Neutral Citation Number: [2026] EWHC 974 (Comm)

Case No: CL-2022-000367

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KING'S BENCH DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/04/2026

Before :

MR JUSTICE BUTCHER

- -

Between:

CANDY VENTURES SARL	**Claimant**
- and –	
(1) AAQUA BV **(2) AAQUAVERSE PTE LTD** **(3) ROBERT BONNIER**	**Defendant**
And between	
(1) FL HOES VENTURES BV **(2) AAQUAVERSE PTE LTD** **(3) ROBERT BONNIER**	**Part 20 Claimants**
-and-	
(1) CANDY VENTURES SARL **(2) NICHOLAS ANTHONY CHRISTOPHER CANDY**	**Part 20 Defendants**

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Ian McDonald (instructed by **Grosvenor Law**) for the **Part 20 Defendants**
Hermione Williams (instructed by direct access) for the **First Part 20 Claimant**

Hearing date: 17 April 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 27 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE BUTCHER

Mr Justice Butcher :

1. This is an application by the Part 20 Defendants to strike out and/or for summary judgment on the Part 20 Claimants' Part 20 Claim ('the Application').

2. The Part 20 Claim is a damages inquiry, which arises out of the grant of worldwide freezing orders ('WFOs'), by me, in July 2022. The history of this matter is now a long one, but needs to be understood for the purposes of assessing this Application.

Factual Background

3. In brief summary, the underlying factual background is as follows. Candy Ventures SARL ('CVS') (which is also the First Part 20 Defendant) is an investment firm. It is owned by Nicholas Candy, the Second Part 20 Defendant, and Steven Smith.

4. Aaqua BV ('Aaqua') is a technology start-up. It was established to develop a social media software application ('the Aaqua App'). Aaquaverse Pte Ltd ('Aaquaverse'), a Singaporean holding company, is Aaqua's parent. Mr. Bonnier is the founder and CEO of Aaqua and Aaquaverse. Aaqua is insolvent. Its trustee in bankruptcy assigned its interest in the Part 20 Claim to FL Hoes Ventures BV ('FLHV') on 17 July 2025. FLHV was substituted for Aaqua as the First Part 20 Claimant on 1 October 2025.

5. Between September 2020 and February 2021, Mr. Smith (on behalf of CVS) and Mr. Bonnier (on behalf of Aaqua) discussed CVS investing in Aaqua. Following those discussions, on 15 February 2021, CVS and Aaqua entered into three agreements by which CVS agreed to invest in Aaqua (the 'Agreements'). The effect of the Agreements was that CVS would sell to Aaqua 1.5 million shares in Audioboom Group plc for £6.75 million (the 'Audioboom Shares'); Aaqua would issue 15,000 shares in itself, fixed at €7.5 million, and evidence CVS's ownership thereof; and the consideration for these shares would be set off against each other.

Procedural Background

6. CVS subsequently contended that it was induced to enter into the Agreements by fraudulent representations by Mr. Bonnier, to the effect that Apple and LVMH Moët Hennessy Louis Vuitton would be investing in Aaqua. It sought rescission and damages in deceit, in the value of the Audioboom Shares.

7. This claim ('the Fraud Claim') was commenced in July 2022. On 26 July 2022, on CVS's ex parte application, I granted WFOs against Aaqua, Aaquaverse, and Mr. Bonnier. That application contained a significant non-disclosure or misrepresentation on the part of CVS in relation to the assets that it had available to satisfy its cross-undertaking in damages. It is not in issue that, as a result, those WFOs were wrongly granted.

8. On 31 August 2022, the WFOs were discharged after Mr. Candy failed to fortify a personal undertaking in relation to CVS's cross-undertaking in damages. On 7 September 2022, an inquiry as to the damages (if any) caused by the WFOs was ordered. That is the basis of the Part 20 Claim.

9. By the Part 20 Claim, it is alleged that the WFOs caused the Part 20 Claimants loss, namely an alleged diminution in the value of Aaqua. The Part 20 Defendants deny the Part 20 Claim, including on the basis of Aaqua's finances and that the WFOs did not cause any loss.

10. A CMC in the action was held on 24 January 2024. Disclosure was given in February 2025. Further disclosure from the Defendants/Part 20 Claimants followed in April 2025. The trial of the Fraud Claim together with the Part 20 Claim came to be fixed for October 2025.

11. On the eve of the PTR, on 17 July 2025, Aaquaverse and Mr. Bonnier revealed that on 10 June 2025 a further 23,000 responsive documents had been uncovered that had not been reviewed or disclosed (the 'Outstanding Documents').

12. By his PTR Order on 18 July 2025, HHJ Pelling KC ordered (inter alia) that the Outstanding Documents be disclosed by no later than 29 August 2025.

13. By a Directions Order dated 12 August 2025, HHJ Pelling KC ordered that, unless the Defendants/Part 20 Claimants filed a Notice of Change by 22 August 2025, they would be debarred from defending the Fraud Claim and their Part 20 Claim would be struck out.

14. On 22 August 2025, two Notices of Change – one on behalf of FLHV and one on behalf of Aaquaverse and Mr. Bonnier – were filed. No Notice of Change was filed and served on behalf of Aaqua, by 22 August 2025 or at all.

15. On 29 August 2025, the Defendants/Part 20 Claimants wrote to the Part 20 Defendants in relation to the Outstanding Documents, stating that, based on communications with TransPerfect, their disclosure provider, they 'were able to identify 16,931 underlying documents'; to reduce that, they had applied automated filters to exclude various categories; and this had reduced the set to 6,875 documents, which they had not reviewed and had instead provided 'as-is'.

16. On 1 September 2025, CVS issued an application for a debarring order, on the grounds that Aaqua had not filed a Notice of Change and the Defendants/Part 20 Claimants had failed to comply with the PTR Order.

17. On 3 September 2025, FLHV issued an application for substitution in place of Aaqua, pursuant to CPR 19.2.

18. On 15 September 2025, the Defendants/Part 20 Claimants issued an application for relief from sanctions, seeking relief for Aaqua's failure to file and serve a Notice of Change and asking the Court not to debar them from defending the Fraud Claim or strike out their Part 20 Claim, despite their disclosure failures.

19. By a Debarring Order dated 1 October 2025, HHJ Pelling KC, inter alia, debarred Aaqua from defending the Fraud Claim and struck out its Part 20 claim, with indemnity costs; and debarred Mr. Bonnier from defending the Fraud Claim, on the basis of his breaches in relation to the Outstanding Documents. HHJ Pelling KC's order further vacated the trial of the Part 20 Claim, and provided as follows:

> '12. The Part 20 Trial shall only be re-listed to be heard in the event that the Part 20 Claimants:
>
> (a) Pay the Payment on Account:
>
> (i) Within 7 days of the date of agreement between the Parties in respect of the sum payable in relation the Payment on Account; or,
>
> (ii) In the absence of such agreement and in the event that the sum payable in respect of the same is subject to assessment by the Court, by the date ordered by the Court; and,
>
> (b) Review and provide disclosure of the Outstanding Documents by 7 January 2026
>
> (together, the "Part 20 Conditions").
>
> 13. In the event that the Part 20 Claimants comply with all of the Part 20 Conditions as set out in paragraph 12 above:
>
> (a) Within 7 days of the date of such compliance, the Parties are to attend on the Commercial Court Listing Office to fix the date for the Part 20 Trial, which shall be listed on a date not before 4 months from the date of such compliance; and,
>
> (b) The estimated length of the Part 20 Trial is 7 days. This includes 1 day of pre-trial reading time.
>
> 14. In the event that the Part 20 Claimants fail to comply with any of the Part 20 Conditions as referred to in paragraph 12 above:
>
> (a) The Part 20 Claim shall be automatically stayed, without further order; and,
>
> (b) The Part 20 Defendants shall have liberty to apply for an order striking out the Part 20 Claim.
>
> 15. For the avoidance of doubt, paragraphs 8 to 14 above apply, equally, to FL Hoes.'

The Trial of the Fraud Claim

20. The trial of the Fraud Claim was heard by Bright J on 7-9 October 2025.

21. Bright J handed down his judgment on 5 November 2025 ('the Bright Judgment'): [2025] EWHC 2877 (Comm). Bright J found in favour of CVS and ordered Aaqua and Mr. Bonnier to pay damages of £4.6 million plus interest (the 'Judgment Sum'). The following passages of the Bright Judgment are of potential relevance to the Application:

‘[91] CVS’s claim is in fraudulent misrepresentation and/or the tort of deceit. CVS’s case is that, prior to the conclusion of the Three Agreements, Mr Bonnier (acting on behalf of Aaqua) made three representations to CVS (together, the “Representations”), each of which was false:

(1) That Mr Bonnier was in the course of ongoing discussions with Apple and LVMH about their investing in Aaqua, and that he honestly and reasonably believed that those companies would invest in Aaqua (the “Honest Belief in Investment Representation”).

(2) That there existed binding conditions precedent between Aaqua and Apple/LVMH which, once satisfied, would lead to those companies becoming unconditionally obliged to invest in Aaqua (the “Conditions Precedent Representation”).

(3) That negotiations with Apple and LVMH were at an advanced stage, and Apple and LVMH had commented on draft contractual documents during those negotiations (the “Negotiations Representation”).

[92] It is CVS’s case that the Defendants knew that the Representations were false, that the Defendants intended the Representations to induce CVS to enter the Three Agreements and that CVS did in fact rely on the Representations. Finally, CVS says say that this reliance caused loss resulting from the exchange of the valuable Audioboom Shares for what it describes in its pleadings as “worthless (or worth considerably less than the €7.5 million that they effectively cost CVS)” Aaqua shares.

…

[121] I am satisfied not only that the Representations were false, but also that Mr Bonnier knew them to be false. I reach this conclusion not least because of Mr Bonnier’s admission, during the trial, that Apple had had no hand at all in the drafting of the Draft Framework Agreement, that Apple had not been involved in any negotiations in relation to it and that there would be no trace of a documentary record of any dealings with Apple even in the 6,000 unreviewed documents that Mr Bonnier says he disclosed to CVS on 29 August 2025, but which CVS says it has been unable to access.

…

[125] I accept that the Defendants made the Representations, knowing them to be false, in order to induce CVS to enter into the Three Agreements.

Mr Bonnier’s intention in light of Aaqua’s financing

[126] Furthermore, CVS presented evidence that Aaqua was essentially financed by the sale of Audioboom shares, with no other significant sources or revenue or income. CVS relied on Mr Bonnier’s admission in his witness statement that:

> "with regard to Aaqua's liquid assets, the primary source of Aaqua's liquid assets were the shares it held in Audioboom which it had originally purchased on the open market and was then able to sell from time to time during the course of late 2021 and 2022 to meet operational needs."

[127] Mr Foy gave evidence that he:

> "quickly came to learn that Aaqua was basically financed by the sale of the Audioboom shares. It had no other revenue or other form of income".

[128] Mr Foy also said that:

> "Mr Bonnier and the Aaqua CFO Dennis Van Cotthem both told [him] that to fund the business it was necessary to sell Audioboom shares […] at least once a month."

[129] In his expert report for CVS, Mr Jonathan Ellis said "I understand that Audioboom was the main source of liquidity for Aaqua", in addition to transactions with Mr and/or Mrs Bonnier, which were recorded as debt and a facility from JSI up to $30,000,000, of which Aaquaverse drew down at least $4,153,244 since July 2022.

[130] CVS also presented evidence that Mr Bonnier was involved in spreading rumours about an Audioboom takeover, in order to push up the share price and thus maximise the income that Aaqua could make by selling shares:

(1) In October 2021, Mr Bonnier mentioned to Mr Smith that Spotify was interested in acquiring Audioboom and that he thought it would bid £19.20 per share – a significant premium compared to the market price – by the end of the month. Mr Bonnier told Mr Smith and Mr Candy that he was in advanced talks with Spotify in relation to the bid and in personal contact with Mr Daniel Ek (Spotify's Co-founder and Chief Executive Officer).

(2) Towards the end of 2021, news of Spotify's alleged interest in Audioboom became public and Audioboom's share price rose sharply. Mr Foy gave evidence that "This was a cause for celebration for the Bonniers. Mr and Mrs Bonnier treated the core team to an extravagant dinner at La Reserve in Paris." Also, that "All members of staff were asked to sign an agreement forbidding the dealing in certain shares without prior authorisation from the EMT. This included Audioboom."

(3) In or around February 2022, Mr Bonnier informed Mr Smith that Spotify's interest had cooled, but that he was now in talks with Vivendi (a French investment firm) about purchasing Audioboom at a significant premium.

(4) In early 2022, Vivendi's supposed interest in Audioboom became public, leading to another share price increase. Around the same time (February 2022), there were media reports that Amazon was also interested in acquiring Audioboom.

(5) No formal bid for Audioboom was ever made by any of the supposedly interested parties. Mr Smith gave evidence that in hindsight he believes they were "deliberate ruses" to distract CVS from the Apple/LVMH investment.

(6) Mr Candy said: "I heard in the first quarter of 2022, via [Mr Smith], that the Audioboom Board felt that the takeover rumours by Spotify and Vivendi had been started by Mr Bonnier himself, to pump the share price in Audioboom."

(7) Mr Foy also gave evidence that Mr Bonnier was "almost obsessive*"* about the Audioboom share price.

(8) CVS also provided evidence that there was significant trading activity between Aaqua and Ms Islam-Bonnier in shares in Audioboom, in which relevant TR-1 forms were not filed.

[131] I find that Aaqua was effectively financed by the sale of Audioboom shares, and had no other source of income.

[132] Where it is alleged that somebody has told deliberate lies, that case makes more sense if the motivation for lying can be explained.

[133] In this case, Aaqua's lack of liquidity provides a cogent explanation for Mr Bonnier's lies. He had an urgent need for a source of income. He told his lies in order to induce CVS to invest in Aaqua, by providing Audioboom shares which could then be sold readily. He knew that the involvement of prestigious companies such as Apple and LVMH would add cachet and credibility to Aaqua. Furthermore, he relied on the supposedly advanced stage of the negotiations with Apple and LVMH to hustle CVS into acting swiftly, without proper due diligence.

The Aaqua App's lack of functionality

[134] CVS argued that the Aaqua App never reached the proof-of-concept stage of development.

[135] Mr Ellis said in his expert report that based on internal accounting management, it is clear that the Aaqua App had not transitioned from the "research" into the "development" stage, as the costs were not capitalised on the balance sheet as an asset (which a company can only do once a number of conditions are satisfied to demonstrate that it has entered the development phase).

[136] The research stage is defined in Mr Ellis' report as when:

> "an entity cannot demonstrate that an intangible asset exists that will generate probable future economic benefits. Therefore, this expenditure is recognised as an expense when it is incurred."

[137] Mr McQuade said that upon joining Aaqua in January 2022:

> "I found that the AAQUA app was still in a very basic state…The look and feel of AAQUA's app was obsolete. In my view, this was a direct result of lack of professional product and design input. Given the historic cash expenditure on product development, I found this astonishing. The app was low quality, did not scale and had very little functionality."

[138] The Aaqua App's lack of functionality is relevant because it underlines the fact that the Defendants had no realistic way of attracting investment, or of generating income, except by misrepresenting the position to any potential investor. The underlying technological assets could not be monetised, and this was unlikely to change in the foreseeable future.

…

[144] As set out above, the Debarring Order prevented the Defendants from advancing a factual case or evidence beyond making submissions on the law and/or the evidence adduced by CVS.

[145] Mr Bonnier provided written opening submissions and closing submissions, which I read and considered. I summarise his main points on the law and in response to CVS's evidence below. It is worth noting that much of the contents of Mr Bonnier's written submissions, and much of what he said orally during the trial, was an attempt to give evidence, which I disregarded. This included comments as to the findings made in the course of previous litigation involving Mr Candy, which I did not find relevant to or useful in determining the issues before me.

…

Intention

[156] Mr Bonnier argued that the various provisions relied on by the Defendants showed that CVS did not rely on what he characterised as "informal sales pitches". CVS conducted its own analysis and drew its own conclusions.

[157] However, there is no convincing explanation for Mr Bonnier's telling deliberate lies, as I have found he did, except to induce CVS to invest. Returning to *Rex Goose v Wilson Sandford & Co. (A Firm)* [2000] EWCA Civ 73, per Morritt LJ at [47]:

> "There is obvious sense in such a presumption for if the representor did not intend the representee to act on the faith of his statement why did he lie?"

[158] The only explanation for Mr Bonnier lying so repeatedly and determinedly was in order to secure CVS's investment. None of the provisions relied on by the Defendants affects this simple reality. As I have already found, if Mr Bonnier had not made the Representations, CVS would not have invested.

Summary of findings on liability

[159] It is clear from the documents, and was confirmed by the evidence of CVS's witnesses, that Mr Bonnier made the Representations prior to CVS entering into the Three Agreements.

[160] During the trial, Mr Bonnier confirmed that he was not involved in active negotiations with either Apple or LVMH representatives concerning imminent investment in Aaqua. Thus, I am satisfied that the Representations were false, and he knew them to be false when he made them.

[161] I am satisfied that Mr Bonnier intended CVS to rely on his representation for the reasons set out above.

[162] I am also satisfied that the Representations in fact induced CVS to enter into the Three Agreements, and then to invest in Aaqua.'

22. By an order on consequentials made on 5 November 2025 (the 'Consequentials Order'), Bright J ordered Aaqua and Mr. Bonnier to pay the Judgment Sum (plus pre-judgment interest of £1.1 million) to CVS by 3 December 2025; to pay CVS's costs of the Fraud Claim on the indemnity basis (the 'Fraud Claim Costs'); and to make a payment on account in respect of the Fraud Claim Costs, in the sum of £465,720.71, again by 3 December 2025 (the 'Payment on Account'). Bright J referred, as a reason for the award of indemnity costs, to Mr. Bonnier's 'deliberate untruths, consciously told as such' and 'widespread and reckless pattern of lying'; and to Aaqua and Mr. Bonnier's 'deficient' and 'chaotic' procedural conduct and 'failures to comply with important court orders'.

23. None of the sums due to CVS under the Bright Judgment or the Consequentials Order has been paid by Aaqua or Mr. Bonnier.

Developments since the Consequentials Order

24. Pursuant to the Debarring Order, the Part 20 Claimants were required to file and serve their comments in relation to the costs thrown away by reason of the vacation of the Part 20 Claim by 19 November 2025. That did not occur. The Part 20 Claimants were also required to seek to agree the sums payable in respect of the costs thrown away and the Payment on Account by 3 December 2025. Again, that did not happen.

25. The Application was issued on 4 December 2025. On 5 December 2025, the Part 20 Defendants agreed with FLHV, on behalf of the Part 20 Claimants, that, in relation to the first of the Part 20 Conditions, the Part 20 Claimants would pay the sum of £334,180.26 in respect of the costs thrown away – including the Payment on Account of £244,948.88 – by 17 December 2025.

26. That payment was not, however, made by 17 December 2025 and has not been made to date. On 19 December 2025, the Part 20 Defendants notified the Court that the first of the Part 20 Conditions had not been met by the Part 20 Claimants. Disclosure of the Outstanding Documents ought to have been provided, pursuant to the Debarring Order, by 7 January 2026. That did not happen. On 8 January 2026, the Part 20 Defendants notified the Court that the second of the Part 20 Conditions had also not been satisfied.

27. On 15 January 2026, the Court confirmed that, in view of the Part 20 Claimants' non-compliance with the Part 20 Conditions, the Part 20 Claim was automatically stayed (in line with the Debarring Order).

28. On 22 January 2026, the Part 20 Defendants wrote to the Part 20 Claimants, requesting (inter alia) that they put forward a proposal for curing their ongoing procedural failures. The Part 20 Claimants did not provide any substantive response at that stage. On 2 February 2026, the Part 20 Defendants referred the Part 20 Claimants to this failure to engage. Their solicitors wrote, inter alia:

> 'Your determination to avoid engaging with these obvious and grave failures is damning. Your assertion that it is our clients' conduct which is an abuse of process (and not your own) is wrong-headed and perverse. The Part 20 Claim must plainly be thrown out. Our clients have given the Part 20 Claimants the opportunity to consent to this course so that further significant resources are not wasted. You failed to take the opportunity. We will of course direct the Court to this correspondence in the matter of costs and seek an order that they be assessed on the indemnity basis.'

No reply was sent to that letter by the Part 20 Claimants.

29. This Application was initially due to be heard on 27 February 2026. However, it was taken out of the Court's list, due to the late filing of the hearing bundle, and subsequently relisted for 17 April 2026.

30. No evidence in response to the Application was filed by the Part 20 Claimants between the issuing of the Application on 4 December 2025 and 12 April 2026. However, on 13 April 2026, the Part 20 Claimants filed the third witness statement of Mr Hoes dated 12 April 2026 ('Hoes 3'). The Part 20 Defendants did not object to the Part 20 Claimants relying on Hoes 3 for the purposes of the hearing, and I gave permission to the Part 20 Claimants to rely on it.

The Application

31. The Part 20 Defendants' Application seeks an order that:

> ‘(a) The Part 20 Claim be dismissed and summary judgment be entered in favour of the Claimant / Part 20 Defendants under CPR 24(3)(a)-(b) because … the Claimant / Part 20 Defendants believe that the Part 20 Claim has no real prospects of succeeding and know of no compelling reason why it should be disposed of at a trial.
>
> Further or in the alternative
>
> b) The Part 20 Claim be struck out in its entirety under CPR 3.4(2)(a)-(c) because, … , (i) it discloses no reasonable grounds for bringing the claim; (ii) it is an abuse of the court’s process / likely to obstruct the just disposal of the proceedings; and (iii) there have been multiple failures to comply with court orders; and
>
> c) Judgment be entered in favour of the Claimant / Part 20 Defendants.
>
> Further or in the alternative
>
> d) The Part 20 Claim be struck out in its entirety or summary judgment be entered in favour of the Claimant / Part 20 Defendants on the Court’s own initiative in accordance with CPR 3.1 and CPR 3.3 and / or under the Court’s inherent jurisdiction in accordance with CPR 3.4(5).’

The Principles Applicable

32. There was little argument as to the relevant rules and principles which apply to this Application.

33. The principally relevant rules are those in CPR 3.4 and 24.3, which provide:

> ***“3.4***
> *(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.*
> *(2) The court may strike out a statement of case if it appears to the court –*
> *(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;*
> *(b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings;*
> *(c) that there has been a failure to comply with a rule, practice direction or court order; or….”*
>
> ***“24.3*** *The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—*
> *(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and*
> *(b) there is no other compelling reason why the case or issue should be disposed of at a trial…”*

34. Claims suitable for striking out under CPR 3.4(2)(a) include those which are obviously ill-founded, and those which 'raise an unwinnable case where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides' (*Civil Procedure*, 3.4.2).

35. As to CPR 3.4(2)(b), the categories of abuse of the court's process 'are many and are not closed' (*Civil Procedure*, 3.4.3). They include cases in which a claimant has not taken steps to bring its claim to trial and has failed to comply with court orders over an extended period, as was the case in Zaman v Paradise UK Ltd [2014] EWHC 4684 (QB). A claim which discloses no reasonable grounds for bringing it, claims which attempt to relitigate an issue decided in earlier proceedings and which are the subject of an issue estoppel, and claims which seek to use the process of the court for purposes or in ways significantly different from their usual and proper use, may also be abusive.

36. As to CPR 3.4(2)(c), this confirms that the court has a discretion to strike out a claim where a party has failed to comply with rules, practice directions or court orders. This discretion is 'unqualified', as it is put in *Civil Procedure*, 3.4.18, although it will be exercised in accordance with principle and having regard to the overriding objective. A claim can be struck out under this rule, even though there was no provision in the rule, practice direction or order that specified that the claim might be struck out in consequence of the breach (*Civil Procedure*, 3.4.1). Thus, for example, in Hayden v Charlton [2010] EWHC 3144 (QB) a claim was struck out as a result of 'deliberate and wholesale non compliance with the rules and orders of the court' by the claimants ([75]), notwithstanding that they were not in breach of an 'unless' order ([79]).

37. On an application to strike out under CPR 3.4(2)(c), the principles governing applications for relief from sanctions, as summarised in Denton v TH White Ltd [2014] EWCA Civ 906, have a bearing. It will in very many cases be relevant to consider the three-fold issues of (a) the nature and seriousness of the default; (b) the reason why the default occurred; and (c) all the circumstances of the case so as to deal with the application justly.

38. As to CPR 24.3, the principles governing an application for summary judgment are familiar. The best known summary is that provided by Lewison J in Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch). Nicklin J restated them in Amersi v Leslie [2023] EWHC 1368 (KB) at [142].

The Parties' Positions

39. In relation to the application to strike out, the Part 20 Defendants contend as follows:

CPR 3.4(2)(c)

(1) Mr Bonnier is in breach of the Consequentials Order, in that the sums due under the Bright Judgment have not been paid, whether by 3 December 2025 or at all.

(2) Aaquaverse and Mr Bonnier were in breach in not having given disclosure of the Outstanding Documents in early 2025, or by 29 August 2025.

(3) All the Part 20 Claimants are in breach of the Debarring Order in that the Outstanding Documents were not reviewed and disclosed by 7 January 2026, and disclosure has still not been given.

(4) The sums which it was agreed should be paid in respect of the costs thrown away were not paid by 17 December 2025, and have not been paid to date.

(5) This amounts to a wholesale failure to comply with, and disregard of, the Court's orders. No good reason has been identified for non-compliance. In all the circumstances of the case it is just that the Part 20 Claim should be struck out.

CPR 3.4(2)(a)

(6) The Part 20 Defendants contend that the Part 20 Claim is obviously ill-founded and unwinnable. The only loss properly claimed, via the Part 20 Claim, is the alleged loss in the value of Aaqua as of July 2022. Though there is reference to other losses in the Points of Claim, including advisory fees, staff-related losses, and the costs of Singaporean moratorium proceedings, they have never been particularised or evidenced by contemporaneous documentation.

(7) As to the claim in respect of the alleged loss of value of Aaqua, this claim is hopeless in light of the findings of Bright J that Aaqua and Mr Bonnier had no realistic way of attracting investment or of generating income, except by misrepresenting the position to any potential investor, that the Aaqua App lacked functionality and could not be monetised, and that Aaqua was effectively financed by selling the Audioboom Shares and had no other source of income. The Bright Judgment was not appealed. It creates an issue estoppel, which operates against FLHV and Aaquaverse, as privies of Aaqua (as assignor, in the case of FLHV), as well as against Mr Bonnier.

(8) In addition, the Part 20 Claimants' own expert – Mr Franks of FTI Consulting – opined in July 2025 that it was a prerequisite for the Part 20 Claim to have any value that Mr Bonnier's description of events was correct, that if Aaqua was not financially viable as a going concern prior to the WFOs then the value of its ongoing operations would be nil, that its financial viability had depended almost entirely on its ability to raise additional external funds in the short and longer terms, and that if sufficient funding was not available then its value was nil. Bright J has now determined that Aaqua and Mr Bonnier had no way of raising funds save by fraud, and thus on Mr Franks own analysis Aaqua's value as of July 2022 was nil.

CPR 3.4(2)(b)

(9) The Part 20 Defendants contend that the Part 20 Claim is also an abuse of the process of the Court because of the Part 20 Claimants' failure to take the necessary steps to bring the Part 20 Claim to trial, and because it discloses no reasonable grounds for bringing it, and in part it seeks to relitigate issues which have been determined by the Bright Judgment.

Summary Judgment

(10) The Part 20 Claim stands no realistic prospect of success. There are no reasonable grounds for believing that the Outstanding Documents will materially add to or alter the relevant evidence. Mr Hoes' statement that the Part 20 Claimants will lead evidence to show that the WFOs led directly to the liquidation of Aaqua and a complete write-off of its business is mere assertion. There are no grounds for supposing that any fuller investigation of the facts will affect the outcome of the Part 20 Claim. The Court should 'grasp the nettle'.

40. The Part 20 Claimants submitted as follows, re-ordering Ms Williams' helpful submissions to mirror the order adopted above:

As to CPR 3.4(2)(c)

(1) That FLHV had agreed to pay £334,180.26 in respect of the costs thrown away. It deeply regretted that it had not been possible for it to honour that commitment. This was because it had been expecting funds, but they had not arrived. Similarly the reason that the disclosure exercise had not been fulfilled was due to lack of funds.

(2) FLHV has been working hard to secure significant financing from a litigation funder and has received support in such efforts from Crescient Ltd, which is 'a strategic adviser in the litigation funding market [and which is] independent of any funders, insurers and lawyers…'. Crescient has sent a letter dated 10 April 2026 which concluded that there is 'a reasonable expectation that a funder will engage and potentially offer terms on this investment', and Mr Hoes' evidence is that 'Crescient is optimistic that funding can be secured and anticipates a 6-8 week turnaround.'

(3) The court is accordingly urged to give the Part 20 Claimants one further chance to take the Part 20 Claim to trial, and it would be unjust if the Part 20 Claimants were to face no consequences for the fact that they intentionally obtained WFOs improperly.

CPR 3.4(2)(a)

(4) The Part 20 Claimants emphasise that the Part 20 Claim arises from what is *conceded* to have been the wrongful obtaining of the WFOs by the Part 20 Defendants.

(5) As to the Part 20 Defendants' points on causation and quantum, it is not accepted that there are relevant issue estoppels arising from the Bright Judgment. It is not disputed that FLHV is a privy to Aaqua. But Ms Williams, by reference to Price v Nunn [2013] EWCA Civ 1002, at [68], contended that issue estoppel would apply only if the issues decided by Bright J had been 'necessary ingredients' in the cause of action then being litigated. She submitted further that it would be unjust for the decision of Bright J, after a trial at which Aaqua and Mr Bonnier had been debarred from defending the claim against them, should preclude the advancing of the Part 20 Claim.

(6) While the Part 20 Defendants relied on Mr Franks' evidence, their own expert, Mr Ellis of HKA Consulting, had disagreed with Mr Franks' view that the market

value approach to valuation was appropriate, and had instead adopted the position that the only proper basis on which Aaqua should be valued was the cost approach, by considering the amount of money which had been spent in developing the group's product, and which had arrived at a valuation of £38,545,950.

(7) The Part 20 Claimants intend to lead evidence to show that the WFOs led directly to the liquidation of Aaqua resulting in a complete write off of its business and assets and a zero valuation immediately afterwards. Reference was made to the witness statement of Keith Davidson, who was Chief Technology Officer of Aaquaverse between March 2022 and July 2023.

CPR 3.4(2)(b)

(8) There is no abuse in the Part 20 Claim, which is not premised or founded on Mr Bonnier's fraud. Further, FLHV is an innocent third party. It was the Part 20 Defendants who deliberately lied on critical matters to obtain wrongly granted WFOs, and whose effects were 'devastating'.

Summary Judgment

(9) The points made in this regard have largely been already summarised in relation to CPR 3.4(2)(a).

Discussion and conclusions

41. In my judgment this is a case where the Part 20 Claim should be struck out pursuant to CPR 3.4(2)(c), on the basis of very significant and continued breaches of the Court's orders.

42. It is helpful to look at the matter through the prism of Denton v White's three stage approach. As to the nature and significance of the breaches, they are of the utmost seriousness and significance. The Part 20 Claimants' disclosure failures have already caused the vacation of the trial of the Part 20 Claim, with an order for costs thrown away on an indemnity basis. The Court laid down a timetable for the satisfaction of the Part 20 Conditions, failing which there would be an automatic stay, with a liberty to apply to strike out. Notwithstanding that, neither Part 20 Condition was, or has been, complied with. This is even though this Application was originally due to be heard on 27 February 2026. Despite the additional time, the Part 20 Conditions remain unsatisfied.

43. In terms of the reasons for the breaches, what is put forward by the Part 20 Claimants is an alleged lack of funds. This, in my view however, is not a good reason. Aaqua's interest in the Part 20 Claim was assigned to FLHV in July 2025. FLHV must have known, by that time, that the claim would require funding, but no steps seem to have been taken to secure such funding until about 24 February 2026, when Crescient was approached. That was over two months after there had been a failure to pay the costs thrown away (or the Payment on Account) as required by the Debarring Order. Even now, it is unclear whether any funding will become available: Crescient merely says that there is 'a reasonable expectation that a funder will engage and potentially offer terms'.

44. Inability to pay for legal representation and/or being a litigant in person are not, generally, good reasons for non-compliance with Court orders: see R (Hysaj) v SSHD [2014] EWCA Civ 1633 at [43], and *Civil Procedure* 3.9.5.1. Further, as was said, in my view correctly, by ICC Judge Burton in Fletcher and Macpherson v Razeem [2024] 7 WLUK 886 at [23]: 'Impecuniosity alone is not an adequate reason to breach court orders that require a litigant to pay adverse costs orders made against them…' My view that the alleged lack of funds in the present case was not a good reason for non-compliance is in line with these statements.

45. In relation to an examination of all the circumstances of the case in order to deal justly with the application, it is right to take into account that there is an admitted, and significant, wrong on which the Part 20 Claim is based, namely the mis-presentation made to me which induced the making of the WFOs on the terms ordered. This, however, does not of itself mean that the claim should not be struck out, any more than the fact that there was no issue as to liability in Zaman v Paradise UK Ltd [2014] EWHC 4684 (QB) precluded a strike out in that case.

46. Against that consideration a number of matters must be taken into account. These include the need for litigation to be conducted efficiently and at proportionate cost. The breaches in the present case have led directly to inefficient litigation. They include also the need to enforce compliance with rules, practice directions and court orders. That is a circumstance which tends in favour of a strike out order. They also include whether prejudice has been caused by reason of the breaches. As to that, I consider that the Part 20 Defendants are being, to a significant extent, prejudiced, by having had to incur the costs thrown away and not being reimbursed for them, and by having the Part 20 Claim hanging over them, but stayed, and with no clarity as to when it might come to trial.

47. Importantly, in addition, they include whether the sanction is proportionate. In my judgment it is. The Part 20 Claimants remain in breach of both the Part 20 Conditions which were set by HHJ Pelling KC, in circumstances where the Debarring Order quite clearly envisaged and provided that non-compliance with those conditions would lead to an application to strike out. I have considered whether a strike out might be disproportionate because there has not been breach of an unless order. My view is that it would not be disproportionate, or, to put it another way, that justice does not necessitate giving the Part 20 Claimants another chance on 'unless terms'. In my judgment, the Debarring Order of HHJ Pelling KC very clearly warned the Part 20 Claimants that non-compliance might lead to striking out; a considerable amount of time has elapsed beyond that provided for in the Order for compliance; and in the meantime the Part 20 Defendants reiterated that they would be seeking the dismissal of the Part 20 Claim.

48. Furthermore, this is not a case in which, even now, the Part 20 Claimants have come forward with a proposal of a short period within which they will definitely comply with the Court's orders. The period which is 'anticipated' as that within which there might be 'turnaround' of the application for funding is the not inconsiderable, and not very precise, period of '6-8 weeks'. In submissions, it also became clear that what the Part 20 Claimants were suggesting was that this should be a period of 6-8 weeks from the hand down of this judgment, because the prospective funders would need to consider its terms. There would then presumably have to be a further period, of unspecified length, during which the disclosure exercise was completed. Moreover,

as I have already said, whether any funding will be forthcoming at all is unclear. These matters mean that this is not a case in which the Court can be optimistic that the grant of an order on unless terms will promptly put the case back on track.

49. In considering the circumstances of the case for the purposes of the application under CPR 3.4(2)(c), and save that I have taken into account, as already set out, that there is no dispute that the WFOs were wrongly obtained, I have not had regard to the strength of the arguments on either side as to whether the Part 20 Claimants will, at a trial, be able to establish causation of substantial damages. As summarised in *Civil Procedure*, 3.9.14, in most cases where relief from sanctions are concerned, the prospects of success in the underlying action are not to be investigated or taken into account. This is subject to a possible exception if summary judgment could be obtained. I consider that a broadly similar approach is to be taken in relation to the application under CPR 3.4(2)(c) in this case. For the purposes of that application I have proceeded on the basis that there is at least a realistic prospect of the Part 20 Claimants recovering substantial damages. I have also proceeded on the basis that the Part 20 Claimants' case to recover substantial damages is not so strong that they could obtain summary judgment on it themselves. Indeed, it was not suggested that they could, and it is clearly the case that they could not.

50. Given my conclusion as to the application under CPR 3.4(2)(c), I will deal only briefly with the other bases on which the Application is made.

51. As to CPR 3.4(2)(a), I was not persuaded that the Part 20 Claim could be seen, at this stage, to be 'obviously ill-founded and unwinnable'. As I have set out, the Part 20 Defendants' case in this regard rested essentially on the findings of Bright J and the contention that they formed an issue estoppel. There was, however, relatively limited argument on what might constitute an issue estoppel. It appeared to me at least arguable, with a realistic prospect of success, that the findings of fact on which the Part 20 Defendants now rely were not 'necessary ingredients' of the cause of action on which they prevailed in the Fraud Claim, which involved the three Representations identified in paragraph 91 of the Bright Judgment. To put it in the language of Dixon J in Blair v Curran (1939) 62 CLR 464, at 531-3, which though not cited to me is a well-known authority in the area, it is arguable that the matters in the Bright Judgment now relied on by the Part 20 Defendants were 'subsidiary or collateral' findings of fact, or were 'evidentiary facts', and not 'the essential foundation or groundwork of the judgment'. I also consider that there might be an arguable case that, given that Mr Bonnier and Aaqua were debarred from defending those proceedings, if there is material which is relevant to the findings in question which was not considered, but which would be relevant to the Part 20 Claim, that could constitute a special circumstance in which the application of an estoppel might produce injustice not justice.

52. Insofar as the Part 20 Defendants rely, in this context, on the evidence of Mr Franks, that is, in my view, effectively met, for present purposes, by the Part 20 Claimants' reliance on the evidence of Mr Ellis. On the material before me, it appears that there is an argument on the issue of valuation on which it is not possible for me to form a view.

53. As to CPR 3.4(2)(b), I consider that the points relied on by the Part 20 Defendants under this head effectively duplicate points made either under CPR 3.4(2)(c), which I

accept as supporting an order for strike out, or under CPR 3.4(2)(a), which I do not.

54. I would not grant the application for summary judgment had it stood alone, for essentially the same reasons as apply to the application made under CPR 3.4(2)(a).

Disposal

55. I will grant an order striking out the Part 20 Claim.

56. I invite the parties to agree the terms of an order reflecting this decision.