



Neutral Citation Number: [2024] EWHC 1899 (Ch)

IN THE HIGH COURT OF JUSTICE **Case No: CH-2024-000029**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

Rolls Building,
Fetter Lane,
London,
EC4A 1NL

Date: 26 July 2024

Before :

MR STEVEN GASZTOWICZ KC
Sitting as a Deputy High Court Judge

Between :

(1) ABDULLAH NASSER BIN OBAID
(2) OH-NA REAL ESTATE COMPANY LIMITED
(a company incorporated in the British Virgin Islands)
(3) TAQA INVESTMENT COMPANY
(a company incorporated in the Kingdom of Saudi Arabia)

Claimants/Appellants

-and-

RLS SOLICITORS LIMITED
(trading as RLS LAW)

Defendant/Respondent

Mr Matthew Parker KC (instructed by **Fieldfisher LLP**) for the **Claimants/Appellants**
Mr Daniel Shapiro KC (instructed by **Edesia Law**) for the **Defendant/Respondent**

Hearing dates: 15 May and 5 June 2024

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR STEVEN GASZTOWICZ KC :

1. This is an appeal against a decision of Deputy Master Lampert given on 11 December 2023.
2. In a reserved judgment handed down on that date, the Deputy Master ordered that the Claimants' (the current Appellants') claim be struck out under CPR 3.4(2)(a), as disclosing no reasonable grounds for bringing the claim. She held that alternatively there would be summary judgment for the Defendant. The order subsequently sealed was to the effect that the claim was struck out and there be judgment for the Defendant on the claim.
3. The appeal against the order made is brought with the permission of Trower J granted on 13 March 2024.

The Nature of the Action

4. In the action, the Defendant solicitors are alleged to have been instructed on behalf of the Second Claimant ('Oh-Na') together with a company called OYF Limited ('OYF') no later than 22 January 2015 in relation to proposed property acquisitions in England at the 'Brighton Marina Development' and the 'Assembly Development' in Manchester.
5. The action is one for solicitors' negligence, with claims in both contract and tort pleaded in the usual way, and with claims for breach of fiduciary duties added.
6. Oh-Na, which was a company under the control of Mr Obaid, is considered by the Claimants to be the correct claimant but the First Claimant (Mr Obaid himself) and the Third Claimant ('Taqa'), another company connected with him, are said to have been joined out of caution in case it is contended by the Defendant that they are the proper Claimants.
7. It is in respect of the duties owed to Oh-Na (or alternatively other Claimants) that the breaches are alleged to have occurred.
8. Further details of the particular allegations made will be set out by me below.
9. No Defence was filed prior to the action being struck out.

The Deputy Master's Decision

10. The Deputy Master's decision in the action is reported at [2023] EWHC 3136 (Ch). It was made on the basis of her construction of a settlement deed dated 19 June 2019 made between the current Claimants (together referred to as the 'ANBO Parties') on the one hand and one Dr Khalid Al-Hezaimi, OFY, and Latifah Assets Limited ('Latifah') (together referred to as 'the KAH Parties') on the other. I shall refer to this as the 'Settlement Deed'.
11. The Settlement Deed settled certain disputes between the parties, including proceedings under Case Number HC-2017-001893 (the 'Previous Proceedings') between the ANBO parties as claimants and the KAH parties as defendants.
12. On the Deputy Master's construction of it, the Settlement Deed prevented the claims by the ANBO parties in the present action against RLS from being made.

13. Neither party suggests it was wrong for the Deputy Master to determine the construction point on a summary basis and it was appropriate for her to do so for the reasons set out by Lewison J, as he then was, in *Easy Air Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch) at para 15, as approved by the Court of Appeal in *AC Ward & Sons Limited v Catlin (Five) Limited* [2010] Lloyd's Rep LR 301 at para 24.
14. The appeal is brought on the basis that her decision was wrong on the construction point. That raises a matter of law, as is also not disputed.

The Nature of the Dispute between the ANBO and KAH Parties forming the Background to the Settlement Deed

15. The nature of the dispute between the ANBO and the KAH Parties leading to the Settlement Deed was set out in paras 8-14 of the judgment of the Deputy Master, has not been challenged, and can be summarised as follows.
16. Mr Bin Obaid and Dr Al-Hezaimi were involved in various business ventures together, including a medical equipment business in Saudi Arabia and Egypt known as United Industrial Medical & Plastics Co ('UIMP'). Their relationship fractured and they, and their companies, became involved in various proceedings in England and Saudi Arabia. Those proceedings involved serious allegations on both sides of fraud and corruption.
17. Mr Bin Obaid claimed that he and Dr Al-Hezaimi had agreed that Dr Al-Hezaimi would invest in English property acquisitions using Mr Bin Obaid's money and that these properties would be held in his company, Oh-Na.
18. He accused Dr Al-Hezaimi of perpetrating a fraud on him, as a result of which the properties, which were said to be worth more than £35 million, came to be held by his companies OFY and Latifah.
19. The Particulars of Claim in the Previous Proceedings identified a number of payments made by Mr Bin Obaid or Taqa to Dr Al-Hezaimi (or a company called Global Real Estate Portfolios Ltd, on his behalf) for the purpose of investing in English real property. Payments totalling approximately £31.56 million, including monies provided for a previous proposed acquisition known as the 'Brighton Marina Development' which did not proceed, were said to have been made for the purpose of funding the purchase of 125 apartments in the 'Assembly Development' in Manchester, which did.
20. The claim in those proceedings alleged that the properties, and any rental income or surplus monies from the funds advanced, belonged to one or other of the Claimants beneficially and they claimed a declaration to that effect, an order to transfer title, damages and equitable compensation, together with an order for accounts and enquiries, interest and further and other relief.
21. By their Defence Dr Al-Hezaimi and the other KAH Parties denied the claims. They contended that the payments set out in the Particulars of Claim were not made for the purpose of investing in English properties for the Claimants' benefit but were for other purposes. In particular, four of the payments alleged to have been made for the purpose of the Assembly Development were said to have been made for purposes relating to UIMP, including payment of Dr Al-Hezaimi's salary and expenses. The KAH Parties contended that

none of the payments relied upon by the Claimants were made for the purpose of investing in property and that the properties in issue belonged to the KAH Parties.

22. The Particulars of Claim in the Previous Proceedings were subsequently amended. The amendments were substantial and deleted reference to five of the payments relied on in relation the Assembly Development (adding two others).
23. Thereafter the KAH Parties served an amended Defence and Counterclaim which distinguished between the payments pleaded in the original Particulars of Claim (called the "Original Payments") and those in the Amended Particulars of Claim (the "APoC payments"). The KAH Parties contended that all but three of the APoC payments were made as salary or reimbursement of expenses due to Dr Al-Hezaimi, two payments were said to have been made in respect of the purchase of Dr Al-Hezaimi's stake in UIMP, and the final payment was said to have been made to purchase Dr Al-Hezaimi's shares in an Egyptian business called R.Kareem Medical Co. The counterclaim contended that if the two APoC payments were not made for the purpose of Mr Bin Obaid purchasing Dr Al-Hezaimi's shares in UIMP, then Mr Bin Obaid was liable to pay for those shares under the terms of a sale agreement. Secondly, the KAH Parties claimed damages for breach of an alleged agreement with Mr Bin Obaid which was said to have been made orally in Cairo.
24. Various other proceedings were commenced in Saudi Arabia between one or more of the Claimants and one or more of the KAH Parties. The trial of the Previous Proceedings commenced before Falk J, as she then was, on 12 June 2019. Before the conclusion of the trial the Settlement Deed was entered into, which brought an end to it.

The Present Claim

25. The details of the present action against RLS, as summarised by the Deputy Master in paras 17-35 of her judgment, have also not been challenged. They are as follows.
26. The Claimants allege that in late 2012 or early 2013 an oral agreement was reached between Mr Bin Obaid and Dr Al-Hezaimi, that property investments would be made using an off-shore company of which Mr Bin Obaid would be the majority shareholder, along with his two sons; Mr Bin Obaid would provide the funds required for the investments; and Dr Al-Hezaimi would manage the day to day operations of the off-shore company. The effect of the agreement was that Dr Al-Hezaimi was to act as Mr Bin Obaid's agent and owed him such duties as an agent owes to his principal.
27. Dr Al-Hezaimi organised the incorporation of Oh-Na as the off-shore investment vehicle. Dr Al-Hezaimi originally held the majority of the shares in Oh-Na, but those shares were transferred to Mr Bin Obaid in September 2014. Mr Bin Obaid, his sons and Dr Al-Hezaimi were the directors of Oh-Na at the material time.
28. The Claimants allege that Mr Bin Obaid agreed with Dr Al-Hezaimi that he would purchase a tower block in Brighton Marina using Oh-Na as the purchase vehicle. Ms Sandra Rankine of the Defendant was instructed by Dr Al-Hezaimi to act jointly on behalf of Oh-Na and OFY Limited (one of the KAH Parties) in connection with the purchase. It is alleged that Ms Rankine took instructions solely from Dr Al-Hezaimi and at no point took instructions from the board of Oh-Na which was (apart from Dr Al-Hezaimi) unaware that the Defendant was instructed to acquire the Brighton Marina properties in the joint names of Oh-Na and OFY.

29. In connection with that transaction, it is alleged that on 6 January 2015 Mr Bin Obaid transferred approximately £14.5 million to Dr Al-Hezaimi of which £11.3 million was paid over to the Defendant and credited to its client account in the name of Dr Al-Hezaimi alone. Prior to the payment of those funds to the Defendant there had been an email exchange between Ms Rankine and Dr Al-Hezaimi about the source of the funds for the transaction. It is alleged by the Claimants that the explanation given was untrue and, on its face, wholly implausible and suspicious. As previously stated, the Brighton Marina transaction did not ultimately proceed.
30. In May 2015 Mr Bin Obaid is said to have agreed with Dr Al-Hezaimi that he would acquire a substantial interest in the Assembly Development, namely the leases in Block B and the freehold to the entire development, with Oh-Na as the purchase vehicle for the transaction. The purchase was to be funded partly from the funds which Mr Bin Obaid had previously provided for the Brighton Marina transaction.
31. The Defendant was instructed to act jointly for Oh-Na and OFY in respect of the acquisition and again took instructions solely from Dr Al-Hezaimi. It is alleged that Mr Bin Obaid and the board of Oh-Na (apart from Dr Al-Hezaimi) were unaware that the Defendant was instructed under a joint retainer. It is further alleged that, unbeknown to Mr Bin Obaid, Dr Al-Hezaimi instructed the Defendant to act on behalf of Latifah in relation to the acquisition of the freehold of the Assembly Development.
32. On 17 May 2015 Dr Al-Hezaimi transferred £3 million to the Defendant which was again credited to a client account in Dr Al-Hezaimi's name and described as completion monies. The £3 million is alleged to have formed part of the sum provided by Mr Bin Obaid on 3 January 2015. Mr Obaid paid further sums totalling £1,224,974 to Dr Al-Hezaimi which were paid over to the Defendant together with the remainder of Mr Bin Obaid's 6 January 2016 payment. The Claimants allege that it was again incumbent on RLS to ascertain Oh-Na's or Mr Bin Obaid's interest in those funds but that, so far as they are aware, RLS did not do so.
33. On 9 July 2015 contracts were exchanged by which Oh-Na and OFY agreed to purchase 62 and 63 flats respectively and Latifah agreed to purchase the freehold of the Assembly Development. Deposits were payable on exchange, and it is alleged that the funds used to pay those deposits were the funds in the Defendant's client account paid to Dr Al-Hezaimi by Mr Bin Obaid. The contractual position was therefore that Oh-Na, OFY and Latifah were each to acquire an interest in the Assembly Development, despite the agreement between Mr Bin Obaid and Dr Al-Hezaimi that Oh-Na would acquire the entirety of those interests.
34. On 9 July 2015 the Defendant sent client care letters in respect of the Assembly Development transaction to Latifah (in respect of the freehold purchase) and Oh-Na and OFY jointly (in respect of the leasehold properties). It is alleged that the terms applicable to Oh-Na were not known to its board, save for Dr Al-Hezaimi.
35. The Claimants contend that in view of the joint retainers in relation to both the Brighton Marina transaction and the acquisition of the Assembly Development it was incumbent upon RLS to ascertain the nature and extent of Oh-Na's (or Mr Bin Obaid's) interest in the funds paid to the Defendant's client account which they failed to do. It is alleged that at no time did Mr Bin Obaid or Oh-Na's board sanction or approve the structure and that RLS did

not have authority to exchange contracts in the form that was exchanged on 9 July 2015. It is further alleged that the entire deposit was paid using funds which were beneficially Oh-Na's (alternatively, Mr Bin Obaid's).

36. It is alleged that Dr Al-Hezaimi subsequently instructed RLS that Mr Bin Obaid no longer wished to acquire the leasehold titles in the Assembly Development through Oh-Na and that OFY would acquire all of these properties. This was not a decision that had been taken by Mr Bin Obaid or the board of Oh-Na, who were unaware of the instruction to the Defendant. On the basis of this instruction the Defendant negotiated a variation of the contract to remove Oh-Na as purchaser. It is alleged that the Defendant at no point sought or obtained Oh-Na's instructions or sought to understand the basis of which Oh-Na was purportedly giving up its rights as a purchaser and that the Defendant did not have authority to exchange the supplemental contract dated 10 February 2016 by which Oh-Na was removed as purchaser.
37. In March 2016 Mr Bin Obaid allegedly paid Dr Al-Hezaimi the sum of £1,716,300 which was said to be due as purported marketing commission. That sum was also paid over to the Defendant and credited to the client account in the name of Dr Al-Hezaimi.
38. In April 2016 Dr Al-Hezaimi told Mr Bin Obaid that a final sum of approximately £11 million was due in respect of the acquisition of the Assembly Development properties. On 13 April 2016 Mr Bin Obaid transferred the sum of £11,263,000 to Dr Al-Hezaimi of which £11,262,975 was paid over to RLS. E-mails between Ms Rankine and Dr Al-Hezaimi in relation to the source of the funds are said to contain an explanation that was untrue and, on its face, wholly implausible and suspicious.
39. On 6 September 2016 a Saudi Arabian law firm instructed by Mr Bin Obaid emailed the Defendant seeking information in relation to him and Oh-Na and indicating that they held a suspicion of fraud. It is said that there was no response to that email, nor was any attempt made to contact Oh-Na in relation to it.
40. In June 2017 the Previous Proceedings were commenced by the Claimants against the KAH Parties and included the claim that the acquisition of the freehold and leasehold interests in the Assembly Development were acquired by OFY and Latifah with monies provided by Mr Bin Obaid and were beneficially Oh-Na's property. As I have already said, the Previous Proceedings were settled by the Settlement Deed.
41. The present claim alleges that the Defendant owed Oh-Na an implied contractual duty to exercise the degree of skill and care to be expected of a reasonably competent firm of solicitors and a tortious duty co-extensive with the implied contractual duty. It is alleged that those duties required the Defendant to take Oh-Na's instructions and act in accordance with them; to ascertain Oh-Na's beneficial interest in the funds remitted to it and Oh-Na's instructions in respect thereof; to pass on to Oh-Na information obtained in the course of the retainer which a reasonably competent solicitor should know might indicate a breach of the duties owed by Dr Al-Hezaimi to Oh-Na and/or Mr Bin Obaid; and that if the Defendant had information indicating that a fraud was being perpetrated on Oh-Na and/or Mr Bin Obaid then it was obliged to disclose that information to them. The Claimants also allege that the Defendant owed fiduciary duties to serve Oh-Na faithfully and loyally; not to prefer the interests of any other person over those of Oh-Na; not to allow the performance of its obligations to Oh-Na to be influenced by its relationship with another client; not to

put itself in a position of conflict and to cease to act if it found itself in a position of conflict such that it could not fulfil its duty to one client without being in breach of its obligations to another client.

42. The claim alleges that the Defendant breached those duties and that but for those breaches of duty and/or trust, the acquisitions would not have completed in the names of OFY and Latifah and either would have completed in Oh-Na's name or not been completed at all, or the funds paid by Mr Bin Obaid would have been returned to him.
43. Oh-Na's losses are said to comprise its costs of investigating the fraud said to have been perpetrated by Dr Al-Hezaimi and the legal and professional fees paid in respect of the Previous Proceedings.
44. It is only fair to note that the allegations of fraud made against Dr Al-Hezaimi and the KAH Parties have never been tested before the Court, let alone established, and the Settlement Deed makes clear it is not to be regarded as an admission of any liability or wrongdoing by anyone.

The Terms of the Settlement Deed

45. The parties to the Settlement Deed were, as I have said, the ANBO Parties on the one side and the KAH Parties on the other.
46. Each Claimant and Defendant to the Previous Proceedings was referred to as a "Party" and collectively as the "Parties".
47. The recitals to the Settlement Deed under the heading "Background" provided as follows:

"(1) The Parties have been in dispute in relation to the beneficial ownership of the real property and money described below as the Identified Assets.
(2) The Parties wish to fully and finally resolve those disputes on the terms of this Deed."
48. The Identified Assets comprised various properties including the Assembly Development and cash amounts which were to be split 78.8% to the ANBO Parties and 21.2% to the KAH Parties.
49. The Settlement Deed contained the following definitions of relevance to this case:

" 'Affiliate' means (i) any natural person related directly or by marriage to any Party; or (ii) any company, partnership or other entity which currently, or from time to time, directly or indirectly is controlled by any of the Parties, where control means having the ability to exercise decisive influence on the entity or company whether by ownership, the right to use all or part of the assets of a company or entity, rights in respect of the composition, voting or decisions of the company or entity or otherwise; or (iii) any Agent of any Party"
50. "'Agents' means each of the officers, employees, directors, shareholders, agents and professional advisers of the Parties or any of them and all such individuals and entities which held any such positions at the date of this Deed".

51. " 'Claim' or 'Claims' means all and any claim or cause of action (other than arising out of a breach of this Deed) of any kind (including without limitation by way of correspondence, allegation, defence, counterclaim or set off and/or for any fees, costs or expenses) in any jurisdiction whether under English or foreign law, whether civil or criminal in nature, arising out of or in connection with (i) the English Proceedings (including for the avoidance of doubt any counterclaim in those proceedings and any orders for the payment of costs); or (ii) and [any] claim for rental payments or other proceeds of the Identified Assets arising prior to the date of this Deed. For the avoidance of doubt, this clause shall not prevent the Parties from pursuing the litigation in other jurisdictions currently pending between them, except to the extent that there is an overlap with the claims in the English Proceedings."
52. Clause 3.1 of the Settlement Deed stated that
- "the Parties acknowledge and agree that KAH Parties are the legal and beneficial owners of the KAH Assets and the ANBO Parties are the beneficial owner of the ANBO Assets".
53. Clause 4 of the Settlement Deed provided as follows,
- "4.1 Each of the Parties agrees, on behalf of themselves and their respective Affiliates;
- 4.1.1 that this Deed shall constitute full and final settlement of all Claims against each of the other Parties and their respective Affiliates
- 4.1.2 covenants and undertakes, and shall procure that each of their Affiliates covenants and undertakes, that
- (A) they shall not make or maintain any Claim against any of the other Parties or their respective Affiliates;
- (B) they shall not at any time sell, assign or otherwise purport to transfer any Claim against any of the other Parties or their respective Affiliates;
- (C) they shall not in any way support, encourage, incite, maintain, assist, cause or procure any person or entity who is not bound by the terms of this Deed to assert, institute or continue any Claim against any of the other Parties or their respective Affiliates; and
- (D) they shall not make any non-party or third party application in relation to a Claim."
54. "English Proceedings" were defined as the Previous Proceedings.
55. Clause 6.1 provided that,
- "Each of the Parties represents and warrants to each of the other Parties that he or it has all requisite power and authority and has taken all action necessary to enter into and perform his or its obligations under this Deed, that it is lawful for him or it to do the same and that there are no outstanding consents or approvals required for him or it to do so".
56. Clause 11.1 provided that,
- "This Deed constitutes the entire agreement and understanding between the Parties in respect of the subject matter of this Deed."
57. Clause 13 provided that,

"No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 of England and Wales by a person who is not a party to this Deed, save for the Affiliates of the Parties who are expressly permitted to enforce the provisions of clause 4 above".

58. Clause 19 provided that,

"This Deed and any dispute or claim arising in relation to its subject matter or formation (including any dispute as to non-contractual obligations) shall be governed and construed in accordance with the laws of England and Wales".

The Issue on the Appeal

59. The issue before the court is whether on the proper construction of the Settlement Deed the Claimants are prevented from bringing the current proceedings against RLS as their former solicitors.

60. If it did, the Deputy Master's decision not to allow the claim to proceed was right. If not, it was wrong by reason of an error of law and the appeal must be allowed.

Relevant Legal Principles in relation to Construction of the Settlement Deed

61. In *Bank of Credit & Commerce International SA v Ali* [2002] 1 AC 251 the House of Lords confirmed that ordinary principles of contractual interpretation apply to releases.

62. Relevant legal principles in relation to contractual interpretation have been set out by the House of Lords and the Supreme Court in a number of relatively recent cases, including *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, *BCCI v Ali* (above), *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 AC 1101, *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900, *Arnold v Britton* [2015] AC 1619, and *Wood v Capita Services Ltd* [2017] AC 1173.

63. *BCCI v Ali* concerned an agreement made "in full and final settlement of all or any claims ... of whatsoever nature that exist or may exist", in which Lord Nicholls stated at para 26 that,

"The meaning to be given to the words used in a contract is the meaning which ought reasonably to be ascribed to those words having due regard to the purpose of the contract and the circumstances in which the contract was made".

64. In *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101 at para 14 Lord Hoffman pointed out that the court is concerned to identify the intention of the parties by reference to what a reasonable person, having all the background knowledge which would have been available to the parties, would have understood them to be using the language in the contract to mean.

65. In *Arnold v Britton*, the Supreme Court stated that the meaning of the words used falls to be assessed by focusing on those words and having regard to

- (a) the natural and ordinary meaning of the clause in question;
- (b) any other relevant provisions in the contract;
- (c) the overall purpose;

- (d) the facts and circumstances known or assumed by the parties at the time that the document was executed; and
- (e) commercial common sense; but
- (f) disregarding subjective evidence of any party's intentions.

66. The Court then expanded on these, as can be seen from the report.

67. In *Wood v Capita Services* the court emphasised, at para 10, that:

- (i) the court's task in interpreting a contractual term is to ascertain the objective meaning of the language chosen by the parties to express their agreement;
- (ii) this is not a literalist exercise focused solely on a parsing of the wording of a particular clause but requires consideration of the contract as a whole;
- (iii) depending on the nature, formality and quality of the drafting of the document, the court in reaching its view as to that objective meaning can give more or less weight to elements of the wider context, taking into account the factual background known to the parties at the date of the contract (but excluding evidence of prior negotiations);
- (iv) when interpreting any contract, both textualism and contextualism are tools available to ascertain the objective meaning of the language used by the parties, with the extent to which each tool will assist the court in its task varying according to the circumstances of the case.

68. It has also been emphasised on more than one occasion that notwithstanding that the focus is on the particular words in issue, the contract as a whole falls to be considered in interpreting them.

The True Construction of the Settlement Deed

69. It is relevant to note that right at the start of the Deed it was stated that,

"(1) *The Parties have been in dispute* in relation to the beneficial ownership of the real property and money described below as the Identified Assets.

(2) The Parties wish to fully and finally resolve *those* disputes on the terms of this Deed."

The emphasis is mine.

70. This was not an all-encompassing settlement of any and all claims there might be and was intended to be limited to those relating to the English Proceedings, as shown by the end of clause 1.1.

71. As set out above, Clause 4 provided that,

"4.1 Each of the Parties agrees, on behalf of themselves and *their respective Affiliates*;

4.1.1 that this Deed shall constitute full and final settlement of all Claims against each of the other Parties and *their respective Affiliates*

4.1.2 covenants and undertakes that

(A) they shall not make or maintain any Claim against any of the other Parties or *their respective Affiliates....*"

72. And as part of Clause 1.1 (set out above) it was provided that,

“ ‘Affiliate’ means (iii) any Agent of any Party"

“ ‘Agents’ means each of the officers, employees, directors, shareholders, agents and professional advisers of the Parties or any of them and all such individuals and entities which held any such positions at the date of this Deed".

73. As the Deputy Master accepted, and as I consider, the word ‘*respective*’ in clause 4 is not surplusage and the way in which meaning is given to the word is to align each Party specifically with its Affiliates.

74. RLS was an ‘Affiliate’ (‘Agent’) of both Oh-Na and OFY because it was an Agent retained jointly by them in relation to the purchase of the Assembly Development (and was also alleged by the Claimants to have been also retained by Latifah in relation to the acquisition of the freehold of it).

75. The Deputy Master considered that on this basis RLS was released from all ‘Claims’, including claims by its own clients.

76. However, in the Settlement Deed providing that “each Party agrees ...that this Deed shall constitute full and final settlement of all Claims against each of the other Parties and *their respective* [Agents]”, it seems to me that that its aim, and what it was directed to, was their release from claims against them as the other party’s agents.

77. In other words, the agreement was in my judgment intended to release every other Party’s agent such as RLS in its capacity as that other party’s agent.

78. It does not seem to me to have been intended to release claims any party might have against its own agent – such as for work charged for as having been carried out on its behalf but not actually done, to take a simple example, or giving it tax advice in relation to the arrangements, to take another – just because they were also an agent of another party.

79. That is also consistent with the aim of the Deed being, as stated at the start of it, to resolve the parties’ disputes in relation to the beneficial ownership of certain assets. This does not suggest it was intended to prevent actions between a party and its own professional advisers.

80. Moving to a more vivid example, Jones Day acted for all the KAH Parties, and were therefore an Affiliate of each of them. If Dr Al-Hezaimi alleged Jones Day had acted negligently in the Previous Proceedings, he would be barred from suing them.

81. In relation to such claims, the Deputy Master said, in para 73 of her judgment,

“I do not accept Mr Edwards’s submission that, on the Defendant’s construction, the Settlement Agreement operates to release any claim that any party to the Previous Proceedings has against their own solicitors and counsel who acted in those proceedings”.

82. This, she said, was because “a firm advising in connection with the Previous Proceedings and, ultimately, the Settlement Deed would not benefit from the release on policy grounds and/or because of the common law principle that a party may not rely on their own wrong to secure a benefit”.
83. There is no blanket rule of law that a party may not rely on its own wrong to secure a benefit: see for a vivid illustration *Patel v Mirza* [2017] AC 467. However, parties may generally be thought not by a contract to have intended to enable one of them to do so, leading to the contract being construed accordingly or, for example, a term being implied that a condition precedent should not be prevented by one of them from being fulfilled: see *King Crude Carriers SA v Ridgebury* [2024] EWCA Civ 719 (decided on 27 June) esp at paras 81-83.
84. Mr Shapiro KC’s submissions before me on this point were put on a slightly different basis to the reasoning of the Deputy Master and were to the effect that the party alleging wrongdoing by its solicitors in connection with the Previous Proceedings could sue the solicitors for wrongly drawing up the settlement agreement in terms that covered them in relation to a release.
85. However, all this seems to me to show that the parties did not intend the agreement to effect such a release, which is consistent with its wording in fact being intended to release claims against agents in their capacity as agents of opposing parties. Accordingly, parties would be free to sue their own solicitors in relation to negligence in acting for them – which is the basis on which RLS are sued.
86. The Deputy Master took into account in deciding that the release in the Settlement Deed operated to release a party’s own agent certain comments by Newey LJ in the Court of Appeal in *Schofield v Smith* [2021] EWCA Civ 824.
87. In that case a settlement agreement provided for full and final settlement of all claims by any party “against any other Party or any other Released Party”.
88. “Released Parties” were defined as the parties and their affiliates. It is also to be noted that the definition of “claim” referred to liabilities arising “in whatever capacity”.
89. The agreement in that case was therefore differently worded from the Settlement Deed in that:
 - (1) it did not release only particular claims, as the Settlement Deed did;
 - (2) it did not refer to the settlement of such claims “against each of the other parties and *their respective agents*”;
 - (3) it provided that liabilities “in whatever capacity” were covered.

90. RLS through Mr Shapiro accepted there was a distinction in the wording of the Settlement Deed in the present case from that in *Schofield*. He accepted that the introduction of the word ‘respective’ in the settlement Deed meant that only an entity that was an Agent (or was otherwise an Affiliate) of another party – not just an affiliate of the party itself – was released.
91. Accordingly, if a solicitor such as RLS was an agent for one party only, that party could sue it for breach of duties owed to it, but if it was also an agent for another party it could not, even though the breach of duty alleged may have nothing to do with the other party, such as for over-charged fees – or negligence towards it (as here).
92. However, this ignores the fact, that in the present case it was, in my judgment, *as* another party’s agent that the agent was being released – in other words, in that capacity.
93. The Deputy Master said at para 71 of her judgment that,
- “In *Schofield* the appellant advanced a similar argument to that advanced by Mr Edwards which was rejected by the Court of Appeal at paragraph 45 per [N]ewey LJ:
- “Yet more linguistic objections to Mr Davies’ interpretation of the Settlement Agreement arise in relation to his submission that REL, Properties and Askwith represent a single “Party” or that a release by one of them of an “Affiliate” of all or two of them was limited to the role of the “Affiliate” in relation to the other(s) of them. “Party” and “Parties” are defined to refer to “a party and the parties to this Agreement”, who, on the face of it, are the four companies listed at the beginning of the Settlement Agreement, not Barclays on the one hand and REL, Properties and Askwith together on the other. Nor is there any evident warrant in the terms of the Settlement Agreement for concluding that a release by, say, Properties of a person who is an “Affiliate” of both Askwith and Properties was confined to the person’s activities for Askwith, and it is very hard to see how that could work in practice”.*
94. She said at para 72 of her judgment that,
- “In the same way a release by Oh-Na of the Defendant who is an Affiliate of each of OFY, Latifah and Oh-Na is not confined to the Defendant’s activities for OFY and Latifah. As [N]ewey LJ said: ‘*it is very hard to see how that could work in practice*’ where the Defendant was acting for each of them in connection with the same property transaction (the acquisition of the Assembly Development)”.
95. Counsel at the hearing before me were agreed that Newey LJ’s quoted comments in *Schofield* were *obiter*.
96. Whatever the position there, I do not myself see why it is hard to see how this would work in practice in the present case.

97. The matters of professional negligence complained of are based on the (alleged) breach of specific duties owed to the Claimants, notwithstanding they were retained together with another, resulting in losses which are distinct and specific to them.
98. To take a very simple example by way of analogy with the present case, if a solicitor acts for two people, A and B, on the purchase of a house to be occupied by them and on the instructions of A fails to put B's name on the deeds jointly with A despite B having provided half the purchase money and without confirming with her that this should be done, leading to A subsequently selling the house in which B had a joint share to a third party without her knowledge and disappearing, it is not clear why there should be any difficulty in practice in her bringing an action against the solicitor based on his breach of duties owed to her because there was joint retainer. Of course, there may be arguments on the facts as to whether, for example, the solicitor was entitled to act as he did but such a situation would not appear to present a practical difficulty.
99. So, too, it seems to me in relation to the specific allegations of breach of duty and losses alleged by the Claimants here.
100. It is objected by Mr Shapiro that if the action against RLS proceeds it might bring contribution proceedings against Dr Al-Hezaimi so that if the Claimants were to be successful in the action sums could be recovered from him whereas the Settlement Agreement was intended to put an end to all claims against him in respect of the dispute between the Parties.
101. It is also pointed out in support of this that Oh-Na had by solicitors' letter dated 22 September 2017 said that it reserved all its rights to take further action in relation to RLS having continued to act for OFY after proceedings were issued by Oh-Na against OFY (in June 2017), and that by a further letter dated 5 October 2017 it said it reserved its right to take further action against it (and, according to the Defendant's skeleton there was a further letter in January 2019, though the contents of that letter are not in fact before me to show what was said).
102. However, first, the Settlement Deed indicated at the start that "*The Parties have been in dispute* in relation to the beneficial ownership of the real property and money described below as the Identified Assets" and "The Parties wish to resolve *those* disputes" on the terms of the Deed (my emphasis).
103. The claim in the present proceedings is a claim that Oh-Na's own solicitor failed in its duties towards it and any contribution proceedings would be based on Mr Al-Hezaimi having acted improperly towards *RLS* leading to it acting as it did.
104. Second, the letters of autumn 2017 did not refer to the matters alleged in the present action, and they were sent by the Claimants to RLS almost two years before the Settlement Deed, with no action being taken against RLS in the intervening period even if they came to the KAH Parties' attention.
105. The highest this can be put is that it could provide a reason for the party's own agents being released. One might expect if so, that would, however, cover claims even where they did not act for another party but just for the party itself, as in *Schofield*, given that even if they only

acted for one party they may claim to have been misled by another party such as Dr Al-Hezaimi in circumstances giving rise to such a claim.

106. I have considered RLS's argument in relation to potential "ricochet" claims of the sort referred to in *Schofield*, but I am not convinced by it here.
107. To adapt one of RLS's own general submissions (that adverse effects of wording used does not mean the agreement should be re-written), if the language used in the Settlement Deed does, in the context of the deed read as a whole, not prevent a party from making claims against its own agent, as I consider to be the case, the fact that contribution proceedings may be possible against Dr Al-Hezaimi (which remains theoretical at the moment) does not alter that.
108. Parties may by their agreement seek to prevent such contribution claims or they may not. In *Schofield* the prevention of "ricochet" claims provided a reason for them to do so, as they were found by the wording of the agreement to have done. Here, construing the Settlement Deed as a whole, what they intended was in my judgment simply to release the Agents of other parties from claims made against them as that other party's Agent. The preservation of the ability for a party still to be able to sue its own Agents for breach of duty, as the Oh-Na's new solicitors had, prior to entry into the Settlement Deed, previously stated it wished to reserve its position to do, equally provides a reason for that.
109. In *Schofield* the Court of Appeal decided that there was no reason to depart from the natural meaning of the words used in preventing a party from claiming against its own affiliates and was consistent with them likely wanting protection against "ricochet" claims. In this case, there is in my judgment no reason to depart from the meaning of the different words used, read in the context of the agreement as a whole, which is consistent with the parties not intending to prevent a claim against a party's own agents – in relation to matters which may of course not involve any such "ricochet" claims as much as those that could.
110. At the hearing of the appeal two further arguments were advanced by the Claimants as separately meaning that the claims made by them were not in any event prevented by the Settlement Deed from proceeding. For completeness, I do not accept them though they do not alter the conclusion I have reached, which is what enables the claims made to proceed.
111. The first of these additional arguments was to the effect that the Settlement Deed defines what constitutes a barred "Claim" as being one "arising out of or in connection with the Previous Proceedings", which the claim was contended not to be here. However, the claim is in respect of the costs incurred in investigating and then pursuing the Previous Proceedings: see paragraph 51 of the Particulars of Claim. That seems to me on the face of it to be a claim arising in connection with the previous proceedings. Where the bringing of a Claim is not barred by the Settlement Deed, as I have found to be the case here, this has no bearing on the matter, though.
112. Secondly, it was argued that RLS was not covered by the barring provisions because it was not an agent of any of the Parties at the date of the Settlement Deed or thereafter.
113. This was based on the definition of 'Agents' in Clause 1.1 of the Settlement Deed, so far as relevant in this case, being "each of the agents of the Parties or any of them" and "all such entities which held any such positions at the date of this Deed".

114. This submission was not made to the Deputy Master and is an afterthought which is in my judgment not well founded.
115. It can be rejected summarily because apart from anything else, as well as RLS being an agent of OFY at the time of the matters giving rise to the dispute, a close examination of the Settlement Deed itself shows that RLS was in fact also an agent for OFY and the other KAH Parties at the time of the Deed itself: see Schedule 1 Annex 1.
116. Finally, I should mention that on 27 June, I received from the Claimants' solicitors a copy of the judgment of the Court of Appeal in the case of *Abdullah Nasser Bin Obaid & Others -and- Khalid Al-Hezaimi & Others* [2024] EWCA Civ 612, which was handed down after the hearing of this appeal. Neither party has sought to address me on it, though brief representations were made by the Claimants and Defendants in letters dated 2 July and 3 July respectively. The judgment, delivered through Nugee LJ, emphasises the importance of the recitals to the Settlement Deed, which I have referred to in the course of this judgment, and that there was not intended to be a universal settlement of all claims. I have considered it carefully, but nothing in it causes me to alter the conclusions I have reached.
117. For the reasons I have given, the appeal is allowed and the order of the Deputy Master striking out the Claimants' statements of case and giving judgment for the Defendant on the claim, with costs, is set aside. The Defendant's application dated 7 October to strike out or summarily dismiss the claim is dismissed.