

Claim No. PT-2024-000732

[2025] EWHC 2343 (Ch)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST

15 September 2025

Before :

Jonathan Hilliard KC sitting as Deputy Judge of the High Court

B E T W E E N:

JON FLOWITH & PARTNERS

Claimant

AND

**JOHN ROBERT GREAVES, MARGARET ANN GREAVES, RICHARD SPENCER
GREAVES AND ANTHONY THOMAS GREAVES (1)**

WENDY HOLLINSHEAD, VALERIE HOLLINSHEAD, KAY WRIGHTON (2)

IM PROPERTIES DEVELOPMENT LIMITED (3)

Defendants

David Holland KC (instructed by Shakespeare Martineau LLP) for the Claimant

**Laura Newton (instructed by Squire Patton Boggs (UK) LLP) for the First and Second
Defendants**

Katrina Yates (instructed by Loddors Solicitors LLP) for the Third Defendant

Hearing date: 25 July 2025

APPROVED JUDGMENT

JONATHAN HILLIARD KC sitting as a Deputy Judge of the High Court:

Introduction

1. By an application notice dated 6 December 2024, the Third Defendant (“D3”) applied for an order striking out the claims against it or in the alternative for an order granting reverse summary judgment (the “**Application**”). The Claimant (“C”) claims against all of the defendants damages for breach of a promotion agreement dated 15 January 2014 (the “**Promotion Agreement**”) that D3 entered into with the First and Second Defendants (“D1 and D2”), who are landowners, together with declarations that there have been breaches of that agreement and that C is entitled to damages as a result. The parties have referred to the defendant members of the Greaves family as “D1” and those of the Hollinshead family as “D2” so I shall do likewise.
2. D3 originally contended that the pleading does not, and cannot be improved to, disclose reasonable grounds for bringing the claim or a real prospect of success. Following service of C’s skeleton, which D3 contends set out claims that went beyond those in C’s Particulars of Claim, D3’s position is that I should grant a “conditional” strike-out, namely that I should make an order striking out the claims unless C applies within 28 days for permission to amend its Particulars and such permission is then granted to remedy the defects.

Conclusion

3. In my judgment, I should strike-out the claims against D3 unless C applies within 28 days for permission to amend its Particulars and permission is granted to remedy the defects. This will allow the proposed amended draft to be properly considered. The gloss is that I consider that an application for permission to amend should be unnecessary if the defendants consent in writing to the amendment within 28 days.
4. The claim against D3 is set out in [43] of the Particulars in the following terms:

“While [D3] was not a party to either the meeting of 30th August 2018 or the letter dated 13th September 2018, [D3] owes duties to C under the Promotion Agreement and it has never accepted that the Greaves Family and/or the Hollinshead Family have been and are in breach of the Promotion Agreement. It has, through its solicitors, reserved its position and made no admission that C can enforce the terms of the Promotion Agreement. Further, as a party to the Promotion Agreement, [D3] is joined as a necessary party to these proceedings.”
5. As explained below, (1) this fails to plead what breach of the Promotion Agreement by D3 is alleged, if any, which on its own is fatal. Moreover (2) it does not plead how any alleged breach by D3 caused the loss because no specific alleged breach by D3 is pleaded, and (3) it fails to plead what specific obligations it is alleged that D3 owes under the Promotion Agreement. These are basic elements of a claim for damages for breach of contract.
6. Therefore, it fails to disclose reasonable grounds for bringing the claim. C submitted in the course of oral debate during the second half of the hearing that if the Court

considered the pleading defective, then as a fallback it sought permission to amend its claim by deleting the first two sentences of [43] and adding text in [39] of the Particulars to the effect that the actions of D1 and D2 on 30 August 2018 and 13 September 2018 were on behalf of D3 as well.

7. In my judgment, for the reasons below, if C wishes to amend its claim, it needs to submit an amended written pleading for the defendants to be given a proper opportunity to consider, so the appropriate order is- as D3 submits- to strike out the claims against D3 unless C brings an application to amend within 28 days absent the parties consenting in writing to the amendment within that period.
8. To explain how the issue arises, I shall set out the relevant clauses of the Promotion Agreement and the background to the application, then the parties' stances.

The factual background to the claim

9. The heart of C's claim is that it is entitled to damages for loss of the opportunity to earn significant sums under the Promotion Agreement by virtue of the unlawful repudiation of that agreement in August and September 2018. The key factual background to that claim is as follows.
10. D1 and D2 wished to develop and sell a tract of land at Watery Lane and Netherstowe Lane, Lichfield ("**the Land**"), part of which is owned by D1 and part by D2. They engaged D3- a property development company- as a "Promoter" to assist them in obtaining planning permission and other related steps through the Promotion Agreement.
11. C is a partnership between John Flowith, a chartered surveyor, and his wife. He contends that he did significant work for D1- the Greaves family- and also D2- the Hollinshead family- in relation to the potential development, and introduced D3 to them in late 2012. This, C contends, accounts for C's role, fees and intended rights under the Promotion Agreement entered into just over a year later.
12. Turning to the Promotion Agreement:
 - (1) C and a firm of surveyors called Bagshaws were the "Owner's Agent" for the purposes of the agreement (D1 and D2 being "the Owner").

- (2) The "Selling Agent" was defined as follows insofar as material for present purposes:

"(a) John Flowith & Partners [i.e. C] (Ref: JF) to be appointed jointly by the Promoter and the Owner and if such entity fails to discharge the duties on its part set out in the Agreement competently expeditiously and without conflict of interest in relation to the Property such additional professional chartered surveyors or estate agent entity in accordance with clause (b) below which is agreed on and appointed by the Promoter with the Approval of the Owner to effect the duties of a joint agent in this Agreement".

I understand that no additional Selling Agent was appointed.

13. The overall framework of the Promotion Agreement is that (a) D3 as Promoter pays various upfront costs (see below); (b) in return D1 and D2 grant D3 the right to offer the Property for sale in accordance with a marketing strategy agreed between the parties and the right to receive a share of the sale proceeds relating to the defined Sales Process Land (Schedule 2, paragraphs 1.2 and 1.5), where a relevant Planning Permission is obtained before the Long Stop Date (Clause 2.1(b)) of 20 years from the date of the contract, which can be extended up to a total length of 35 years; (c) the Promoter promotes the Property through the planning system to seek to obtain a Relevant Planning Permission (Clause 3.1); (d) on such a planning permission being granted, the Promoter serves a notice to invoke a defined Sales Process (Schedule 2 paragraph 1.5(a)); (e) the Sales Process Land is then marketed on instruction to the Selling Agent (Schedule 2 paragraph 1.5(d)); (f) once a sale completes, the Promoter receives payment under Schedule 2 paragraph 1.5(h). The construction of paragraph 1.5(h) is disputed between the parties, as I return to below.

14. Cl.10 of the agreement, entitled “*Professional fees and Marketing Costs*”, deals with some of the professional fees. That clause is important, particularly cl.10.4, and provides as follows:

“10.1 The Promoter will Today pay to the Owner a contribution towards the Owner’s Solicitor’s and Bagshaws’ fees for the approval of this Agreement in the sums of £79,000 and £6,000 respectively plus VAT in each case plus disbursements of £72.22

10.2. The Promoter will Today pay to [C] as an introduction fee the sum of £50,000 plus VAT and in return for this [C] will issue a VAT invoice to the Promoter.

10.3. The Promoter will fund all marketing expenditure including without limitation publicity, public relations costs, brochures, boards, advertising and information packs

***10.4 On completion of each Sales Process the Selling Agent will be paid out of the sales proceeds (as referred to in paragraph 1.5(h) of Schedule 2) its fees for the handling of each Sales Process** in the aggregate sums of:*

- (a) 2% of the sale price of the relevant Sales Process Land; and*
- (b) the reasonable disbursements incurred by the Selling Agent in effecting such marketing excluding any disbursements referred to in clause 10.3 in the sums previously agreed by the Owner and the Promoter; and*
- (c) VAT on such items where applicable.*

10.5 Where [C] is the sole agent appointed to act as the Selling Agent then the whole of the fees referred to in Clause 10.4(a) will be due to that firm but if the Promoter requires a second party to be appointed jointly as the Selling Agent then a fee being no less than 1% of the sale price of the relevant Sales Process Land will be due to [C].” (emphasis and underlining added)

15. The fees of the Owner’s Agent are dealt with separately in the course of cl.3.1(e). Cl.3 is titled “*Promoter’s Planning and Related Obligations*”, and provides at 3.1(e):

“3.1 The Promoter shall at all times act diligently and shall use its reasonable endeavours to promote the Property through the planning system and to obtain a Relevant Planning Permission through the due planning process at the earliest

reasonable opportunity for the whole or a substantial part of the Property including (where appropriate and without limitation):

...

*(e) meeting with the Owner or the Owner's Agent (not less than twice each year or at such other intervals required by the Owner and Approved by the Promoter) to discuss such reports and progress and **the Promoter shall pay to the Owner an amount equal to the reasonable and proper costs incurred by the Owner's Agent on a time basis in considering such reports monitoring such progress and attending such meetings** PROVIDED THAT no such fees shall be due to [C] for any work prior to Today up to 28 February 2015"* (emphasis and underlining added).

16. Therefore, D3 as Promoter met a number of upfront costs, and C- after being paid an introduction fee- would receive its main fee on the completion of each sale.
17. The disposal of the sale proceeds is one of the items dealt with in Schedule 2. Paragraph 1.5(h) of that Schedule is important to the present dispute:

"The Owner will subject to paragraphs 1.6, 1.7 and 1.8 procure and hereby irrevocably instructs the Owner's Solicitors to pay to the Promoter out of the Completion Money on the completion of each Sale Process if and to the extent that the Completion Money exceeds the Minimum Price applied to the relevant Sales Process Land the aggregate of:

- (i) *until such sums have been re-paid to the Promoter on any previous application of this paragraph an amount equal to the Promotion Fee paid and the costs paid under clause 3.1(e) and clauses 10.1 – 10.3 and the Promoter's Solicitor's costs in connection with the completion of this Agreement and any Extension Fee then paid by the Promoter to the Owner;*
- (ii) *the Attributable Costs and the amount (if any) of the Attributable Costs in respect of all Sales Process Land previously sold which has not been paid to the Promoter;*
- (iii) *until such sums have been re-paid to the Promoter on any previous application of this paragraph an amount equal to 20% of such element of the Attributable Costs incurred by the Promoter ("**Promoter's Infrastructure Return**") in the provision of Infrastructure under the terms of paragraph 1.3 but the Promoter acknowledges that no element of its costs in effecting the planning promotion of the Property or the Project Area and no interest charge referred to in paragraph 1.8(e) shall be applied to the calculation of the Promoter's Infrastructure Return;*
- (iv) **the proper and reasonable fees of the Selling Agent (as referred to in clause 10.4) [the "Selling Agent Fees"] and the Owner's Solicitors associated with the disposal of the Sales Process Land;**

- (v) *until such sums have been re-paid to the Promoter on any previous application of this paragraph the monies due pursuant to paragraph 1.8(e) if any (i.e. interest on Promoter investment where Owner invokes tax suspension); and*
- (vi) *the proper and reasonable fees of the Promoter's Solicitors and all other costs incurred by the Promoter associated with the disposal of the Sales Process Land and the amount (if any) of such costs in respect of all previous Sales Process Land previously sold which has not been paid to the Promoter; and*
- (vii) *an amount equal to 20% of the Sale Process Offer (plus VAT) after having deducted the monies referred to in paragraphs (ii) – (vi) inclusive above”*
(emphasis and underlining added)

(paragraphs 1.6, 1.7 and 1.8 are not material for present purposes.)

I should also refer to paragraph 4:

“Use of Completion Money

The Completion Money shall belong (beneficially) to the Owner subject to the Owner's obligation to pay the Promoter's Return as referred to in paragraph 1.5(h)”

The “Promoter's Return” is defined in cl.1. as

“the fee payable to the Promoter arising under paragraph 1.5(h) of Schedule 2 on completion of each disposal of Sales Process Land”

18. Moving forward in time to between 2018 and 2019, the following events occurred that are important to the claim:

- (1) D1 entered into an agreement with C on 30 August 2018 and D2 also entered into a different agreement with C on the same day, each setting out payment terms for C for its work in relation to the Land.
- (2) On the same day and shortly after the signing of those agreements, D1 and D2 made clear to C that they did not wish for C to be appointed as Owner's Agent or Selling Agent under the Promotion Agreement and that they were not going to appoint C.
- (3) Those decisions were confirmed in a letter dated 13 September 2018 from D1 and D2.

The pleadings and other dialogue between the parties over the proceedings and Application

19. Given the submissions made at the hearing, it is necessary briefly to set this out chronologically under the following headings before analysing the Application:

- (1) Pre-action correspondence;

- (2) Pleadings;
- (3) The Application documents;
- (4) The evidence in response to the Application;
- (5) The parties' skeletons;
- (6) D3's supplemental skeleton;
- (7) The positions at the hearing.

Pre-action correspondence

20. I shall deal with the pieces of correspondence most relevant to the issues before me.
21. By 30 August 2019 letter, C's solicitors wrote to D3 stating that they were setting out their client's claims in accordance with the CPR Pre-Action Protocol. The letter stated that C had been jointly appointed by all of the defendants as Selling Agent and that all three of those defendants had breached the Promotion Agreement. The particulars of this given included that (1) D1 and D2 had informed C on 30 August 2018 that they did not want C to sell the land, (2) D1 and D2 had confirmed in the 13 September 2018 letter that they would not be instructing C to sell the land, (3) C was entitled under the Contracts (Rights of Third Parties Act) 1999 (the "**1999 Act**") to enforce the terms allowing them to receive 2% Selling Agent fees and additional payments as Owner's Agent, (4) "*as [D3] is jointly and severally liable to [C] under the [Promotion Agreement], [C] therefore has a right to enforce against you those benefits conferred to them under the [Promotion Agreement] by virtue of section 1 of the [1999 Act]. Section 2 of the [1999 Act] prohibits any variation or rescission of [C]'s right without [C's] consent. In these circumstances the termination letter dated 13 September 2018 from [D1 and D2] is unlawful according to section 2 of the [1999 Act]. You [i.e. D3] have no right to terminate [C's] appointment as Selling Agent under the Promotion Agreement and as such you [i.e. D3] have acted in repudiatory breach of the [Promotion Agreement]*" (underlining added); (5) "*The purpose of this letter is to notify you therefore that relying upon their rights under the [1999 Act], [C] have accepted, and, if they have not done so already, hereby accept your [i.e. D3's] repudiatory breach of the [Promotion Agreement] and gives notice that they intend to seek damages against you [i.e. D3] in respect of such breach*" (underlining added); (6) further and in the alternative, C relies on a collateral agreement between C and D3 whereby D3 promised that C would be Selling Agent and rewarded in the terms set out in the Promotion Agreement.
22. D3, through their solicitors, did not respond substantively but instead asked via a 23 April 2020 letter for documents via and noted that the claim relied on the 1999 Act, stating "[o]ur client's position on this remains reserved".
23. After a period of three years, that period attributable to Mrs Flowith's illness and counterclaims made by D1 and D2 based on Mr Flowith's alleged negligence, C through its solicitors stated in June 2023 by e-mail to D3's solicitors that it would press ahead

with the claim and write in due course, to which D3's solicitors responded that liability was denied.

24. C's solicitors then wrote the promised letter to D3's solicitors, dated 4 August 2023, which stated, among other things that (1) the letter of 30 August 2019 had informed D3, with evidence of, among other things, "*the unlawful decision of D1 and D2 to terminate our client's appointment as selling agent, a summary of the Promotion Agreement in respect of the Selling Agent fees and a summary of breaches and loss and our client's reliance upon the [1999 Act]*" (underlining added); (2) the claim against D3 was summarised as resting on two bases- "*our clients...have rights to enforce the terms of the [Promotion Agreement] under the [1999] Act. Alternatively, there is evidence of a collateral agreement- i.e. in return for their mutual promises under the Promotion Agreement, [D1 and D2] and your client promised that D3 would be the selling agent*"; (3) C had a claim for very significant damages on these bases for loss of Selling Agent fees, and also for Owner's Agent Fee and interest. Later in the letter it was explained again that it had been D1 and D2 who had informed C in 2018 that *they* had decided that they did not want C to sell the land.
25. D3 continued through its solicitors to reserve its position, but it did state in its 4 September 2023 letter, having dealt with some specific requests from C, that:

"Our client is in a position where it is being implicated in proceedings relating to matters over which it had no control. It was the landowners [D1 and D2] who purported to terminate the agreement and your letter of 30 August 2019 purported to accept what you referred to as the repudiatory breach, meaning the agreement was then at an end. The matter was entirely out of client's hands..." (underlining added).
26. C's solicitors sent D3's solicitors a letter of claim dated 25 June 2024. Among other things, that (1) set out cls.10.4 and 10.5, explaining that C's damages were therefore based on the 2% set out in cl.10.4; (2) stated that "*[D1 and D2] breached the [Promotion Agreement] when informing our client on 30 August 2018 that they no longer wanted [C] to sell the land (subject to the [Promotion Agreement]) which was followed by a letter dated 13 September 2018*"; (3) "*As explained in our 30 August 2019 letter [C] accepted their repudiatory breach of the [Promotion Agreement] on 30 August 2019 and is entitled to damages for the same*" (underlining added); (3) C was entitled to rely on the 1999 Act to enforce the terms of the Promotion Agreement that conferred a benefit on D3; (4) the term(s) entitling C to the 2% Selling Agent's Fee were terms that it could enforce under the 1999 Act; (5) "*Under the terms of the [Promotion Agreement], [D3] together with [D1 and D2] are jointly and severally liable to [C]*"; (6) Therefore, in summary, among other things, "*the decision to terminate is unlawful*" and "*[D3] together with [D1 and D2] are jointly and severally liable to [C]*".
27. D3's position continued to be entirely reserved.
28. In each case when it reserved its position, D3 based its position on the fact that its requests for documentation had not been met.
29. Mr Holland contended before me that in the letters I have referred to above, C was asserting that D3 had unlawfully repudiated the Promotion Agreement. D3's primary

stance before me was that it was the pleading that mattered on a strike-out application, not C's pre-action correspondence before it, as C had to plead its case properly, but it also submitted that in any event the pre-action correspondence did not clearly set out the claim against it. In my judgment, the pre-action correspondence did not clearly set out C's claim against D3 and in any event it is the pleading that is critical. As to the latter, the Particulars did not for example allege the collateral contract between C and D3 asserted in the pre-action correspondence. This illustrates the importance of a defendant being able to look to the pleading to tell them the case the claimant has chosen to run and which the defendant has to meet.

30. As to the pre-action correspondence, both the 30 August 2019 letter and the 25 June 2024 letter referred to D1 and D2's alleged breaches in 2018, but did not explain properly what D3's alleged breach was. The closest the letters come is the statement in the 30 August 2019 letter that "[y]ou have no right to terminate JFP's appointment as Selling Agent under the PA and as such you have acted in repudiatory breach " but it is not explained how D3 is said to have been in repudiatory breach when the letter states that it was D1 and D2 who informed C at the 30 August 2018 meeting of their view and that in the follow up letter "*G and H*" confirmed that they would not be instructing C i.e. D1 and D2. It was important to explain this, all the more so after D3 explained in its 4 September 2023 letter that it was D1 and D2 who purported to terminate the agreement and D3 had nothing to do with it.
31. Mr Holland also made criticism of D3's stance in the pre-action correspondence. I return to that below.

The pleadings

32. C pleads, among other things that:
- (1) It is clearly identified in the Promotion Agreement as both the Owner's Agent and Selling Agent: [22(i)].
 - (2) The Promotion Agreement, and in particular cls.1.1, 10.2, 10.4 and 10.5 and Schedule 2 paragraph 1.5, purports to confer benefits on it: [22(ii)].
 - (3) There is nothing suggesting, on a proper construction of the Promotion Agreement, that the parties did not intend the relevant terms to be enforceable by C: [22(iii)].
 - (4) By virtue of the foregoing, C is entitled under s.1 of the Contracts (Rights of Third Parties) Act 1999 (the "**1999 Act**"). to enforce those clauses in the Promotion Agreement which conferred a benefit on it: [23(i)], and the parties to the Promotion Agreement are by virtue of s.2 not entitled to vary or rescind it in any way such as to extinguish or alter C's rights: [23(iii)].
 - (5) Further or in the alternative, a collateral agreement arose between D1 and D2 on one hand and C on the other whereby in return for C continuing to carry out the work that it was doing in promoting a substantial residential development on D1's and D2's land, D1 and D2 agreed to appoint C as Owner's Agent and Selling Agent, and to pay

C the fees due to an Owner's Agent and Seller's Agent under the Promotion Agreement: [24].

- (6) At a meeting on 30 August 2018, C signed an agreement with D1 and an agreement with D2 (the "**Greaves Agreement**" and "**Hollinshead Agreement**" respectively), which stated among other things that the parties had entered into the agreement to record the fees agreed to be paid by the landowners to C as a result of C introducing D1 and D2 to D3: [32]-[33].
- (7) D1 and D2 then decided that they did not wish C to be appointed as Selling Agent: [36].
- (8) The following is pleaded under the heading "**Breaches of contract**" at [38]-[44]:
 - (a) In breach of the Promotion Agreement C has not been paid its Owner's Agent Fees for the period between September 2017 and 30 August 2018: [38]. It is not specified who is obliged to pay the Owner's Agent Fees.
 - (b) By reason of what they said at the 30 August 2018 meeting together with what was stated in a letter of 13 September 2018, D1 and D2 wrongfully renounced and/or repudiated their obligations under the Promotion Agreement and that renunciation and/or repudiation was accepted by C in a letter from its solicitors dated 30 August 2019: [39].
 - (c) Further or in the alternative, in breach of s.2 of the 1999 Act, D1 and D2 rescinded the Promotion Agreement: [40].
 - (d) In the premises C is entitled under s.1(5) of the 1999 Act to the remedy of damages for breach of contract: [41].
 - (e) Further or in the alternative, D1 and D2 are in breach of the collateral contract referred to in [24]: [42]. The allegation in the 30 August 2019 pre-action letter that there is a collateral contract between C and D3 is not pleaded.
 - (f) "*While [D3] was not a party to either the meeting of 30th August 2018 or the letter dated 13th September 2018, [D3] owes duties to C under the Promotion Agreement... Further, as a party to the Promotion Agreement, [D3] is joined as a necessary party to these proceedings.*" ([43])
 - (g) While D1 has made payments under the Greaves Agreement, D2 has refused to make payments under the Hollinshead Agreement.
- (9) By reason of "*the matters aforesaid*", C has suffered and/or will suffer loss and damage: [45], specifically C has lost the opportunity of earning the fees as Selling Agent and Owner's Agent under the Promotion Agreement as well as fees payable under the Hollinshead Agreement: [46(i)-(v)]. The damages claimed include the Selling Agent Fees of 2% due under the Promotion Agreement, in the sum of £1,170,618. They also include further damages in respect of the opportunity to earn fees during the currency of the Promotion Agreement.

(10) The prayer for relief against all Defendants states:

“Against all the Defendants

- (1) A Declaration that there has been a breach and/or breaches of the Promotion Agreement; and*
- (2) A declaration that C is entitled to damages as a result of the said breaches.*
- (3) Damages for breach of the Promotion Agreement.”*

33. Therefore, oversimplifying slightly, in respect of D1 and D2 C contends that by D1 and D2 refusing to proceed with it as Selling Agent or Owner’s Agent in August or September 2018, C has been deprived of the chance of earning Selling Agent Fees and Owner’s Agent Fees to date and in the future. However, the prayer is stated to seek damages from D3 as well.

34. In outline, D1 and D2 deny liability in their defence on the following bases ([4]):

- (1) The parties to the Promotion Agreement did not intend to confer a benefit on C in the Promotion Agreement *or* for the terms of the Promotion Agreement to be enforceable by C.
- (2) The terms of the Promotion Agreement on which C relies do not confer upon it an inalienable right to payment. Rather they envisaged that C could in due course, at the commencement of the marketing phase of the project and in a separate agreement, be appointed as Selling Agent on behalf of the Defendants, and would have an opportunity to earn commission by working on behalf of the Defendants in that capacity. In the event, C was not so appointed and did not carry out the work, and the Promotion Agreement was substantially amended on 23 December 2021 including in respect of the provisions relied on by C.

35. In summary, D3 denies liability in its defence on the following grounds ([4]):

- (1) Even if the Promotion Agreement was enforceable by C (which is denied), there is no unperformed obligation in it which required D3 to pay any sums to C. This was referred to as the “No Cause of Action Point” and developed in [5]-[12] of the Defence. [5]-[7] state:

“5. If, which is denied for the reasons set out below, the Claimant did have a right to the payment of any sums pursuant [to] the Promotion Agreement and is entitled to enforce that right pursuant to s.1(1)(b) of the 1999 Act by a claim for damages, it is specifically denied that the Third Defendant is or was under an obligation to pay the Claimant anything.

6. In principle, the Claimant could only ever have a cause of action for damages against the Third Defendant, if the Third Defendant has breached an obligation that it owed the Claimant in the Promotion Agreement, and/or the Third Defendant is a “promisor” within the meaning of s.1(7) of the 1999 Act.

7. However, there is no such obligation or promise on the part of the Third Defendant to the Claimant and/or the Third Defendant is not a promisor for the purpose of s.1(7), or at all.”

The pleading at [7] was expanded upon in [8]-[10], and [11] then concludes that:

“By reason of the facts and matters stated above:

11.1 If there is/was a contractual obligation to pay the Selling Agent’s fee and/or the Owner’s Agent’s costs that is enforceable under the 1999 Act (which is denied, as below), it is / was an obligation owed (if at all) by the First Defendants and Second Defendants to the Claimant, and not by the Third Defendant.

11.2 Further, or alternatively, there is no provision in the Promotion Agreement, which makes the Defendants jointly and severally liable for the Selling Agent’s fee and/or the Owner’s Agent’s costs.

11.3 As there is no relevant obligation to the Claimant in the Promotion Agreement that the Third Defendant could have breached, there is no term that the Claimant can enforce against the Third Defendant, which is not a promisor within the meaning of s.1(7) of the 199[9] Act, or at all.”

The averments in [11.1] and [11.2] depend on the construction of the Promotion Agreement. D3 contended that it was, on the proper construction of cl.10.4 taken together with paragraph 1.5(h) of Schedule, the Owner (D1 and D2) who had the obligation to pay the Selling Agent’s Fee and that cl.3.1(e) only required D3 to make a direct payment to *D1 and D2* of an amount equal to the reasonable and proper costs incurred by the Owner’s Agent, *not* make a payment to C.

- (2) In any event, pursuant to s.1(1)(b) and s.1(2) of the 1999 Act and on a proper construction of the Promotion Agreement, the parties did not intend the contract to benefit and/or be enforceable by C in any or any relevant respect.
 - (3) If, which is denied, the Promotion Agreement was intended to be enforceable by C, any benefits were contingent, and any future benefits apparently in favour of C by way of Selling Agent Fees were contingent on it being appointed as the joint Selling Agent, which never occurred.
 - (4) If, contrary to the foregoing, C was appointed as the Selling Agent by the Promotion Agreement, D1 and D2 were entitled to end such an appointment, for a number of reasons.
36. D3 also states in [1] of its defence that its defence is filed and served without prejudice to its contention that the Particulars ought to be struck out against it and/or reverse summary judgment entered for D3, for the reasons set out in [5]-[12] of the Defence.
37. In respect of [38] of the Particulars, D3 denies that D3 is obliged to pay any sums, and repeats the No Cause of Action Point, together with running a number of other defences.

38. D3 pleads to [43] of the Particulars as follows:

“58. Paragraph 43 is inadequately pleaded and embarrassing for want of particularity but is denied in any event:

58.1 The pleading fails to identify what alleged “duties to C under the Promotion Agreement” are owed by the Third Defendant and have allegedly been breached, or why the Third Defendant is a “necessary party”.

58.2 By reference to the Prayer that seeks damages against all the Defendants, the pleading also fails to identify the purported basis for appearing to allege or draw an inference of joint and several liability.

58.3 The foregoing lack of pleading reflects the reality that there are no such duties in the Promotion Agreement on the part of the Third Defendant. The No Cause of Action point is repeated. The purported claims against the Third Defendant fall to be struck out.”

39. Therefore, D3 was pleading that (i) C had failed to set out fundamental elements of its claim against D3 and (ii) the reason was that it could not do so, as there were no unperformed duties owed by D3 to C under the Promotion Agreement.

40. In the course of its defence, D3 also pleads as part of defence (4) above that:

(a) D1 and/or D2 terminated C’s appointment as Owner’s Agent verbally at the 30 August 2018 meeting, which termination was confirmed in writing by a letter dated 13 September 2018, which letter also made clear that C would not be appointed as Selling Agent in the future either: [21].

(b) D3 was generally aware of D1 and D2’s loss of confidence in C as an Owner’s Agent before the said 30 August meeting, but D3 left the termination decision up to D1 and D2, and did not play a part in effecting the said termination: [22].

(c) On the basis of D3’s awareness of such loss of confidence and pursuant to the implied term D3 contends allows D1 and D2 to terminate, D3 believes that D1 and D2 were entitled to terminate C’s role as Owner’s Agent and terminate and/or not proceed with any joint appointment of C as Selling Agent: [23].

41. D3 also seeks by separate contribution notice from D1 and D2 if- contrary to D3’s defence- D3 is held liable to C, and D1 and D2 deny that D3 is entitled to such contribution. There are two specific exchanges in the contribution notice and defence to it that are particularly relevant for present purposes:

(1) D3 pleaded that if, which it denied, there was a breach of the Promotion Agreement, it was instigated by D1 and D2’s decision to terminate the appointment of C as an Owner’s Agent and not to proceed with C as Selling Agent, which was a matter decided on and done on 30 August 2018 by D1 and D2, not D3: [7.1]. D1 and D2 denied this, stating that “*whilst the position was communicated to C by [D1 and D2], it reflected a decision taken jointly by [D1 and D2] and D3 and not only by [D1 and D2]*”: [9.2.2].

- (2) D1 and D2 also pleaded in the course of their defence to the contribution that any payment of Owner Fees for the period between September 2017 and 30 August 2018 (as complained of by C in [38] of the Particulars) was an obligation on D3 rather than D1 and D2, pursuant to cl.3.1(e) of the Promotion Agreement. Therefore, D1 and D2 set up a competing construction of cl.3.1(e) to D3. That clause is set out in [15] above.

The Application

42. D3's defence was dated 8 November 2024 and D1 and D2's defence to D3's contribution notice was dated 29 November 2024. The Application was filed a week later, on 6 December 2024.
43. Strike-out was sought in the application notice on the basis that "*the Particulars of [Claim] fail to disclose any reasonable grounds for bringing the claim against the Third Defendant, and/or in that respect fail to comply with CPR Part 16 in a way that cannot be put right by amendment*".
44. The accompanying witness statement of Ms Khandker of D3's solicitors stated that in essence the Application was made for the reasons pleaded in [5]-[12] of D3's Defence, namely the "No Cause of Action Point" referred to in [35(1)] above. Expanding on that, the argument set out in the witness statement was in outline that
- (1) the essential requirements for a third party to formulate a cause of action and bring a claim under the 1999 Act were (a) to identify the promise or obligation in the contract that it claims to be entitled to enforce; (b) to identify the party which has made that promise; and then (c) bring a claim against that promisor: [14];
 - (2) "*therefore the Claimant can only bring a viable claim against the Third Defendant if it can identify a promise or an obligation in the Promotion Agreement that the Third Defendant owed to the Claimant, which has been breached*": [15];
 - (3) the Particulars fail to do so: [15];
 - (4) [43] of the Particulars fails to identify the provision in the Promotion Agreement on which C purports to rely in support of the generalised allegation of D3 owing "*duties*" to C: [17(a)];
 - (5) the Prayer to the Particulars purports to seek damages and declaratory relief against all defendants without there being any or any pleaded cause of action to support that claim: [18];
 - (6) this is not a pleading that can be corrected by amendment either because there is no such provision in the Promotion Agreement under which any outstanding duties are owed by D3 to C: [17(b)];

- (7) in particular, payment of the Selling Agent's Fees to C was an obligation of D1 and D2, not D3 and the Owner's Agent Fees were to be paid by D1 and D2 to the Owner's Agent (not D3), D3's only obligation being to reimburse D1 and D2 under cl.3.1(e) once D1 and D2 had made the payment to C: [17(b)].
45. The proceedings were then stayed until further order by 16 December 2024 order of Master Pester, save for the determination of the Application.

The evidence in response to the Application

46. Mr Flowith's witness statement of 14 July 2025 set out his opinion as to the operation of the Promotion Agreement in a number of respects, and his first-hand evidence that he considered relevant to them. The respects in question included that the parties intended the Promotion Agreement to benefit and/or be enforceable by C.
47. C also adduced a witness statement from Mr Edwards of C's solicitors. That stated, among other things, that the first reason that D3's application was incorrect was that *"[t]he Third Defendant is a party to these proceedings as they are a party to the contract and there is a dispute relating to the contract"*.
48. D3 had asked through its solicitors' correspondence in late June 2025 and early July for C's position on its Application, with reasons. In their 16 July 2025 letter, having considered C's evidence, D3 stated through solicitors that C's evidence did not grapple with the fundamental point underlying D3's application, which was stated to be that:
- "By the Particulars of Claim, your client is claiming substantive relief, particularly damages, against all Defendants (including IMP) on the basis of joint and several liability, without having pleaded an unperformed promise in the Promotion Agreement by [D3] in favour of your client [C]."*
49. It was also stated that *"[t]he point here is that the 1999 Act does not give your client a cause of action for damages against [D3] in circumstances where there is no unperformed promise in the Promotion Agreement for [D3] to pay your client any sum"* and *"[t]he Application raises a pure question of construction of the Promotion Agreement and of the 1999 Act"*.

The 18 July 2025 skeletons

50. I shall focus on D3's and C's skeletons, as D1 and D2 stated in theirs that the Application was primarily a matter between D3 and C.
51. In D3's skeleton, D3 argued, among other things, that:
- (1) The essence of C's claim was that *"by D1/D2 refusing to proceed with it as either form of agent in or around August and September 2018, it has been deprived of the chance of earning Selling Agent Fees and Owner's Agent Fees to date and in future"*: [12] (underlining added).

- (2) To have a cause of action for damages against D3 pursuant to the 1999 Act, it was not sufficient for C merely to rely on D3 being a party to the Promotion Agreement and to show that the contract purported to confer a benefit on it. C must also plead and establish the following: (a) the relevant promise by D3 in the Promotion Agreement that C seeks to enforce, (b) that D3 is the relevant promisor responsible for fulfilling the promise, (c) how if at all the promise is enforceable against D3 in accordance with other relevant terms of the Promotion Agreement, and (d) how that promise has been breached by D3 and caused C loss: [26].
- (3) The Particulars failed to satisfy these requirements ([27]-[32]) because:
- (a) [38]- *“In breach of the Promotion Agreement, C has not been paid its Owner’s Agent fees for the period between September 2017 and 30 August 2018”*- fails to identify the party who promised to make that payment and is alleged to be in breach.
 - (b) [39]-[41] allege that D1 and D2 repudiated the Promotion Agreement at a meeting on 30 August 2018 and by a letter dated 30 September 2018, but no allegation of breach is made against D3 in those paragraphs.
 - (c) The only purported pleading as to D3’s liability is in [43]. In respect of [43]:
 - (i) the assertion that D3 is a necessary party is wrong but in any case irrelevant to the question of whether C has a cause of action for the relief sought by D3;
 - (ii) [43] does not specify what is meant by the general assertion that D3 *“owes duties to C under the Promotion Agreement”*;
 - (iii) nor does it state how it is alleged that D3 has breached such duties or
 - (iv) how such alleged breaches by D3 have caused C loss.
 - (d) The prayer seeks damages from all defendants without differentiation between them, but no justification is provided for claiming a remedy against D3, as alleged or at all, or including D3 among the parties allegedly in breach.
- (4) There was no prospect of curing the Particulars by amendment, because- other than the initial £50,000 introduction fee in cl.10.2 that has already been paid- there are no promises on D3’s part in the Promotion Agreement that are enforceable by C under the 1999 Act, as:
- (a) On a proper construction of the Promotion Agreement, it is D1 and D2 as Owner who are expressly responsible for paying the Selling Agent Fees under cl.10.4 and Schedule 2 paragraph 1.5(h), *not* D3. Therefore, D3 is not a promisor in this regard against whom C could ever have a cause of action to enforce non-payment.
 - (b) There is no provision requiring D3 to pay the Owner’s Agent Fees either, because while in principle D3 is liable under cl.3.1(e) to reimburse the Owner D1 and D2 for such sums (if they are indeed due), that is not a promise to pay C directly.

52. Pausing there, D3's skeleton- per (3) above- went into more detail on how it was alleged that the Particulars had failed to set out the necessary constituent elements of the claim, whereas more time had been spent in the witness statement accompanying the application on point (4) above, namely the inability to *rectify* these deficiencies. In my judgment the elements in (3) were and are within the application, not least because (a) the original application notice made clear that two of the ways that the application was put were (i) the Particulars failed to disclose any reasonable grounds for bringing the claim and (ii) that the pleading was defective through failure to comply with CPR r.16.4(1)(a) (in a manner that could not be put right by amendment), and (b) the witness statement made clear that the Particulars did not set out the specific duties of D3 that were being relied on, why they were alleged to be breached, and simply did not set out a pleaded cause of action to support the damages and declaratory relief being sought against D3 in the prayer: [44(1)-(5)] above. Therefore, part of the application was the contention that the Particulars was defectively pleaded, which then provided the springboard for the contention that it could not be put right by amendment. Indeed, C accepts this at [3] of its skeleton where, having described the basis of the application, C comments that D3's solicitor "appears to criticise the pleading but also to assert that it cannot be corrected because there is no underlying claim" (underlining added), and then goes on to defend how the claim is pleaded e.g. at [9]. Further and in any event, D3's skeleton made clear that the inadequate pleading of the claim against D3 was intended to be a key element of D3's application.

53. In its skeleton, C argued that:

- (1) The Promotion Agreement clearly purports to confer a benefit on C for the purposes of s.1(1)(b) of the 1999 Act in two respects, namely that it is to be appointed as Selling Agent and to receive its fees: [37].
- (2) C explained how these obligations were said to arise.
- (3) C contended that the statutory presumption of third-party enforceability that arose under s.1 of the 1999 Act was not rebutted and therefore C was entitled to enforce those terms.
- (4) In respect of the latter obligation, to pay the Selling Agent's Fees C argued that it was clear under the Promotion Agreement, that under paragraph 1.5(h) of Schedule 2 taken in conjunction with cl.10.4, D1 and D2 had to pay the Promoter D3 the Promoter's Return, which was the sum of the elements in paragraph 1.5(h)(i)-(vii), including under (iv) a sum equal to the Seller Agent's Fee and the proper and reasonable costs of the Owner's Solicitors, and

"C will say that it is clear by implication that, once the Promoter's Return had been handed over to D3, it [D3] was duty bound to hand over to C that element which represented the Selling Agent's Fees." [22] (underlining added)

(5) C went on to state:

"39. Further actions of the D1 and D2 (not contradicted or disputed and now condoned by D3) of 30th August 2018 and the letter dated 13 September 2018

constitute a repudiation and/or renunciation of the Promotion Agreement by the Owners [D1 and D2] and the Promoter [D3], eventually finally accepted by C in the letters from its solicitor of 30th August 2019.

...

41the purported termination by the D1 and D2, not opposed and now condoned by D3, was a breach of the terms of the Promotion Agreement...and indeed a breach of the duty under section 2 of the 1999 Act [not to vary a third party's rights without his consent].

42. Thus as pleaded, by reason of breaches by all of the Defendants of the Promotion Agreement C has lost the opportunity of earning the fees which it would otherwise have earned as both Owner's Agent and (relevantly to this application) as Selling Agent, had the Ds not renounced their obligations, that is, indicated in advance that they were not going to comply with their obligations under them." (underlining added)

(6) C also stated that it was surprised by D3's stance in its defence because:

"....C's main argument was and is with [D1 and D2] who directly terminated its engagement under the Promotion Agreement. As D3 accepts, it was not present at the meeting on 30th August 2018 nor did it write the letter dated 13th September 2018. Its case...is that it was not a party to the decision to terminate C's involvement.

47. Further, in correspondence leading up to the issue of proceedings, whilst generally denying liability, [D3] explicitly "reserved its position" on any claim...That was the reason why paragraph 43 of the Particulars of Claim was phrased in that way. It therefore came as something of a surprise to C that D3, instead of (as it could have) adopting a "neutral" stance and agreeing to be bound by any decision which the court may make between C and D1 and D2, has responded with a lengthy Defence containing five separate defences none of which were telegraphed in the lengthy pre-action correspondence."

([46]-[47])

(7) C denied that its pleading was defective, especially given the reservation of position in D3's pre-action correspondence but stated that even if it was, a case will not be struck out or summary judgment given if a proper claim can be pleaded by amendment: [9].

D3's supplemental skeleton and open offer

54. D3 served a supplemental skeleton on 23 July 2025 to update the Court on developments since its 18 July 2025 skeleton and the effect of those developments on the relief it sought.

55. First, D3 contended that C's skeleton outlined three new claims that it contended that C had advanced in its skeleton without having pleaded them, new claims (a)-(c). I focus on (a) and (c), D3's argument about new claim (b) having in my judgment fallen away.

56. New claim (a) was that C argued that as a matter of construction D3 was expressly responsible for directly paying the Selling Agent Fees to C.
57. New claim (c) was, D3 stated, that C now sought to contend that the obligation to instruct D3 as Selling Agent was a joint one, which all three defendants breached jointly in August or September 2018. That was not, D3 stated, pleaded in the Particulars of Claim either, and appeared to be based on a pleading of D1 and D2 at [9.2.2] of their Defence to D3's contribution notice, namely an allegation that there was a joint decision by D3 as well as D1 and D2 not to proceed with the appointment of C as Selling Agent. That could not, D3 contended, have been introduced by C in a Reply because of the rule that a subsequent statement of case must not be inconsistent with an earlier one, so the Reply must not bring in a new claim: CPR PD 16, [9.2].
58. D3 contended that new claim (a) was unarguable, and that new claim (c) *might* be arguable *if* C fully articulated those contentions and could overcome a potential limitation issue under s.5 of the Limitation Act 1980, given that the alleged breaches of contract occurred on 30 August and/or 13 September 2018, more than six years ago.
59. Second, D3 stated that, C having finally provided a potentially arguable basis for amending the Particulars of Claim, D3 had made an open offer by 21 July letter to C to afford it an opportunity do so, namely to adjourn the application pending service of C's draft amended particulars provided the C paid D3's costs thrown away by reason of the adjournment and agreed not to include new claim (a). Those amended particulars could then either be consented to by D3 or if they could not be agreed, the Application would be re-listed, and C could make an application for permission to rely on the amended particulars which could be heard on the same occasion. C had rejected that offer on 22 July, stating that "[t]here is nothing defective in the way our client has pleaded its claim against your client in the way you allege or at all".
60. Third, that offer having been rejected, D3 contended that the order the Court should make on the Application was that the Particulars of Claim should stand conditionally struck out, unless C made an application for permission to amend them within a defined period.
61. Given this stance, the arguments before me necessary focused on strike-out rather than reverse summary judgment, as D3 was effectively not- in light of the C's skeleton- contending that I should simply grant reverse summary judgment in respect of C's claim, as that would be inconsistent with giving C an opportunity to remedy the defect in its pleading.

Stances at hearing

62. C's stance was that the pleading was not defective.
63. D3's stance, as elaborated by Ms Yates in her succinct oral submissions, was as above, and D1 and D2 supported this. D1, D2 and D3 stated that they would need to see the revised pleading and properly consider it in order to determine how to respond to it.

Relevant legal principles

(a) Enforcement of a contractual obligation by a third party

64. C asserts that its claim arises under the 1999 Act, putting to one side the alternative collateral contract argument that it runs against D1 and D2. Therefore, it is important to be clear on the relevant legal principles governing claims under the Act. They are as follows:
- (1) Under the principle of privity of contract, only a party to a contract can enforce it: *Public and Commercial Services Union v Secretary of State for the Department for Environment, Food and Rural Affairs* [2024] UKSC 41 (*“PCSU”*) at [28] per Lord Sales and Lady Rose giving the main judgment.
 - (2) There are a number of exceptions to the first part of the rule, of which an important one is the Contracts (Rights of Third Parties) Act 1999 (the 1999 Act), which is the relevant one for present purposes.
 - (3) s.1(1) provides that, subject to the provisions of the Act, a person who is not a party to a contract (a ‘third party’) may enforce a term of a contract if (a) the contract expressly provides that he may or (b), subject to s.1(2), the term purports to confer a benefit on him.
 - (4) s.1(3) provides that the third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.
 - (5) s.1(2) provides that s.1(1)(b) does not apply if on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party.
 - (6) Therefore, if a contract purports to confer a benefit on a third party for the purposes of s.1(1)(b) *and* the third party is identified in the manner set out in s.1(3), a presumption arises that the relevant term in favour of the identified third party is enforceable: *PCSU* at [96].
 - (7) The presumption that arises where ss.1(1)(b) and 1(3) are satisfied is “*a strong one*”: *PCSU* at [96].
 - (8) s.1 does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract: s.1(4).
 - (9) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract, and the rules relating to damages, injunctions, specific performance and other relief shall apply to him accordingly: s.1(5).
 - (10) s.1 gives the third party the right to enforce a term of a contract: ss.1(1), 1(4) and 1(5). What obligation the term of the contract imposes and on which party to the

contract depends on its construction and the implication of any terms into it. Therefore, if the contract provides that party A shall pay third party C, the 1999 Act may allow C to seek payment from A under the terms of the contract by way of an action for an agreed sum, but it does not allow it to seek payment from party B unless the contract provides that party B shall also pay C. Similarly it does not allow C to sue B for damages for breach of a contractual obligation imposed on A:

- (a) That reflects the fact that the 1999 Act gives a third party a right to enforce *a term of the contract* where the relevant requirements of the Act are satisfied.
- (b) The 1999 Act is an exception to the rule that bars a third party from *enforcing* a contract. It goes no further than that. Therefore, it does not seek to change the substantive terms of the contract by causing a promise by party A to pay money to a third party C to place the other party to the contract, B, under an obligation to pay the money if B never promised to do so.
- (c) That is in turn consistent with s.1(5), which provides the third party with any remedy that would have been available to him if he had been a party to the contract. It does not seek to give him a remedy *beyond* that which he would have if he had been a party to the contract, by allowing him to claim against another party to the contract (person B in my example) sums through an action for an agreed sum payment of a sum that the other party had never agreed to pay or to sue that other party for damages for breach of an obligation that the contract does not place that other party under.

This is unsurprising. As explained in *PCSU* at [28], an important part of the reason for the Act is that limiting enforcement of a contract to the parties to it could allow a common intention of the parties to benefit a third party to be thwarted and the reasonable expectations of the third party that he could enforce the contract to be defeated. Where party A promises under the contract to pay third party C a sum, the parties have no intention that B should do anything to benefit third party C and C has no expectation of being able to seek payment from B.

(b) Strike-out and summary judgment principles

- 65. I can largely take from D3's skeleton most of the relevant legal principles, which did not appear to me to be in dispute. I drew to the parties' attention the *Alton* case referred to below.
- 66. The relevant principles governing strike-out are as follows:
 - (1) The Court has power under CPR r.3.4(2) to strike out a statement of case if it appears to the Court that, "(a) *The statement of case discloses no reasonable grounds for bringing the claim;* (b) *The statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings;* or (c) *There has been a failure to comply with a rule, practice direction or Court Order*".
 - (2) For the purpose of r.3.4(2)(a), paragraph 1.2 of Practice Direction 3A gives examples of cases where the Court may conclude that the PoC fail to disclose reasonable grounds for bringing the claim, including: "(1) *those which set out no facts*

indicating what the claim is about, for example ‘Money owed £5000’, (2) those which are incoherent and make no sense, (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant”. Similarly, the White Book explains at [3.4.1] that grounds (a) and (b) in r.3.4(2) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence.

- (3) Where a statement of case is found to be defective, the Court may consider whether the defect may be cured by the respondent making an amendment. “[W]here the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect” (*Kim v Park* [2011] EWHC 1781 (QB) at [40]). However, such an option only arises, “provided that there is reason to believe that he will be in a position to put the defect right”.
 - (4) The approach in (3) is not a freestanding principle, but rather a reflection of what will in many cases fulfil the overriding objective: *Alton v Powszechny Zaklad Ubezpieczen* [2024] EWCA Civ 1435 at [34].
 - (5) One possible order that the Court can make in the circumstances in (3), if it considers it appropriate on the facts, is that the claim is struck out unless the claimant applies for permission to amend within a certain period and such permission is granted to remedy the defect: *Ashraf v Lester Dominic Solicitors Ltd* [2022] EWHC 621 (Ch) at [272].
 - (6) When striking out a statement of case, CPR r. 3.4(3) empowers the Court to make any consequential order it considers appropriate, including dismissal.
67. For completeness, the relevant principles governing reverse summary judgment are as follows:
- (1) The closely related power under CPR 24.3 to give reverse summary judgment arises where the Court considers that a claimant (a) “*has no real prospect of succeeding on the relevant claim or issue*”, and (b) “*there is no other compelling reason why the case or issue should be disposed of at trial*”.
 - (2) The relevant principles applicable to summary judgment applications were summarised by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch), at [15], as approved by the Court of Appeal in *AC Ward & Sons Ltd v Caitlin (Five) Ltd* [2009] EWCA Civ 1098, at [24]. Distilling those principles (and, for brevity, omitting reference to the further authorities cited therein):
 - (a) The Court must consider whether the Claimant has “*realistic*” as opposed to a “*fanciful*” prospect of success.
 - (b) A “*realistic*” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.
 - (c) In reaching its conclusion the Court must not conduct a “*mini-trial*”.

- (d) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the Court. In some cases, it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.
- (e) *“Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case”.*
- (f) *“On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction”.*

Analysis

68. In my judgment it is clear that the Particulars of Claim as pleaded disclose no reasonable grounds for bringing a substantive claim against D3.

69. The section on breach of contract only contains the following pleading in respect of D3:

“While [D3] was not a party to either the meeting of 30th August 2018 or the letter dated 13th September 2018, [D3] owes duties to C under the Promotion Agreement and it has never accepted that the Greaves Family and/or the Hollinshead Family have been and are in breach of the Promotion Agreement. It has, through its solicitors, reserved its position and made no admission that C can enforce the terms of the Promotion Agreement. Further, as a party to the Promotion Agreement, [D3] is joined as a necessary party to these proceedings.” [43]

The Prayer then states

“Against all the Defendants

- (1) *A Declaration that there has been a breach and/or breaches of the Promotion Agreement; and*
- (2) *A declaration that C is entitled to damages as a result of the said breaches.*
- (3) *Damages for breach of the Promotion Agreement;”*

70. This does not plead what breach of the Promotion Agreement it is alleged that D3 has committed. That is an essential component of the cause of action and its omission is fatal on its own. One must set out which obligation(s) are alleged to have been breached and how they are alleged to have been breached. Indeed, it does not plead in the main body of the pleading that D3 is asserted to be in breach. Absent a claim for secondary liability of some kind, a claim for damages against D3 in respect of the Promotion Agreement must allege a breach of contract.
71. Further:
 - (1) It does not plead how any alleged breach by D3 caused the loss because no specific alleged breach by D3 is pleaded.
 - (2) It does not plead what specific duties it is alleged that D3 owes under the Promotion Agreement to C. It is just stated at [43] that D3 “*owes duties under the Promotion Agreement*” without specifying what they are. While I note that there is a reference to s.1(5) of the 1999 Act in [41] and reference in [22] to particular clauses of the Promotion Agreement purporting to confer benefits on C, this does not adequately plead the claim in this respect. In particular, for example, it needs to be made clear that, as C stated in its skeleton, C is alleging that through a process of “*implication*” ([22] of C’s skeleton) one reads paragraph 1.5(h)(iv) as meaning that D3 (who C contends receives the Promoter’s Return under that paragraph) is duty bound on receiving the Promoter’s Return to pay to C that element which represents the Selling Agent fees and it is that obligation which C contends is enforceable by it.
72. [39], [40] and [42] plead specifically that D1 and D2 breached the Promotion Agreement or in the alternative a collateral contract through the actions of D1 and D2 on 30 August 2018 and in their 13 September 2018 letter. However, no equivalent breach is alleged against D3 and I do not consider there is any basis for reading-in that such a breach is implicitly alleged.
73. On the contrary, D3 is dealt with separately in [43], no breach by D3 referred to in that paragraph and it is positively pleaded in [43] that D3 was not a party to the meeting on 30 August 2018 or the 13 September 2018 letter and is reserving its position.
74. Further, when [43] mentions breach it states that D3 has never accepted that *D1 and D2* have been and are in breach, rather than pleading that D3 is in breach.
75. Therefore, there is no indication from this as to what D3 might have done to breach its own duties.
76. I also note that [38], one of the provisions criticised by D3 in its skeleton, does not plead who owes the obligation to pay its Owner’s Agent Fees and reads as a claim in debt rather than the damages pleaded in the prayer. It was confirmed in oral submission that this pleading is intended to be a claim in debt against D1 and D2 rather than D3.

77. C made a number of submissions through Mr Holland when I raised with him orally whether C contended it had pleaded a breach of duty by D3 and if so what it was.
78. One of those submissions, which reflects [46] and [47] of C's skeleton, is that [43] was pleaded as it was because D3 reserved its position in correspondence and so C did not know at the time of pleading its Particulars whether D3 had joined in the breach of D1 and D2 in 2018 and therefore did not allege such breach.
79. However, in my judgment it is not open to a claimant to reserve its position on whether a defendant (here D3) has been in breach when it claims damages from D3 as it does in the prayer here. If a claimant wishes to plead a claim for damages for breach of contract, it must plead a breach.
80. Further, D3 cannot- as C suggests in [47] of its skeleton- be expected to remain neutral in such circumstances, because a substantial damages claim has been asserted against D3 and it is entitled to understand the basis on which this is claimed from it.
81. Another submission made for C orally was that if C had known at the time of the pleading what it knew now, it (1) would have pleaded that D3 was in breach in 2018 by adding the words "*on behalf of themselves and [D3]*" before "*indicated*" in [39] so that it was pleaded that by reason of what was said at the 30 August 2018 meeting and in the 13 September 2018 letter, D1 and D2 indicated on behalf of D1, D2 and D3 that they no longer intended to be bound by their obligations towards C in the Promotion Agreement, and (2) have deleted all but the last sentence of [43].
82. However, that does not affect whether the pleading as it now stands *without* any such allegation of breach by D3 in [39] discloses a cause of action. Rather it illustrates at least some of the language that one would expect to see in [39] and not see in [43] if a breach was to be pleaded against D3.
83. As D3 submits, a breach of duty by a promisor is an essential constituent of any cause of action against D3. I have explained above that the 1999 Act can allow a third party- here C- to hold D3 to contractual obligations under the contract or sue for breach of those obligations ([64(10)]), but C must identify what those obligations and breaches are alleged to be.
84. Finally, I reject the submission that the inability to plead more fully is a result of D3's stance in the pre-action correspondence. C did not make clear in the pre-action correspondence what the alleged breach on D3's part was. Further and in any case, D3 did state that it played no part in the events of 2018 and any breach committed then, so if C disagreed with that and wished to allege that D3 had a role in those events which was the foundation of the breach and therefore the damages claim, it needed to make that clear.
85. Mr Holland made serious criticism of D3 for reserving its position more generally and not raising the points that it later did in its detailed defence. I agree that D3 could and should have done more in its pre-action correspondence to set out its position generally, irrespective of whether its complaints about the lack of information provided by C were

well founded, and its defence shows that it could have said more substantively at an earlier stage about its response to the claim. To take an example, it could have pointed out in its reply to the 30 August 2019 letter that the letter did not make clear what D3's alleged breach was. However, this does not detract from the points that I have made earlier in the second and third sentences of [84] above.

86. It follows from the above that essentially I accept D3's arguments in [26]-[32] of its skeleton summarised at [51(3)] above. Further I also accept D3's argument in its supplemental skeleton that what it terms new claim (c)- that there was a breach of duty by D3 in August and/or September 2018- is simply not pleaded.
87. The seriousness of the holes in the pleaded cause of action are reinforced when one comes to examine whether they can be redressed.
88. Therefore, the question is whether this can be remedied by re-pleading, whether C should be given the opportunity to do so and if so what order should be made.
89. D3's case on this was originally that they *could* not be remedied, because there was no prospect of showing that D3 had any duties under the Promotion Agreement to C (other than to pay the initial £50,000 which it already had) that were capable of enforcement by C under the 1999 Act as a matter of law. This remained D3's case in its skeleton, including forming the basis of the reverse summary judgment application.
90. As explained above, that was reflected in the fact that the way that the Application was originally put, namely on the basis of the "No Cause of Action Point", focused largely on legal arguments as to the application of the 1999 Act to the present facts. The way that it was put in Ms Khandker's statement accompanying the application notice, for example, rested the application on the basis that (i) C had failed in the Particulars to identify the duty breached and (ii) this could not be remedied because there were no (unperformed) contractual duties that C could enforce under the 1999 Act.
91. Limb (i) of this was amplified in the skeleton, by reference to [38]-[43] of the Particulars. That is what I have accepted.
92. As to limb (ii), having seen C's skeleton, which formulated the claim against D3 as one based on D3 joining in the allegedly unlawful repudiation of the Promotion Agreement in August and September 2018, D3 accepted in its supplemental skeleton that what it described as "new claim (c)" might be arguable if C fully articulated its contentions and could overcome a potential limitation point, but that such a claim needed to be pleaded out by C to be considered further. Therefore, the issues between the parties have come into sharper focus through the exchange of skeletons. In light of this, the oral debate before me focused to a more significant degree on limb (i) above than had the application prior to the skeletons.
93. C submitted that D3 should not have launched a strike out application but rather waited for C's reply. I reject that submission for two reasons. First and foremost, as D3 submitted, it is not appropriate to introduce a new claim in a reply and CPR PD 16 [9.2] expressly states this should not be done. Second, there is no evidence at all that C would have run this new claim in a reply in any event.

94. C also submitted that instead of bringing the Application D3 had instead to make an information request for further and better particulars, and therefore the hearing had come about through D3's fault. I reject that submission. There is no pleading that discloses reasonable grounds for a claim against D3. For example there is no allegation of breach against D3 in the Pleadings, rather than an overly brief or unclear pleading that particular obligations were breached in a certain way. Therefore, the pleading needs to be amended if it is to bring any arguable claims against D3. In any event and separately, C could have provided further information about its case on the bringing of the Application and has not done so until very recently. C's submissions on amendment were that if it had known at the time of pleading the Particulars what it knew after the close of pleadings, it would run the case against D3 differently. That could and should have been said by C after the defences, contribution notice and defence to contribution notice had been filed and served.

Remedying the defects

95. I understand from a combination of the C's oral submissions and skeleton that the intended claim that C wishes to plead against D3 is, in outline, along the following lines:
- (1) While D1 and D2 were the parties at the 30 August 2018 meeting who informed C of the purported termination of the arrangement between them and senders of the 13 September, those acts were carried out by D1 and D2 on behalf of themselves and D3 so that they are to be treated as acts of D3 as well.
 - (2) Those acts amounted to an unlawful repudiation of the obligations of D1, D2 and D3 owed to C under the contract and enforceable by C under the 1999 Act, which was accepted by C at the latest by 30 August 2019 letter, bringing to an end the defendants' primary obligations to C.
 - (3) Those obligations were in D3's case, or at least included, (a) the obligation jointly to appoint C as Selling Agent when the time came (namely following the service of a "Sales Process Notice"), (b) for D3 further down the line to pay the Selling Agent fees from the Promoter's Return when D1 and D2 had discharged their obligations to bring about the payment of the Promoter's Return to D3. Particular emphasis was placed by Mr Holland on the importance of (a), as the key first step that C would be entitled to have all defendants take on the sale process commencing in order to have C formally engaged as Selling Agent, with all that carried with it, and he contended that D3 had overlooked in its defence and Application the joint nature of this obligation and the ability of C to enforce it under the 1999 Act.
 - (4) Had this repudiation not occurred, C would have earned significant fees under the contract.
 - (5) Therefore, C has lost the opportunity to earn these fees, and that represents the loss for which it can claim damages against all the defendants, including D3, because that loss has been caused by the defendants' unlawful repudiation of the Promotion Agreement.

96. Given D3's stance on "new claim (c)", D3 does not ask me to strike out the claims against it on an unconditional basis. Rather D3 suggests that I should give C a chance to remedy the defects through an unless order striking out unless it applies within 28 days for permission to amend.
97. I took C's stance to be that if- contrary to its primary case- I considered the pleading defective, I should simply give C permission to amend in the manner set out in [81] above, without striking out, conditionally or otherwise.
98. In my judgment, the order suggested by D3 is the appropriate one, rather than one suggested by C, subject to allowing for the possibility of the defendants consenting in writing to the amendment within 28 days. I consider that I should allow for the possibility of consent rather than the costs and time of an application automatically being required.
99. In short, C needs to set out its case properly in writing and the defendants be given a proper opportunity to consider it. C should be given the opportunity to do so, and it would be disproportionate simply to strike out the pleading. However, in my judgment it would not be appropriate simply to grant C permission to amend now in the brief terms put as their fallback case in oral submission, if- as I took to be the case- that was what C was seeking. The reasons for this are as follows.
100. First, the current pleading is defective in relation to D3 in the respects that I have set out above.
101. Second, it is not clear to me on what I have heard fairly briefly orally of the intended amended pleading that it does disclose a claim with real prospects of success. Therefore, I consider it proper that C should go away and make an application for permission to amend in respect of it, so that the pleading can be considered by the defendants in the first instance.
102. The revised intended pleading alleges that D1 and D2 repudiated the contract on behalf of themselves *and* D3. However, I have not been taken to any evidence showing me that there is a basis for that contention. On the contrary, the pleading currently positively pleads that D3 was not a party to the meeting on 30 August 2018 or the 13 September 2018 letter ([43]). Further, this is in circumstances where D3 made clear in the pre-action correspondence that its position was that "*it is being implicated in proceedings relating to matters over which it had not control*", "*[i]t was the landowners who purported to terminate the agreement*" and "*[t]he matter was entirely out of [our] client's hands*" (4 September 2023 letter), and the next substantive letter from C- the 25 June 2024 letter of claim- continued to maintain that it was D1 and D2 who breached the Promotion Agreement without express mention of D3 doing so.
103. I note for completeness that [40] of Mr Flowith's statement gives evidence as to what he was told about D3's stance by Ms Hollinshead at the end of the 30 August 2018 meeting, namely that on Ms Hollinshead raising the issue of termination with the lead at D3, he had told her "*you can use whoever you like*" but neither party mentioned or placed any reliance on that in submissions. There is in the bundle a 6 September 2018 letter from Mr

Flowith to D2 dealing with the 30 August 2018 meeting, but I have not seen any correspondence to D3 in the aftermath of the meeting, for example.

104. Mr Holland submitted that what had changed since that pleading was that D3 had pleaded in its defence (at [23]) that it believed that D1 and D2 had lawfully terminated C's role as Owner's Agent and lawfully terminated and/not proceeded with C's appointment as Selling Agent. However, I find it difficult to see why that pleading by D3 itself determines whether D3 indicated to C in 2018 (through D1 and D2) that D3 was repudiating the Promotion Agreement. D3 pleaded that it had nothing to do with the repudiation: [22].
105. As Ms Yates pointed out, *D1 and D2* had pleaded in their response to D3's contribution notice that when the position was communicated to C by D1 and D2 in 2018, it reflected a decision taken jointly by D3 as well rather than just by D2. However, beyond that pleading I have not seen any evidence that this was the case. Mr Holland's position orally was that C did not at the time of the Particulars know what had happened in 2018 on the defendants' side and that this was the difficulty in pleading a specific breach by D3 in the Particulars.
106. I should also mention that Mr Holland suggested that there was no limitation issue for an amendment because the repudiation was accepted in 2019, the Promotion Agreement terminated then and loss caused then, which was, he contended, less than 6 years ago. As Ms Yates submitted in response, time runs for breach of contract claims from the date of breach, which in this case would be from August or September 2018. However, as Ms Yates properly drew my attention to briefly, a Court may under CPR 17.4(2) allow an amendment whose effect will be to add or substitute a new claim after the end of a relevant limitation period where it arises out of the same facts or substantially the same facts as are already in issue, and – at least- a Court may consider both that the situation falls within r.17.4(2) and that it should- if otherwise satisfied that the amendment is a proper one- allow it under this provision despite the time taken to make the amendment.
107. At a number of points in his oral submissions, Mr Holland also put the revised claim on the basis of a breach by D3 *in contending in its November 2024 Defence that D1 and D2 had lawfully terminated the Promotion Agreement*, because, he contended, this showed that D3 was unwilling going forward to comply with its obligations under the Promotion Agreement.
108. However, Mr Holland's case was that C's rights to have the defendants' primary obligations to C under the Promotion Agreement had been terminated in 2019 on acceptance of repudiation by C and replaced by a secondary obligation to pay C damages, so I find it difficult to see how any breach can arise by D3 in 2024. Further, the loss currently claimed appears to relate to the period from 2018 or 2019, rather than from 2024, and any amendment to [39] of the Particulars to make an allegation that D3 joined in the allegedly unlawful repudiation in 2018 would not capture an allegation of breach in 2024.
109. Third, the application for permission to amend could have been made significantly sooner, even as a fallback stance, and been considered at the present hearing. It is not satisfactory for an application for permission to amend to be made orally at the hearing,

when it could have been made significantly before in writing and allowed proper consideration of the amendment with the benefit of fuller consideration and argument from D3. As D3 submits, if the relevant development after the Particulars was the allegation by D1 and D2 in its 29 November 2024 defence to D3's contribution notice that the position communicated by D1 and D2 to C in August and September 2018 reflected a decision taken jointly by all defendants, C could have sought to amend then. The fact that a stay was put in place on 16 December 2024 by consent between the parties pending the determination of the strike-out application would not have stopped C from providing a draft amended pleading to the defendants or if necessary seeking to lift the stay to have an amendment application heard. Testing the point this way, say that C had decided at that point that it needed to amend. There would be no justification for keeping this up its sleeve until the strike-out hearing. Rather it should let the defendants know of its position.

110. Fourth, tied to that, D3 contended that it should be given a proper opportunity to consider a revised draft pleading, rather than only being able to deal in an oral reply with a fallback amendment application made in the second half of the hearing. I agree that a proper opportunity should be allowed to consider draft amendments.

111. Fifth, C has maintained and continues to maintain that there are no defects in its pleading. It has been given a number of opportunities to say that it wishes to amend, most recently following D3's supplemental skeleton of 21 July 2025, which states- among other things- that the contention in C's skeleton that there was a joint breach by D3 as well as D1 and D2 in August or September 2018 is simply not pleaded: [2(c)].

112. Sixth, as D3 submits, the amendments proposed to [39] and [43] by Mr Holland referred to in [81] above do not in any event appear to go far enough in a number of respects, and at the very least D3 should be allowed a proper opportunity to consider whether it accepts that they do. For example, any reamendment should deal with whether the [38] allegation is being made against D3 or not. I understand from Mr Holland that it is not, but that should be made clear. It should also be made clear what "*obligations towards C*" it is said that D3 is renouncing in [39] if that paragraph is amended. Further, Ms Yates submitted that a bare pleading that D1 and D2 *were indicating on behalf of all the defendants* that they no longer intended to be bound by their obligations towards C under the Promotion Agreement would need further elaboration to explain how it was said they were indicating on behalf of all defendants. I can see that is a matter that the defendants would wish to consider in determining their stance on any proposed amendment.

113. C also submitted that because D3's application was brought on the basis that the case was not adequately pleaded *and could not be adequately pleaded* because of its inherent substantive flaws, if C was right that the claim could be adequately pleaded then D3's application failed and should be rejected outright.

114. In my judgment, that is incorrect. If the claim as pleaded does not disclose reasonable grounds for bringing the claim, then it is correct that a claimant should be given the opportunity to put right the defect, providing that there is reason to believe that he will be in a position to put the defect right, per [40] of *Kim v Park*, rather than just striking out the claim. However, it does not follow from this that the strike-out application should simply be rejected wherever it might be possible for C to replead in a way that would

disclose reasonable grounds for bringing the claim. Rather, one must consider what the appropriate order is in the circumstances of the case. At one end of the spectrum lies the case where it is clear that the defect can be put right and the claimant makes clear in good time before the strike-out hearing that it asks for permission to amend if the Court considers the statement of case as pleaded to disclose no reasonable grounds for bringing the claim, and provides a written draft to allow the parties and Court to consider it properly. In such circumstances, the Court would likely just give permission to amend. That is not the case here. Rather, for the reasons set out above, the appropriate order is essentially the one sought in D3's supplemental skeleton and oral submissions.

Two final points

115. As explained above, in its open offer D3 asked C to agree not to run what D3 termed "new claim (a)", namely a claim based on an argument that as a matter of construction D3 was expressly responsible for directly paying the Selling Agent Fees to C on D1 and D2 having procured their solicitors to pay the Promoter's Return to D3, including an element in respect of the Selling Agent fees. However, it did not ask C to rule out the possibility of including a claim based on an allegation that all defendants breached an obligation to instruct D3 as Selling Agent.
116. D3's position before me, per its supplemental skeleton, was simply that I should grant conditional strike-out, namely order that the Particulars should stand conditionally struck-out, unless C makes an application for permission to amend them within a defined period (and that application then succeeds). There was no attempt to impose detailed conditions on what C might include in its draft amended particulars. I asked Ms Yates orally as to whether there should be any such constraints, and she submitted in response that it was open to the Court to give C the opportunity to plead out all claims and then the defendants and the Court will determine whether they can be brought.
117. I consider that to be the sensible approach, for the reasons above. As I explained above ([95(3)]), the claim that C intends to plead appears to assert renunciation by D3 of both an obligation to appoint C as Selling Agent *and* of an obligation further down the line for D3 to pay C's fees if D3 receives funds to do so from D1 and D2's solicitors out of the Completion Monies. Therefore, to some extent it appears to be founded on what Ms Yates termed new claim (c) in her supplemental skeleton but with new claim (a), or some elements of that, added to it, although how important that addition is to the claim (rather than C needing simply to show that *one* of the defendants would have had to pay it the Selling Agent fees if the joint Selling Agent appointment had been effected) is not yet entirely clear. D3 can consider its position on that repleaded claim when it is properly repleaded. The merits of new claim (c) were not fully argued out before me, and given that D3 did not ultimately- from the supplemental skeleton onwards- seek to use the "No Cause of Action Point" to argue for an unconditional strike-out, I do not consider that I need to go into it further or deal with the other lines of defence in the defendants' defences. It is more appropriate for D3 to see precisely how the new claim is in fact put in a draft amended pleading.
118. The second point arising concerns what happens if C does *not* obtain permission to amend their claim so as to plead claims against D3, specifically whether D3 should- as C contends- continue to be joined so that it is bound by any findings as to the construction or status of that agreement. At present this is one of the reasons why C has joined D3:

[43] of the Particulars. Therefore, in my judgment the question is whether I should order under CPR r.19.2(3) that D3 should cease to be a party in that scenario. That provision provides that the Court can order that a person ceases to be a party if it would not be desirable for that person to be a party to the proceedings.

119. Ms Yates accepted in her skeleton and orally that if I struck out the substantive claims against D3, there may nevertheless be a case for D3 remaining a party to be able to make submissions on and be bound by any findings made about the Promotion Agreement given the difference of view with D1 and D2 as to the meaning of cl.3.1(e). I consider that would be sensible in order to ensure that all parties to the Promotion Agreement are bound by any findings as to the construction or status of that agreement and able to make appropriate submissions on such construction points. I can see that findings could be made on points that may not be common ground between D1 and D2 on one hand and D3 on the other. The claim under [38] of the Particulars, which seeks payment of Owner's Agent Fees from D1 and D2, is the obvious illustration of that. D1 and D2 plead at [43] of their Defence that the payment of those fees was D3's responsibility, whereas D3's position is that its only obligation under cl.3.1(e) is to reimburse D1 and D2 for the Owner's Agent fees: [35] of D3's skeleton argument, which appears to be C's position as well. D3 points out that the Court may take the view that it would be desirable for D3 to remain joined to the claim so that it can make submissions in relation to any Owner's Agent Fees (if any) to which the reimbursement provision may apply. I consider that would be sensible rather than this issue being determined in D3's absence without its input and in a manner which does not bind it despite it being a party to the Promotion Agreement.