemporaneous documentation had referred to it as his residence. He claimed that it had been unfair to assert that the Uno Ponterosso search had been out of date because it only contained information about the 2008 accounts. He accepted that this had been a mistake and pointed out that the search had been very up to date as it had included information about the Applicant's office address as at March 2010. He submitted that both Mr Onions and the First Respondent had been entitled to conclude that this was the best available and most contemporaneous evidence that the New York apartment was the Applicant's address. He claimed that it was specious to assert that the First Respondent should have drawn the Judge's attention to the disclaimer in the credit searches as it was generally known that credit searches may not be entirely accurate.

156.56 Mr Fenwick told the Tribunal that the Court had been informed about the outcome of Mr Knuckey's investigations. He said that the information that had been provided to the Court showed that the Applicant regularly stayed in London and demonstrated that the Respondents were not trying to give the impression that he was always in New York. He reminded the Tribunal that Mr Knuckey had been given inconsistent information about the Applicant's whereabouts in London and Mr Knuckey had experienced difficulties in making personal contact with him. Mr Fenwick said that the First Respondent had no reason to doubt Mr Knuckey who had formerly been a senior police officer. He said that in the light of this and following the return of the documents from New York as "undeliverable", the Respondents had been entitled to conclude that there were good grounds for believing that the Applicant was trying to evade service.

156.57 In continuing submissions, Mr Fenwick told the Tribunal that the Respondents accepted that the evidence from the doorman in New York which had been contained in the Khan e-mail should have been disclosed to the Court and this had been an omission on their part. He acknowledged that this information may have explained why the New York service had been returned as "undeliverable" but it did not alter the fact that the Respondents had good grounds to think that the Applicant was evading service. Mr Fenwick stated that it did not explain why the credit searches and the Uno Ponterosso search had given the New York address as the Applicant's residence. It did not affect the fact that Mr Knuckey had been given conflicting information about the Applicant's residence in London or that the Applicant had not returned Mr Knuckey's call even though he had apparently said that he knew about the US proceedings. Mr Fenwick claimed that the Respondents had still been entitled to conclude that the Applicant had been trying to evade service. He questioned why two intelligent solicitors, such as the Respondents, would have believed that this piece of information was so relevant or material that it was worth dishonestly or

deliberately suppressing it. He said that the Respondents had wanted to find the Applicant and make sure that he was served with the US proceedings and with the Freezing Order so that both could be effective.

156.58 Mr Fenwick stated that the Tribunal should consider the mindset of both Respondents at the time. There had been a pattern of the Applicant not responding in 2008/2009 and there had been considerable difficulties in trying physically to locate him. He reminded the Tribunal that the Respondents did not have to prove anything in this case. It was for the Tribunal to decide whether their decision to suppress this relatively unimportant piece of information had been the result of a deliberate act. Mr Fenwick asserted that the Applicant may have retained the New York apartment but moved out for all sorts of reasons and it could still have been a proper place for service. It had been made clear that the Applicant could be in London or Italy. He suggested that it would have been quite easy to have overlooked the relevant part of the Khan e-mail as it had been one e-mail amongst many others and 16 days had elapsed between the date on which it had been sent and the time that the First Respondent had sworn his affidavit. Mr Fenwick asserted that it would be quite impossible for the Tribunal to be satisfied that the First Respondent had remembered the e-mail at the time that he had sworn his affidavit and then decided to deliberately fail to mention this to the Court. He accepted that the Respondents should have disclosed the e-mail but said that the idea that they had deliberately omitted to do so only worked if the Tribunal accepted the Applicant's conspiracy theory. He added that the e-mail would have come to light in the US proceedings anyway when evidence would have been given about the failed attempt at service. In conclusion, he asked the Tribunal to consider paragraphs 43, 45 and 47 of his Note which summarized the rest of the First Respondent's evidence in relation to this matter.

156.59 In relation to the subsequent disclosures concerning the New York apartment, Mr Fenwick said that the First Respondent's third affidavit had not been misleading in relying on the Uno Ponterosso search and the credit searches as evidence that the Applicant's address had still been the New York apartment. He stated that this had been factually correct and the best available evidence of what the Applicant had said about his address. He reminded the Tribunal that the duty of full and frank disclosure only applied to the Without Notice hearing anyway and had ceased by this stage when material was being considered in the presence of the opposing party.

156.60 Mr Fenwick told the Tribunal that by July 2010, it was clear from the exchange of e-mails with Mr Wiesner that Stewarts Law had known about the Khan e-mail since 12 April. He stated that it was being alleged that the Second Respondent, with or without the connivance of the First Respondent, had realised that the Khan e-mail had already been received and had decided that although the Court must be told about the e-mail, he would not disclose the fact that Stewarts Law had known about it at the time. In addition, he said that it was being asserted that the Second Respondent had decided to try and solve the problem by asking Mr Wiesner to swear an affidavit inventing his reasons. Mr Fenwick said that the Second Respondent had simply been trying to do his best in the short period of time during which the e-mail exchange had taken place. In addition, he had been attempting to deal with the issue of the alleged post dating of the Khan affidavit. Mr Fenwick stated that the Second Respondent had known that Mr Wiesner had given evidence about the incorrect date on Mr Khan's fax

machine and he had not turned his mind to the fact that it was the First Respondent, rather than Mr Wiesner, who needed to correct the position.

156.61 In continuing submissions, Mr Fenwick asserted that the Applicant's case had altered in relation to this matter. He said that originally it had been alleged that the First Respondent had been dishonest in his seventh affidavit. He stated that the Applicant had failed to note that if the Second Respondent was telling the truth about having overlooked the Khan e-mail then this would mean that the seventh affidavit had not been a lie at the time that it was sworn on 6 July. He suggested that it was for this reason that the case had shifted to an allegation of dishonesty in relation to the eighth affidavit.

156.62 Mr Fenwick said that the eighth affidavit had made it clear that the First Respondent accepted that the Liquidating Trust had been aware of the failed service before the Without Notice hearing. He stated that the Tribunal needed to be satisfied that the Respondents had realised that what had been said in the seventh affidavit was untrue and that it needed to be corrected and had deliberately and dishonestly failed to so in circumstances where they had known that the Applicant was going through everything with a "fine tooth comb". Mr Fenwick said that with the benefit of hindsight, the First Respondent would have realised that the error should have been corrected but the fact that he had not done so did not mean that he had decided to be dishonest and risk his reputation of 30 years. Mr Fenwick stated that if the Tribunal believed that there had been a conspiracy then the situation would be different. He asked the Tribunal to note that the Second Respondent's admission in evidence that what he had suggested to Mr Wiesner had not been "wholly dishonest" must be seen in context. He had been answering questions at the end of a long and arduous cross examination and he had been looking at the situation as it seemed now rather than at the time.

156.63 In continuing submissions, Mr Fenwick said that there was no evidence of any pre-existing agreement whereby Mr Candy/CPC would receive a share of the proceeds of the litigation. He asserted that it had been suggested that there was something inherently improper with Mr Candy/CPC supporting and paying for the application for a Freezing Order. He told the Tribunal that the case of JSC BTA Bank v Ablyazov & Ors (No 6) [2011] 1 WLR demonstrated that provided that there was a legitimate purpose for an application then the fact that there was an ulterior motive did not make such proceedings an abuse of process assuming that the motive was lawful. He said that the Liquidating Trust had wanted to obtain a Freezing Order and this was an entirely proper purpose. The fact that Mr Candy/CPC may have hoped to obtain an additional benefit was not, in itself, wrong and did not need to be put before the Court. Mr Fenwick stated that there had been no need for the Court to be told that Stewarts Law were acting for both for the Liquidating Trust and Mr Candy/CPC and there was no requirement for the Court to be told about any involvement on the part of CPC in the US proceedings. He said that there was no evidence that CPC had been trying to get the Liquidating Trust to do something which it would not otherwise have done. He submitted that the duty of full and frank disclosure related only to the application and the fact that the Liquidating Trust may have been assisted by a third party did not need to be disclosed.

156.64 Mr Fenwick said that the dispute between Mr Candy/CPC and the Applicant in respect of One Hyde Park did not affect the Court's discretion. He asserted that there was either a *prima facie* case for a Freezing Order or there was not. He said that, in any event, the First Respondent had referred to evidence which showed that Mr Candy/CPC were co-operating with the Liquidating Trust. He stated that if it was accepted that the First Respondent had been part of a conspiracy to "do down" the Applicant for CPC's purposes then the situation might be different but it was not. Mr Fenwick said that there was no evidence to support the Applicant's assertion that confidential information regarding his assets had been passed to Mr Candy/CPC by the First Respondent. He acknowledged that there had been an arguable mistake in relation to the information disclosed to Jones Day but pointed out that Jones Day had been assisting the Liquidating Trust and it was not surprising that the Second Respondent, without really considering the matter, had included them in a distribution list. He said that there was no evidence at all to suggest that Jones Day had passed on this information to Mr Candy/CPC. He reminded the Tribunal that the First Respondent had understood that CPC wanted to know whether the Liquidating Trust were likely to go against One Hyde Park and there was nothing wrong with them being told that this would be not be necessary. He said that information about the value of the Applicant's assets would have passed into the public domain at the Fortification Hearing anyway.

156.65 In his continuing submissions, Mr Fenwick told the Tribunal that attempts had been made to show that the First Respondent had been present when Mr Onions had made his submissions at the Fortification Hearing. He said that this was untenable and there was not a shred of evidence to make such an assertion. He stated that it was apparent that the First Respondent had not been present as otherwise there would have been no need for the Second Respondent to have written a note. Mr Fenwick reminded the Tribunal that the issue for the Fortification Hearing had been security for costs going forward. He explained that the Second Respondent had believed that third party funding usually involved a funding arrangement where a third party funded costs in exchange for a share of the proceeds. Mr Fenwick suggested that this understanding had been reasonable, even thought it had not been entirely correct and it was perfectly possible to see how the Second Respondent, having heard Norris J ask how the Liquidating Trust was funded, believed this to be addressing the future position. Mr Fenwick acknowledged that, with hindsight, perhaps the Second Respondent should have realised that he was also being asked about past costs as well as future funding. He pointed out that the Second Respondent had not been sure that he had got this right and so he had written a note for the First Respondent. The note had read "Counsel told Court legal fees coming from cash" and Mr Fenwick said that this was absolutely correct in relation to future fees. He reminded the Tribunal that the First Respondent had been aware that even if Stewarts Law had gone on to a CFA, there would still have been disbursements to pay in the US as well as Counsel's fees in this country. In these circumstances, the note could not necessarily be said to be wrong as it would have been the only way that the Liquidating Trust would have been able to discharge this expenditure and the First Respondent had known that CPC were not prepared to offer any further funding. Mr Fenwick said that in such circumstances he did not think that it was possible to say that the First Respondent had been under a duty to go back and correct matters after those submissions had been made to the Court.

156.66 Mr Fenwick asked the Tribunal to consider what had happened about this issue afterwards. He reminded the Tribunal that Withers had written to Stewarts Law on 2 June 2010 asking for clarification as to the precise position regarding the $135,000. He pointed out that the First Respondent had believed that funding arrangements were privileged and did not need to be disclosed until the end of the proceedings. He told the Tribunal that the First Respondent's letter in reply had not contained anything which had had been misleading and the letter to Withers of 30 July 2010 had made it clear that some of the Liquidating Trust's costs had been funded by CPC. Mr Fenwick said that it was apparent that the Respondents had discussed the matter at the time of Stewarts Law's letter to Withers on 13 August in which it had been said that the way in which Withers had interpreted the words of Mr Onions "does not fully accord with our recollection of what was being discussed and the context in which those words were said". Mr Fenwick pointed out that although Withers had referred to a transcript, this had not been sent and it was clear that it was at this point that the Second Respondent had told the First Respondent that he had believed that the Court was referring to future costs. Mr Fenwick said that this was entirely consistent with the position that the Respondents had now adopted and with the fact that the Second Respondent, not being certain as to the exact position but believing that reference was being made to future funding, had made the note and drawn it to the attention of the First Respondent. Mr Fenwick acknowledged that having considered the transcript, the response given by Mr Onions could be seen to refer to both past costs and future funding. He said that if the First Respondent had been in Court then he would have spotted this and done something about it. Mr Fenwick stated that unless it could be established that the First Respondent had known that there was funding going forward, it could not be said that the Respondents had dishonestly or deliberately prepared misleading evidence for the Fortification Hearing.

156.67 Mr Fenwick told the Tribunal that the case of Pulman did not assist with the allegation that the First Respondent had falsified the date of the CFA. He stated that the Tribunal in that case had found that backdating in circumstances where it was believed to reflect the agreement between the parties was not dishonest. Mr Fenwick acknowledged that documents should not be backdated. He pointed out that the CFA had not contained a date but it had been entered into on 27 May rather than on 24 May as stated in the Notice and accompanying letter. He told the Tribunal that clearly the date in the letter had been incorrect but this had been the result of a genuine error.

156.68 The Tribunal was told that it was going to be very hard to explain how the default in the US proceedings could be set aside. Mr Fenwick said that this was particularly so where there appeared to be cogent evidence that the Applicant had told Mr Knuckey that he knew about the proceedings having been put on notice by the correspondence between Gordons and SJ Berwin and following the telephone calls from Kroll and Mr Candy. Mr Fenwick stated that there was no merit in this allegation and it certainly could not be said to have been dishonest. Mr Fenwick stated that the allegation based on the incorrect Land Registry searches had been due to a straightforward mistake as the First Respondent accepted and could not be said to have been dishonest.

156.69 In conclusion, Mr Fenwick suggested that when this situation was viewed fairly and in the context of what happened in real life rather than dissecting the matter in the way in which the Applicant and his legal team had done over so many months and at so much expense, there could be nothing to satisfy the Tribunal that either of the

Respondents had been dishonest at any stage. Mr Fenwick reminded the Tribunal that the Applicant's case was that even if the Respondents had not been dishonest, they had still committed offences. He said that it was difficult to see what parts of the Code of Conduct the Respondents had breached and he asserted that there had been a "scattergun" approach to these allegations. He conceded that there had been mistakes and he did not accept Mr Wardell's criticism of the First Respondent's admissions and apologies. He said that both Respondents had been frank and open in relation to the errors that had been made. He said that if there had been mistakes and the Tribunal considered that a disciplinary sanction should follow then it was up to the Tribunal to conclude what it was that had been done incorrectly. He asked the Tribunal to be cautious before allowing the litany of complaints to result in a finding that there had been a wholesale breach of the Respondents' obligations and he asked the Tribunal to look at each of the allegations fairly.

156.70 In reply to Mr Fenwick's closing submissions, Mr Wardell said that criticism of the First Respondent's eighth affidavit had been part of the Applicant's original complaint and he referred the Tribunal to extracts from the Applicant's first witness statement. He said that the case had not shifted in the way that Mr Fenwick suggested. He told the Tribunal that there was no evidential basis for the proposition that Mr Khan's affidavit would come to light in the US proceedings and the disclosure of the affidavit would not have revealed the 12 April e-mail in any event.

156.71 Mr Wardell stated that he was under a duty to highlight the facts in this case but it was for the Tribunal to decide whether there had been any breaches of the Code of Conduct. He explained that he did not make an allegation of dishonesty in relation to the backdating of the CFA. He had been relying on the date of the CFA to show that the Court and Withers had been misled as to the true state of affairs regarding funding.

156.72 In continuing submissions, Mr Wardell said that it had been claimed that blackmail was made out if there was an unwarranted demand with menaces. He stated that Mr Fenwick had asserted that a demand would not be unwarranted if it had been made in the belief that the person making the demand had reasonable grounds for making it and that the menace in question, in this case publication, was a proper means of reinforcing that demand. In reply, Mr Fenwick said that Mr Wardell had mischaracterised the definition of blackmail again. He referred the Tribunal to the statutory definition of blackmail which said:

> "A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief – (a) that he has reasonable grounds for making the demand and (b) that the use of the menaces is a proper means of reinforcing the demand".

Mr Fenwick maintained that the allegation of blackmail had been made out.

The Tribunal's Findings

156.73 The Respondents had provided misleading information to the Court as to whether the Applicant still lived at the New York apartment, had suppressed information regarding the Applicant's place of residence and had failed to disclose other relevant information relating to the questions of whether the Applicant was evading service and likely to dissipate his assets. They had failed to disclose the existence of the Khan and Udvardy e-mails and had not told the Court about Mr Knuckey's telephone conversation with the Applicant on 15 April 2010. There had been a particular need for the Respondents to comply with their duty of full and frank disclosure at the Without Notice hearing and they had failed to do so. Accordingly the Tribunal found allegation 1.1 to be substantiated against both Respondents.

156.74 The Tribunal did not find the First Respondent's explanation for "overlooking" the Khan e-mail to be convincing. In particular, the First Respondent had admitted, at the time of swearing his third affidavit, that he was aware that the Applicant's telephone number was no longer in service and he could only have obtained this information from the Khan e-mail. This amounted to dishonest conduct on the part of the First Respondent and accordingly the Tribunal found allegation 1.2 proved against the First Respondent. The allegation of dishonesty was not being pursued against the Second Respondent. The Tribunal also found that the Respondents' failings constituted a breach of the Code of Conduct and therefore found allegation 1.3 to be substantiated against both Respondents.

156.75 The Respondents had been under a duty to provide full and frank disclosure at the Without Notice hearing and so information regarding the involvement of Mr Candy/CPC should have been provided to the Court. It was not for the Respondents to be selective as to what material should or should not be disclosed, if arguably, this was likely to influence the Court. Accordingly, the Tribunal found allegations 2.1 and 2.2 to be substantiated against both Respondents on the basis that matters pertinent to the funding of the litigation were not disclosed to the Court nor that third parties might have an interest in the outcome of the Without Notice hearing. The Tribunal considered that the failure to disclose these matters amounted to dishonest conduct on the part of the First Respondent and therefore found allegation 2.3 proved. The allegation of dishonesty in respect of allegation 2.3 was not being pursued against the Second Respondent. The Respondents' conduct did amount to a breach of the Code of Conduct and accordingly the Tribunal found allegation 2.4 to be substantiated against both Respondents.

156.76 The Tribunal accepted the Applicant's case that the Respondents had provided misleading information to the Court regarding the allegations of fraud made against the Applicant in the US proceedings, had allowed the nature of the claims made against the Applicant in the US proceedings notably those concerning problems with service and categorisation of the alleged fraud as actual rather than constructive to be overstated and had failed to inform the Court as to the defences that might be available to the Applicant. These matters had constituted a breach of the Respondents' obligations of full and frank disclosure and their duty not to mislead the Court. Accordingly, the Tribunal found allegations 3.1 and 3.2 to be substantiated against both Respondents. The Tribunal found that the failure to disclose this information did constitute dishonest conduct on the part of the First Respondent and

therefore allegation 3.3 was proved against him. The allegation of dishonesty was not being pursued against the Second Respondent. The Respondents' conduct did amount to a breach of the Code of Conduct and accordingly the Tribunal found allegation 3.4 substantiated against both Respondents.

156.77 The Tribunal agreed that the disclosure of confidential information regarding the Applicant's assets did amount to a breach of an implied obligation of confidence and/or implied undertaking to the Court and constituted a breach of CPR 31.22. Accordingly, the Tribunal found allegation 4.1 substantiated against both Respondents because they were satisfied that such confidential information had been disclosed to Jones Day and must therefore have been at risk of being further disclosed by them to their clients, Mr Candy/CPC, although such further disclosure was not found by the Tribunal as a matter of fact. The Tribunal did not consider that allegations 4.2 and 4.3 had been proved to the requisite standard and the allegation of dishonesty was not pursued against the Second Respondent in respect of allegation 4.2. However the Tribunal did consider that the First Respondent's conduct in relation to allegation 4.2 (but not the Second Respondent's) had shown a reckless disregard for his duty as an officer of the Court. The Tribunal also found that the First Respondent's and the Second Respondent's failings amounted to a breach of the Code of Conduct and therefore found allegation 4.4 substantiated against both Respondents.

156.78 The Tribunal agreed that the statements given by Mr Onions at the Fortification Hearing had been misleading and that the evidence filed for the hearing had also been misleading by failing to mention that Mr Candy/CPC had provided funding to the Liquidating Trust. The Tribunal considered that this failure constituted a breach of the Respondents' obligations to provide full and frank disclosure and of their duty not to mislead the Court. Accordingly, the Tribunal found allegations 5.1, 5.2 and 5.3 proved to the requisite standard. The Tribunal considered that the First Respondent had been dishonest in permitting Mr Onions to give the statements referred to and found that he had been dishonest in his affidavit and accordingly found allegations 5.4 and 5.6 to be substantiated against the First Respondent. The allegations of dishonesty were not being pursued against the Second Respondent. The Tribunal agreed that the Respondents had failed to correct the incorrect and misleading statements given by Mr Onions and therefore found allegation 5.5 proved against both Respondents**.** The Respondents' conduct amounted to a breach of the Code of Conduct and accordingly the Tribunal found allegation 5.7 to be substantiated against both Respondents.

156.79 The Tribunal agreed that the Respondents had provided misleading information to the Court regarding the Applicant's New York apartment after the Without Notice hearing and accordingly found allegations 6.1, 6.2 and 6.3 to be substantiated against both Respondents. Tribunal had been asked to find that both Respondents had been dishonest. The First Respondent had provided a misleading explanation to the Court regarding his knowledge of the Khan e-mail in his seventh and eighth affidavits. The Second Respondent had assisted in the drafting of the affidavits and the Respondents had discussed the fact that the Khan e-mail had been "overlooked". The Second Respondent would therefore have known that the explanation given by the First Respondent in his eighth affidavit was not true yet he had allowed it to be put before the Court. Accordingly the Tribunal found that the Respondents' conduct as set out in allegation 6.3 had been dishonest so that allegation 6.4 was substantiated against

both Respondents. The Respondents' conduct amounted to a breach of the Code of Conduct and so the Tribunal found allegation 6.5 to be substantiated against both Respondents.

156.80 The Tribunal did not find that the Respondents had provided misleading information to the Court regarding Mr McGrath. It was not possible to know exactly what the Respondents' state of knowledge had been regarding the whereabouts of Mr McGrath. Accordingly, the Tribunal did not find allegations 7.1, 7.2 or 7.3 to be substantiated to the required standard of proof. The allegation of dishonesty was not being pursued against the Second Respondent.

156.81 In his fifth affidavit, the First Respondent had told the Court that "it will be very difficult" for the Applicant to have the default removed. This did not faithfully record the advice that the First Respondent had received from Mr Wiesner and so he had given misleading information to the Court. The Second Respondent would have known that this evidence was misleading. Accordingly the Tribunal found allegations 8.1 and 8.2 to be substantiated against both Respondents. The Tribunal considered that the First Respondent's conduct had been dishonest and therefore found allegation 8.3 to be proved. The allegation of dishonesty was not being pursued against the Second Respondent. The Respondents' conduct amounted to a breach of the Code of Conduct and so the Tribunal found allegation 8.4 to be substantiated against both Respondents.

156.82 The Tribunal agreed that the First Respondent had given an incorrect explanation as to why the HM Land Registry searches had been added to Mr Evans's first affidavit after it had been sworn and accordingly found allegation 9.1 to be substantiated against the First Respondent. The Tribunal did not find allegation 9.2 to be proved to the requisite standard although the Tribunal did agree with Roth J that this showed "a remarkable lack of proper precaution and supervision in the preparation of the documents to be placed before the court on a without notice application". The allegation of dishonesty was not being pursued against the Second Respondent. The Tribunal found that the conduct on the part of the First Respondent and the Second Respondent's conduct (to the extent that he would have known that the information that had been given to the Court was incorrect) constituted a breach of Rule 1.06 of the Code of Conduct and to that extent allegation 9.3 was substantiated.

Previous Disciplinary Matters

157. None.

Mitigation

<u>First Respondent</u>

158. Mr Fenwick acknowledged that, given the serious findings that had been made by the Tribunal, it was likely that the First Respondent would be struck off the Roll. He reminded the Tribunal that the First Respondent was a solicitor of 30 years experience and he had an unblemished record. He said that the First Respondent was a good man and the Tribunal's findings were wholly at odds with a solicitor who had performed his duties with rectitude and who had received the admiration of many during the

course of his long career. He referred the Tribunal to the references that had been submitted on the First Respondent's behalf.

159. The Tribunal was told that an order for strike off would inevitably destroy the First Respondent's career, his means of livelihood and his way of life and Mr Fenwick asked the Tribunal to consider whether some lesser sanction could be appropriate. He suggested that the Tribunal should consider whether any "exceptional circumstances" such as those set out in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) might apply in this case and said that in order to decide this, the Tribunal would need to take into account relevant factors such as the nature, scope and extent of the dishonesty, whether it was momentary or over a period of time, whether there had been any benefit to the First Respondent and whether there had been any adverse effect on others.

160. In continuing mitigation, Mr Fenwick said that if the Tribunal was also minded to make any additional sanction, such as a monetary award, then he would ask the Tribunal to consider the fact that the First Respondent would have no other means of livelihood if he was struck off the Roll. Mr Fenwick pointed out that the issue of costs would also need to be considered. He told the Tribunal that the First Respondent may have to repay the costs of his defence and he also faced the prospect of further civil proceedings by the Applicant. He stated that the Applicant had not suffered any financial loss as his costs had been paid in full. He asked the Tribunal to take all of these factors into account when deciding on the appropriate penalty in this case.

161. Mr Mold told the Tribunal that where an application had been made in relation to "exceptional circumstances" then he was entitled to make submissions, on behalf of the Applicant, on the question of sanction. He acknowledged that a finding of dishonesty would not automatically lead to striking off in circumstances where exceptional circumstances applied and he referred the Tribunal to the decision in Burrows v The Law Society [2002] EWHC 2900 Admin. He submitted that the decision in a case such as Burrows was "worlds apart" from the present case. He stated that this was not a momentary lapse on the part of the First Respondent but was a course of conduct which had continued over a period of time. He told the Tribunal that the First Respondent's seventh and eighth affidavits had involved a deliberate misleading of the Court in order to hide previous wrongdoing and this was a serious breach. He reminded the Tribunal that the First Respondent had denied dishonesty to the end and as had been said in Sharma, this acted "... as a further bar to any real mitigation..." In conclusion, he told the Tribunal that the Applicant had not recovered all of his costs in full and so he had suffered financially as a result of these matters.

Second Respondent

162. Mr Fenwick told the Tribunal that it was no exaggeration to say that the Second Respondent was totally devastated by the findings that had been made against him. He reminded the Tribunal that, at all times, the Second Respondent had been acting under the supervision of a very senior partner. He had been relatively inexperienced and had worked at Stewarts Law for only seven months. It was inevitable that he would be likely to follow the guidance and instruction of his supervising partner. Mr Fenwick pointed out that the Second Respondent had consulted Counsel throughout

this matter and he had limited Court experience. The size and nature of this claim had been very different from what he had been used to previously when he had worked at a provincial firm. He had dealt with only one other application of this kind before and this had involved a football club who had funds available for cross undertakings and so these types of issues had not arisen. Mr Fenwick reminded the Tribunal that the Second Respondent had been part of the team but he had not been involved in the decision making process.

163. In continuing mitigation, Mr Fenwick said that the Second Respondent had made a sincere apology and he had attempted to be open, honest and fair in his answers and this had been acknowledged by the Applicant. He told the Tribunal that the Second Respondent had not been trying to hide what he had done or to belittle it. He had genuinely believed that he had been doing his best in circumstances where, due to his inexperience, he had been entitled to rely on the assistance of others.

164. Mr Fenwick reminded the Tribunal that the First Respondent's seventh affidavit had accurately stated the belief that both Respondents had as to Stewarts Law's lack of knowledge regarding the Khan affidavit and its contents. He said that as soon as the Second Respondent had heard that Mr Wiesner was aware of the contents of the Khan affidavit, he had immediately identified that the Court needed to be told about this. Mr Fenwick stated that it was clear that the Second Respondent had overlooked the fact that this material had already been provided to Stewarts Law. He said that in the absence of the Tribunal's detailed findings in relation to this matter, he concluded that the Second Respondent could not have been dishonest in relation to the seventh affidavit.

165. In continuing mitigation, Mr Fenwick stated that there had been only a very short period of time during which the Second Respondent had realised that the Khan e-mail had been overlooked, communicated with Mr Wiesner and suggested the answer (which he accepted was unsatisfactory) that Mr Wiesner should explain his reasons for not mentioning the e-mail in an affidavit. Mr Fenwick said that he must assume, in the absence of detailed reasons, that the Tribunal had considered there to be some personal recognition by the Second Respondent of the fact that the Court was not being given the full picture regarding the Khan e-mail and that this accounted for the finding of dishonesty that had been made against him. Mr Fenwick accepted that the eighth affidavit had failed to correct what was then known to be incorrect in the seventh affidavit but pointed out that the eighth affidavit had not been a deliberate lie. He said that the Second Respondent had been an inexperienced solicitor and he had not sworn the eighth affidavit. He asserted that the fact that the Second Respondent had failed to mention something had to be a less serious matter than repeating something which was known to be untrue.

166. Mr Fenwick submitted that this was a case where "exceptional circumstances" should apply. He pointed out that the dishonesty had lasted for only a very short duration of time, at most about 48 hours from the time of the exchange of e-mails with Mr Wiesner on 6 July until the time that the eighth affidavit had been sworn on 8 July. It had been very limited in its nature and scope. The Second Respondent had been junior and the affidavit had been sworn by the supervising partner. Mr Fenwick said that by that stage, the discharge of the Freezing Order had taken effect and it was not something which, in itself, had had a significant adverse effect on others. He

reminded the Tribunal that the Second Respondent had not been the decision maker in the case but had followed instructions and he had not stood to gain anything personally. Mr Fenwick maintained that the Second Respondent had been trying to do his best. He may have lapsed but he was an otherwise honest and straightforward person.

167. In continuing submissions, Mr Fenwick told the Tribunal that the Second Respondent was still young and although he was not currently practising as a solicitor, an order for strike off would have serious consequences for his future career. Mr Fenwick asserted that it was not necessary for the Second Respondent to be struck off the Roll. He suggested that the Tribunal should consider a restriction order or a period of suspension followed by a restriction order as this would enable the Second Respondent to be able to continue to serve the profession in the future. He told the Tribunal that the Second Respondent had earned just under £26,000 during the course of the last year and so his financial circumstances were such that any substantial financial penalty would not be appropriate. Mr Fenwick asked the Tribunal to judge the Second Respondent with compassion and he argued that the profession would not be ill served if the Tribunal made an exception in this case.

168. Mr Mold told the Tribunal that the Second Respondent's dishonesty should be seen in the context of the other breaches as it was not just a "one-off" case of dishonesty and nothing else. He said that the finding of dishonesty relating to the First Respondent's eighth affidavit had involved the concealment of prior fault on the part of Stewarts Law. He stated that, although the Second Respondent had been more candid in his evidence, he had not been fully open or completely honest. He told the Tribunal that the Second Respondent had not been a novice at the time as he had been working for a law firm for five years by that stage. In short, Mr Mold asserted that this was not a case where "exceptional circumstances" should apply.

Sanction

169. The Tribunal had regard to its own Guidance Note on Sanctions when deciding the appropriate penalty in this matter. The First Respondent had engaged in a dishonest course of conduct which had continued over a period of time. There had been a number of serious failings on his part in bringing material and relevant considerations before the Court and he had deliberately misled the Court when his duty, as an officer of the Court, was to give full and frank disclosure. There were no exceptional circumstances, such as those identified in Sharma, which would justify a sanction other than a striking off. In order to protect the public and maintain the reputation of the profession, the only appropriate sanction in the case was that the First Respondent should be struck off the Roll and the Tribunal so ordered.

170. In relation to the Second Respondent, the Tribunal did not consider that the dishonesty which had been found proved against him had been carried out in a "moment of madness". Whilst the Tribunal had sympathy for the Second Respondent as a young solicitor, he had still been under a duty to put right what he knew should have been placed before the Court. He should have had the strength of character to refuse to do something which he had known to be wrong. The Tribunal did not consider that there were any exceptional circumstances that would justify a penalty other than a striking off in a situation where the Second Respondent had been found

to have been dishonest. Accordingly, the Tribunal ordered that the Second Respondent should be struck off the Roll of Solicitors.

171. Mr Fenwick made an application under Rule 17(2) of the SDPR for the Tribunal to suspend the filing of the Orders on the basis that the First Respondent intended to appeal the Tribunal's findings. He explained that he had not yet had the opportunity to speak to the Second Respondent and so he wished to reserve his position in that regard. He asked that the filing of the Orders be suspended until after the determination of any appeal.

172. Mr Mold said that it was not usual for Orders to be suspended simply on the basis that there might be an appeal and he opposed Mr Fenwick's application.

173. The Tribunal had made serious findings of dishonesty against both Respondents and in such circumstances decided that it would not be appropriate for the Orders to be suspended. Accordingly the Tribunal refused to accede to Mr Fenwick's request for a suspension of the filing of the Orders.

Costs

174. Mr Mold made an application for costs on behalf of the Applicant. He stated that such an application was fully justified as the Applicant had been completely successful. He suggested that costs should be subject to detailed assessment and he asked the Tribunal to order costs on an indemnity basis. He said that this had effectively been a seven day trial and the dishonesty that had been found proved had continued in evidence before the Tribunal.

175. Mr Fenwick said that the Applicant should not be awarded costs in a sum greater than that which the SRA would ordinarily receive on the basis that the Applicant had claimed to have brought these proceedings in the public interest and in the guise of a person acting as regulator. He told the Tribunal that it would be excessive for the Applicant to receive the full amount of his costs as much of the work carried out had related to Mr Candy/CPC and the US lawyers. He did not agree that costs should be awarded on an indemnity basis as this would mean that the burden of proving reasonableness had shifted on to the Respondents which would not be right in the circumstances. He said that if the Tribunal was minded to make an order in an amount that the SRA would be likely to receive then he would ask that costs be summarily assessed.

176. In continuing submissions, Mr Fenwick stated that the Second Respondent had spent a great deal of time dealing with a large number of allegations of dishonesty which had been abandoned at the last minute and which should never have been brought in the first place. He said that it would not be right for the Second Respondent to have to pay those costs. Mr Fenwick asserted that any order for costs made against the Second Respondent should either be reduced to zero or should be limited to a very small proportion of the Applicant's costs. He said that any costs order would have to be paid over time due to the Second Respondent's limited financial circumstances.

177. In reply, Mr Mold reminded the Tribunal that, even on an indemnity basis, costs must have been reasonably incurred. He pointed out that no evidence had been supplied in

relation to the Second Respondent's financial means. He said that the allegations of dishonesty against the Second Respondent had all arisen from the same factual circumstances and so no additional costs had been incurred. He told the Tribunal that the true picture in relation to the Second Respondent had only emerged very late in the day, either during evidence or when he had filed his second witness statement and the Applicant had responded reasonably in not pursuing all of the allegations of dishonesty.

178. The Tribunal noted that the Second Respondent had been an assistant solicitor at the time and he had been subject to the instruction and supervision of the First Respondent. There had been only one finding of dishonesty against him compared with a number of serious allegations of dishonesty which had been found proved against the First Respondent. It was appropriate that this should be reflected in the order for costs and the Tribunal ordered that the First Respondent should pay 80% of the Applicant's costs and the Second Respondent should pay 20%.

179. The Tribunal did not consider that there were any exceptional circumstances which would justify an order for costs being made on an indemnity basis and accordingly ordered that costs would be paid on the standard basis only. The Tribunal ordered that the Applicant's costs should be subject to a detailed assessment unless agreed between the parties.

Statements of Full Orders

180. The Tribunal Ordered that the Respondent, Andrew William Shaw, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties. The Respondent to pay 80% of those costs.

181. The Tribunal Ordered that the Respondent, Craig Stephen Turnbull, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties. The Respondent to pay 20% of those costs.

Dated this 29th day of April 2013
On behalf of the Tribunal

J. N. Barnecutt
Chairman