Neutral Citation Number: **[2025] EWHC 3064 (KB)**

Case No: KB-2024-000753

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/11/2025

Before:

MR JUSTICE JAY

- -

Between:

FELIPE MASSA — **Claimant**

- and -

(1) FORMULA ONE MANAGEMENT LIMITED
(2) BERNARD CHARLES ECCLESTONE
(3) FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE — **Defendants**

- -
- -

Nick De Marco KC, Kendrah Potts and Rowan Stennett (instructed by **Debevoise & Plimpton LLP**) for the **Claimant**
Anneliese Day KC (instructed by **K&L Gates LLP**) for the **First Defendant**
David Quest KC and William Day (instructed by **Herbert Smith Freehills Kramer LLP**) for the **Second Defendant**
John Mehrzad KC (instructed by **Horwich Farrelly Limited**) for the **Third Defendant**

Hearing dates: 29-31 October 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 20 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE JAY

MR JUSTICE JAY:

INTRODUCTION

The Claim and the Parties

1. The Claimant, Felipe Massa ("Mr Massa") has for many years maintained that he should have been the 2008 Formula One ("F1") World Drivers' Champion. He says that he was the victim of skullduggery at the 2008 Singapore Grand Prix, compounded by an actionable conspiracy on the part of the Defendants which, coupled with other matters, ensured that the truth was kept under wraps until it was too late and the coveted prize had already been awarded. Mr Massa has brought this CPR Part 7 claim seeking damages and declaratory relief, with the intention of righting a historic wrong.

2. The three Defendants apply to strike out this claim under CPR 3.4 (2)(a) and/or for reverse summary judgment under CPR 24.3. They say that all the claims are misconceived and brought well out of time.

3. Mr Massa is a citizen of Brazil who raced for various F1 teams between 2002 and 2017 (he did not race in 2003). In 2008 his team was Ferrari and he was their lead driver. The Defendants are: (1) the First Defendant, Formula One Management Limited ("FOM"), a company incorporated in the UK which in 2008 acted as the agent and business manager for Formula One Administration Limited, the F1 commercial rights holder at that time, and effectively the promotional and commercial arm of F1; (2) the Second Defendant, Mr Bernie Ecclestone, in 2008 a director and Chief Executive Officer of FOM; and (3), the Third Defendant, Fédération Internationale de l'Automobile ("the FIA") a French company based in Paris and the governing body for world motor sport, including F1. Other important individuals whom I need to introduce are Max Mosley, at the material time President of the FIA, and Charlie Whiting, the FIA F1 Race Director and, in effect, its lead official at every F1 race. Mr Mosley died in 2021 and Mr Whiting in 2019.

4. The role, functions and duties of FOM do not require elucidation. The only reason it has been sued is to fix it with vicarious liability for the alleged torts of Mr Ecclestone. It is not in dispute at least for present purposes that FOM is vicariously liable for the breaches of duty, if any, of Mr Ecclestone and that the FIA stands in the same position in relation to Mr Mosley.

5. The status and role of the FIA requires exordium. According to the witness statement of the FIA's solicitor, Ms Imogen Mitchell-Webb, paras 8-11, the FIA is a non-profit organisation and association of National Automobile Clubs ("ASNs"), Automobile Associations, Touring Clubs and National Federations for motoring and motor sport. The organisation of championships is delegated to local organisers or ASNs. At all material times the FIA was, and remains, the sole international sporting authority entitled to: (1) make and enforce regulations for the encouragement and control of automobile competitions and records, (2) organise FIA international championships including the F1 Drivers' World Championship; and (3) provide the final international court of appeal ("the ICA") for the settlement of disputes arising therefrom.

6. Thus, the FIA provides the framework within which F1 races are organised and its rules enforced. Whether it has any further role in the context of the issues arising in these proceedings is in dispute.

Strike Out and Reverse Summary Judgment

7. The legal principles governing strike out and reverse summary judgment applications are not in dispute. Insofar as there may be a material difference between the tests for strike out and summary judgment, I will apply the test more favourable to the Defendants. Strictly speaking, a strike out application must be determined on the pleadings alone without reference to evidence. Given that the Defendants seek (and probably need) to rely on evidence in support of most of their arguments, I consider that it is sensible to focus on the application brought under CPR Part 24, deploying Mr Massa's pleadings as his best formulation, subject to any further permitted amendment, of his evidential case.

8. *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch) at para 15, per Lewison J as he then was, contains a familiar summary of the general principles governing summary judgment applications, and those need not be repeated here. However, I should refer to the most recent Court of Appeal authority on this topic which is *Giwa v JNFX Ltd* [2025] EWCA Civ 961. Although it is well established that the Court must not conduct a "mini-trial" on contested facts, a close examination of the evidence is still required. As Males LJ explained, at para 33:

> "the Court is not only entitled but obliged to do this, not with a view to resolving disputed versions of events, but with a view to assessing whether there is any real substance in the [pleaded] case."

I would add that the dividing-line between a close examination of the evidence, applying appropriate caution in recognition of the possibility of other evidence being available at trial and the risks of drawing apparently solid inferences from material which has not been fully tested, and carrying out a mini-trial is often difficult to discern, particularly in a complex case. In the circumstances of the present case, in any situations (and there have been a few) where I felt that I was being invited to stray into mini-trial territory, I have pulled back from the fray and resolved any concerns in Mr Massa's favour.

9. I address two further matters which arise in these particular circumstances. First, evidential disputes about foreign law are capable of being resolved at this stage without cross-examination, but only where one foreign lawyer is "so clearly right and … the lawyer on the other side so obviously wrong" that a summary determination is appropriate: see Leggatt J, as he then was, in *Edgeworth Capital (Luxembourg) SARL v Maud* [2015] EWHC 2364 (Comm), at para 21. Secondly, in the context of a CPR Part 24 application, the issue is not whether Mr Massa will succeed in disapplying the primary limitation period in reliance on s. 32 of the Limitation Act 1980 but whether, after an evaluation of the evidence, he has a real prospect of doing so: see, for example, *Hugh Grant v News Group Newspapers Ltd* [2023] EWHC 1273 (Ch), at paras 10, and

54-56. Often, but not always, whether a claimant has sufficient information to know that he has a worthwhile claim and/or has conducted reasonable diligence "is dependent upon a factual investigation which is quintessentially inapposite for summary judgment": see Andrews LJ refusing permission to appeal against Fancourt J's decision in *Various Claimants v MGN Ltd* [2022] EWHC 1222 (Ch), at paras 180-183.

Representation

10. Mr Massa was represented by Mr Nick De Marco KC, Ms Kendrah Potts and Mr Rowan Stennett. I heard oral submissions from Mr De Marco and Ms Potts.

11. FOM was represented by Ms Anneliese Day KC. Mr Ecclestone was represented by Mr David Quest KC and Mr William Day. Both Mr Quest and Mr Day presented oral submissions. The FIA was represented by Mr John Mehrzad KC. I am grateful to all counsel for their written and oral submissions.

ESSENTIAL FACTUAL BACKGROUND

12. The relevant facts are either agreed or must be assumed to be true for present purposes, the Court taking Mr Massa's case at its reasonable pinnacle.

13. The inaugural Singapore Grand Prix took place on 28 September 2008. It was organised with the approval of the FIA by Singapore GP Pte Ltd, and the relevant ASN was the Singapore Motor Sporting Association ("the SMSA").

14. On lap 14, one of the Renault drivers, Nelson Piquet Jr, deliberately crashed his car in order to aid his colleague, Fernando Alonso, who at the time was better placed in the overall standings. Just before the crash happened, Mr Massa driving for Ferrari, was in the lead, Lewis Hamilton[1], driving for McLaren-Mercedes, was in second place, and Mr Alonso was way behind, having made a pit stop on lap 12. The crash brought out the safety car whilst the track was cleared of debris and there was no overtaking until the "all-clear" was given on lap 20. Whilst the safety car was out for five laps, there was inevitable "bunching" between the vehicles and Mr Alonso's disadvantage was considerably reduced.

15. As soon as the pit lane opened but still during the safety car phase[2], a number of drivers made pit stops. Mr Massa, then still in the lead, went into the pits at lap 17 but exited in last position. Unfortunately, he started to drive away with the fuel nozzle and hose still attached to his car, probably because a Ferrari mechanic had prematurely given him the green light. Mr Massa then lost further time because he was penalised for unsafe

[1] Now Sir Lewis. I will be calling him "Mr Hamilton" for present purposes, without intended disrespect, because he was that at the time.
[2] Until a rule change in 2010, the pit lane did not stay open throughout the safety car phase. It remained closed until all the cars were lined up.

release, and he finished the race in 13th place with no points. Mr Alonso won the race and Mr Hamilton came third, securing six points.

16. Whether Mr Massa's race errors are an answer to this claim is not an issue which the Defendants ask me to resolve at this stage. Mr Massa would say that he would not have gone into the pits at lap 17 in these unexpected and stressful circumstances but for the crash. It is further said on his behalf that the focus of these proceedings is not an attempt by Mr Massa to win the race but his contention that a timely investigation would or might have led either to an annulment of the results of the Singapore Grand Prix or an adjustment of the points to his advantage.

17. Rumours that the crash had been deliberate swirled around from the outset. There were a number of suspicious features of the crash which I need not explore. These suspicions came to nothing at the time because no complaint or protest was made, and no investigation took place.

18. The 2008 Grand Prix season came to a nail-biting conclusion at the Brazilian Grand Prix held at Interlagos in São Paolo on 2 November. Mr Massa won the race in great style before his home crowd, but in often wet and changeable conditions Mr Hamilton overtook another car on the final lap to secure fifth place. Mr Hamilton's overall points tally of 98 eclipsed Mr Massa's 97, and the first of his seven titles had been secured.

19. On 2 November 2008 Nelson Piquet Sr, himself winner of three world championship titles, approached Mr Whiting and told him that his son had crashed deliberately at the Singapore Grand Prix having been instructed to do so by individuals in the Renault team. Mr Mosley and Mr Ecclestone were both present at the Brazilian Grand Prix. At or around that time, Mr Massa's case is that Mr Whiting communicated Mr Piquet Sr's information to Mr Mosley, and Mr Whiting and/or Mr Mosley then told Mr Ecclestone.

20. These revelations did not enter the public domain at the time. Mr Massa's pleaded case is that between 2 and 30 November 2008 Messrs Ecclestone and Mosley conspired together that the FIA would not take any steps to investigate the circumstances surrounding the crash, and that Mr Piquet Sr's information about the deliberate nature of the crash would be concealed. Mr Mosley's role in relation to this conspiracy was that the crash would not be investigated by the FIA and Mr Ecclestone's role was that he would persuade Mr Piquet Sr to keep a lid on the allegations. FOM and the FIA were also parties to the conspiracy as vicariously liable for the actions of these two individuals. It has not been pleaded that Mr Whiting was a party.

21. A relevant background consideration is that Messrs Ecclestone, Whiting and Piquet Sr went back a long way. In the glory days of Brabham which included the early 1980s, Mr Ecclestone owned it, Mr Whiting was its chief mechanic, and Mr Piquet Sr was its lead driver.

22. At the F1 Gala which took place in Monaco on 12 December 2008, Mr Hamilton was awarded the title of F1 Drivers' World Champion.

23. In July 2009 Renault terminated its contract with Mr Piquet Jr. On 26 July 2009 Mr Piquet Sr contacted the FIA saying that his son would now make a statement. On 30 July 2009 Mr Piquet Jr swore a statement confirming that the crash was deliberate and

that he had acted on the instructions of Flavio Briatore, the Renault F1 team principal, and Pat Symonds, the Renault Executive Director of Engineering.

24. Paras 23 and 24 of the Re-Amended Particulars of Claim ("the Re-Am PoC") allege that media reports in August 2009 to the effect that the crash may have been deliberate were the reason why the conspirators could no longer proceed in pursuance of their agreement. Not that anything really turns on this, I consider that a fairer assessment on the available evidence is that the trigger for an investigation was Mr Piquet Jr's agreement to provide a witness statement.

25. The FIA then instigated and led an investigation into the crash and its surrounding circumstances. This investigation entailed offering immunity to Mr Piquet Jr in exchange for his providing written and oral statements which were true; and, acting through Mr Mosley, instructing the stewards of the 2009 Belgian Grand Prix to conduct further inquiries on behalf of the FIA and to prepare a report for consideration by the FIA. The stewards were assisted by the FIA technical department, the FIA's external legal advisors, Sidley Austin LLP, and Quest Investigations. On 4 September 2009 the stewards delivered a report to Mr Mosley setting out their preliminary conclusions inculpating Renault. Mr Mosley convened a meeting of the World Motors Sport Council ("the WMSC"), an organ of the FIA and of which he and Mr Ecclestone were members, to consider the report, reach its own conclusions, and (if appropriate) impose sanctions. The Renault F1 team was invited to answer a charge that it had conspired with Mr Piquet Jr to cause a deliberate crash at the Singapore Grand Prix. On 15 September 2009 Renault stated that the charge would not be contested.

26. Contrary to the Defendants' submissions, there can be no doubt in my view but that the FIA carried out and was in charge of this investigation, and that the final decision was made by one of its emanations, the WMSC.

27. According to a press report, Mr Piquet Sr was interviewed by FIA investigators on 17 August 2009. A transcript of his interview was leaked to the press on 17-19 September 2009. According to the leaked interview published (in part) or summarised in various newspapers, in November 2008 Mr Piquet Sr told Mr Whiting of the FIA that his son had crashed on purpose, and "Whiting apparently later told FIA president Max Mosley". Mr Piquet Sr alleged that he "told the whole story to Charlie". He kept quiet because he "was afraid to screw up" his son's career. The *Corriere della Sera* published a slightly different version of the transcript: that someone close to Mr Piquet Jr told Mr Piquet Sr that the crash was deliberate, and that Mr Piquet Sr's subsequent conversation with his son proceeded on that premise.

28. On 22 September 2019 the WMSC published its decision dated 21 September. It noted that these charges were of unprecedented seriousness. After a careful and comprehensive review of the available evidence, which included telemetry data obtained from Mr Piquet Jr's car, his written and oral evidence, the inferences to be drawn from interviews given by two of the main suspects, and the evidence of "witness X", the WMSC applying the criminal standard of proof found the charges proved against Renault and Messrs Briatore and Symonds. The WMSC concluded that Mr Piquet Jr was also a party to the conspiracy but that no sanction would be imposed because he had been granted immunity.

29. As for what happened in late 2008, the WMSC concluded as follows:

> "7. After the race, the sequence of events described above, giving rise to such an obvious benefit for Renault F1 and Mr Alonso, had raised suspicion and there was a degree of speculation that Mr Piquet Jnr's crash had been deliberate. Rumours continued to circulate in the weeks that followed the race. Mr Piquet Jnr's father, Nelson Piquet Snr, indicated privately to an FIA official that the crash may have been deliberate, though at that time Mr Piquet Jnr was still under contract with Renault F1 and it was understood that he would not be prepared to make a statement to the FIA. The FIA considered its position and concluded that it did not have sufficient evidence at that time to launch a detailed investigation."

This paragraph is troubling, for at least three reasons. First, on the basis of the facts that must be assumed to be true for present purposes, Mr Piquet Sr did more than indicate privately to the unnamed FIA official, whom we know to be Mr Whiting, that the crash may have been deliberate. Secondly, if the press reporting in relation to what Mr Piquet Sr told the FIA in September 2009 is correct, the private indication he gave in 2008 was also on the lines that the crash was deliberate. Para 7 glosses over and is probably inconsistent with Mr Piquet Sr's evidence to the FIA. Thirdly, the final sentence of para 7 asserts that the reason the crash was not investigated in 2008 was insufficiency of evidence, whereas on the assumed facts in these proceedings the real reason was the conspiracy.

30. The WMSC's findings exonerated Mr Alonso. It is not part of Mr Massa's case that these particular findings were wrong. An argument along these lines would not avail him because notionally effacing Mr Alonso's points would not, without more, secure him any advantage; it would only serve to move Mr Hamilton from third place to second.

31. The WMSC did not annul or adjust the results of the 2008 Singapore Grand Prix. Mr Massa was aware of the WMSC decision at the end of September or early October 2009. He gave interviews at the time saying that the FIA should have cancelled the results of the 2008 Singapore Grand Prix and conferred the 2008 Drivers' Championship on him. Notwithstanding this, the WMSC's decision was not appealed by Ferrari to the ICA. According to Mr Massa, this was because he was told by Ferrari's lawyer that there was nothing that could be done.

32. Mr Massa's witness statement filed in these proceedings is not altogether clear as to precisely what he knew and did not know in 2009. He says that he harboured strong suspicions before the WMSC decision was published. He had conversations with various people including Mr Piquet Jr and did not believe their denials. Mr Massa states that he did not read the press reporting of 17-19 September. He did not read the WMSC report but only a press release. However, reading between the lines, I consider that it would be fair to conclude that Mr Massa accepts that he knew by the end of September 2009 that Mr Piquet Sr had informed Mr Whiting in November 2008 at the very least that the crash *may have been* deliberate: see, for example, the wording of para 30(a) of his statement:

> "Until Bernie Ecclestone's interview in March 2023 or later, I did not know that Piquet Sr told Charlie Whiting … that his son Nelsinho's crash **was** on purpose in 2008." (emphasis in original)

Here, Mr Massa is implicitly drawing a distinction between knowing that the crash *may have been* deliberate (by implication, he had that knowledge in September 2009) and knowing that it *was* deliberate (he did not have that knowledge until March 2023).

33. During the course of the interview mentioned by Mr Massa and which was published on 1 March 2023, Mr Ecclestone is said to have told his interlocutor, Mr Ralf Bach, the following:

> "[Mr Ecclestone and Mr Mosley were] informed during the 2008 season about what happened during the race in Singapore, Piquet Jr had told his father Nelson … that he had been asked by the team to deliberately drive into the wall at a certain point in order to trigger a safety car phase and thus help his team-mate Alonso … [they] decided not to do anything for the time being. We wanted to protect the sport and save it from a huge scandal … [Mr Ecclestone stated that he] used every last power of persuasion I had with my former driver [Mr Piquet Sr] to get him to keep calm for the time being. … There was a rule back then that a world championship classification was untouchable after the FIA awards ceremony at the end of the year. … We had enough information in good time to have investigated the matter. According to the Rules, however, we would probably have had to annul the race in Singapore in those circumstances … That means that, for purposes of the World Championship standings, it would never have taken place. Then Felipe Massa would have been world champion and not Lewis Hamilton."

Mr Bach published in German but the interview must have been conducted in English.

34. These are the essential facts which the Defendants either accept as true or agree must be assumed for present purposes. By way of summary, it is accepted by the Defendants *for these present purposes only* that Mr Piquet Sr's 2008 revelations about the crash were that it was deliberate and those revelations were shared, either directly or indirectly, with Messrs Whiting, Ecclestone and Mosley; that there was sufficient information to investigate the crash before the end of the 2008 season; that the conspirators agreed that the FIA would not conduct an investigation and would conceal their knowledge about the underlying allegation; and that it was part and parcel of the conspiracy that Mr Piquet Sr would be prevailed upon to keep quiet.

35. I will interpolate further facts when I come to analyse the issues arising in these applications. Out of fairness to the Defendants, I should emphasise that at trial some of these facts would be contested. For example, Mr Ecclestone does not accept that the interview published in March 2023 is a true and accurate reflection of his state of mind.

AN OUTLINE OF THE RE-AMENDED PARTICULARS OF CLAIM

36. Draft Re-Am PoC were served in advance of the hearing but no application to re-amend was made until the very end of the hearing itself. Ms Kendrah Potts for Mr Massa relied on the decision of the Court of Appeal in *Bhamani v Sattar* [2021] EWCA Civ 243, at para 62 (per Peter Jackson LJ) in support of the submission that Part 24 applications are determined on the evidence and not the pleadings, and that late amendments should ordinarily be allowed if they reflect a case that has a real prospect of success. I do not interpret Peter Jackson LJ as holding that on a Part 24 application the pleadings should be placed to one side with the focus being entirely on the evidence. Rather, the pleadings provide the necessary analytical framework for the court's examination of the evidence, and exactly how a party chooses to formulate his case will always be relevant.

37. The Defendants had sufficient time to address the new points raised, and did not oppose the application to re-amend, without prejudice to their contention that these new points did not raise a case that should survive strike out and/or reverse summary judgment.

38. A detailed examination of the Re-Am PoC will be provided later, but by way of summary, Mr Massa advances the following claims against the Defendants. To make sense of these claims at this stage, I need to summarise them in this sequence. First, there is a claim in breach of contract against the FIA alone governed by French law. Secondly, there is a claim in the tort of inducing breach of contract against FOM and Mr Ecclestone, governed by English law. Thirdly, there is a claim in the tort of conspiracy against all three Defendants, governed by English law. More particularly, the conspiracy relied on is an unlawful means conspiracy. Mr Massa's primary case as to the unlawful means is that the FIA breached contractual obligations owed to him. His alternative case is that the FIA breached contractual obligations owed to its Members. Finally, there is a claim brought against the FIA in tort founded on the breaches of duty owed by the FIA under its Statutes; in the alternative, these breaches are also a (separate) foundation of Mr Massa's unlawful means conspiracy.

39. As for Mr Massa's case on causation, damages and other relief, he contends that but for the breaches of duty relied on, the FIA would have investigated the crash in late 2008 and before Mr Hamilton received his award in Monaco in December. The WMSC, alternatively the ICA on appeal, would either have annulled the results of the Singapore Grand Prix altogether, or would have adjusted the results such that points were awarded to reflect the position immediately before the crash; alternatively, Mr Massa has lost the chance of either of those favourable outcomes. It is obvious on the arithmetic at least that on either scenario Mr Massa would have won the 2008 F1 Drivers' Championship.

40. Mr Massa's damages claim is predicated on his winning the 2008 Drivers' Championship, alternatively losing that chance. It includes a claim for £64M reflecting the difference in salary he would have received in subsequent years and the loss of sponsorship and other commercial opportunities.

41. Further, Mr Massa claims to be entitled to the following declarations:

(1) A declaration that the FIA acted in breach of its own regulations in failing to investigate the circumstances of the crash promptly in 2008;

(2) A declaration that if the FIA had not acted in breach of its own regulations, it would have cancelled or adjusted the results of the Singapore Grand Prix with the consequence that Mr Massa would have won the Drivers' Championship in 2008.

42. The issues arising on Mr Massa's pleaded case, falling for resolution in these applications, are four in number.

43. First, the Defendants say that the claims in breach of contract and breach of duty are unsustainable, because the duties relied on do not exist and/or did not create rights enforceable by Mr Massa. This has been described as "the Contract Ground", a taxonomy devised before the Re-Am PoC advanced a new and additional breach of duty ground which at least in part does not depend on the existence of a contractual relationship between Mr Massa and the FIA. Breach of contract is a thread that passes through the conspiracy and inducement claims which are encompassed by the Contract Ground. The claim in breach of contract against the FIA I will be calling the "pure contract claim".

44. Secondly, the Defendants say that any cause of Mr Massa's alleged losses was his own failure to appeal to the ICA in time after the WMSC decision was promulgated in September 2009 ("the Time Limit Ground").

45. Thirdly, the Defendants say that all the claims are time-barred under, as appropriate, English and French law ("the Limitation Ground").

46. Fourthly, the Defendants say that the Court would never grant the declarations sought ("the Declarations Ground").

47. I now turn to explore these four grounds in more detail.

THE CONTRACT GROUND

The Regulatory Framework

48. As Mr Quest submitted, the Contract Ground concerns the proper meaning and effect of the FIA's Statutes of 26 October 2007 ("the Statutes"), the International Sporting Code of 20 December 2007 ("the Sporting Code"), the F1 Sporting Regulations of 19 May 2008 ("the Sporting Regulations"), and the Super Licence issued to Mr Massa on 29 February 2008 ("the Super Licence"). The Super Licence imposed on Mr Massa the obligation to abide by the terms of the Sporting Code and the Sporting Regulations, and permitted him to enjoy the "rights, prerogatives and advantages" resulting from their application to him. It is common ground that the Super Licence was the basis of the contractual relationship between Mr Massa and the FIA. It is also common ground that the Statutes were not referenced in the Super Licence and were not incorporated into the contract between Mr Massa and the FIA. He cannot, therefore, rely on them to found the pure contract claim. However, the Statutes are relevant to the correct interpretation

of the Sporting Code which is made under them. They are also relevant to one formulation of the unlawful means conspiracy claim as I will explain in due course.

49. Article 2 of the Statutes provided in material part:

> "The object of the FIA shall be to establish a union between its members, chiefly with a view to:
>
> 1) Maintaining a world-wide organisation upholding the interests of its membership in all international matters concerning automobile mobility and tourism and motor sport.
>
> 2) Promoting freedom of mobility through affordable, safe, and clean motoring, and defending the rights of consumers when travelling by automobile.
>
> 3) Promoting the development of motor sport, enacting, interpreting and enforcing common rules applicable to the organization and running of motor sport events.
>
> 4) Promoting the development of the facilities and services of the Member Clubs, Associations and Federations of the FIA and the co-ordination of reciprocal services between Member Clubs for the benefit of their individual members when travelling abroad.
>
> 5) Exercising jurisdiction in respect of disputes of a sporting order and any disputes which might arise between its Members, or in relation to any of its Members having contravened the obligations laid down by the Statutes, the International Sporting Code and the Regulations.
>
> 6) Preserving and conserving all documents concerning world motoring in order to trace its History."

50. Article 3 of the Statutes provided that the Members of the FIA comprised Clubs, Associations and Federations, including ASNs. Mr Massa as a driver was not a Member. By Article 4 of the Statutes, the General Assembly of the FIA:

> "… shall be the sole international body governing motor sport, that is to say it shall hold the exclusive right to take all decisions concerning the organization, direction and management of International Motor Sport."

51. Article 7 of the Statutes stipulated that the WMSC a Committee of the FIA.

52. I asked Mr Quest to identify the provision in the Statutes which empowered the FIA to enact the Sporting Code. He directed my attention to Article 4, but the passage I have just cited does not appear to create an express power. Nothing really turns on this: maybe there is an implied power; and it is clear that once enacted (under whatever legal source), the WMSC is responsible for keeping the Sporting Code under review, with

the General Assembly of the FIA having power to modify it under Article 9(12) (see also Article 16(8)).

53. Article 16 of the Statutes provides:

> "**Terms of Reference of the World Motor Sport Council**
>
> (1) To see to the enforcement of the Statutes and the International Sporting Code."

54. Article 23 of the Statutes addresses the functions of the ICA. It is the final appeal body from various decisions, including those made by stewards (see Article 141 of the Sporting Code below) where the parties have decided not to submit an appeal to any relevant National Court of Appeal, and those made by the WMSC. There are restrictions in this second category of case which it is unnecessary for me to examine.

55. Under Article 27, the WMSC may directly impose the sanctions provided for in the Sporting Code.

56. Both Articles 1 and 2 of the Sporting Code, headed "International regulations of motor sport" and "International Sporting Code" respectively, lie within Chapter I, "General Principles":

> "1. The … FIA shall be the sole international sporting authority entitled to make and enforce regulations for the encouragement and control of automobile competitions and records, and to organise FIA International Championships and shall be the final international court of appeal for the settlement of disputes arising therefrom …
>
> 2. So that the above powers may be exercised in a fair and equitable manner the FIA has drawn up the present "International Sporting Code" (the Code). The purpose of this Code and its appendices is to encourage and facilitate international motor sport. It will never be enforced so as to prevent or impede a competition or the participation of a competitor, save where the FIA concludes that this is necessary for the safe, fair or orderly conduct of motor sport."

57. Under Article 141 of the Sporting Code, stewards are independent officials having "supreme authority for the enforcement of the [Sporting] Code, of national and Supplementary Regulations and of programmes" at Grand Prix. The FIA nominated three stewards for the 2008 Singapore Grand Prix and the SMSA nominated a fourth. Thus, any protest lodged by Ferrari at or following the Singapore Grand Prix within relevant time limits would have been to the stewards with a right of appeal to the national tribunal appointed by the SMSA and/or the ICA. Plainly, although not expressly articulated, stewards are empowered to investigate. Presumably, their usual means of doing that during the course of a practice session, qualifying or the race itself is by reviewing visual and audio footage and, if necessary, electronic data.

58. Article 151 of the Sporting Code, headed "Breach of Rules" within Chapter IX, "Penalties", provided:

> "Any of the following offences in addition to any offences specifically referred to previously, shall be deemed to be a breach of these rules:
>
> a) All bribery or attempt, directly or indirectly, to bribe any person having official duties in relation to a competition or being employed in any manner in connection with a competition and the acceptance of, or offer to accept, any bribe by such an official or employee.
>
> b) Any action having as its object the entry or participation in a competition of an automobile known to be ineligible therefor.
>
> c) Any fraudulent conduct or any act prejudicial to the interests of any competition or to the interests of motor sport generally."

The instant case is concerned with sub-paragraph (c).

59. Any breach of the Sporting Code or its Appendices may be subject to Penalties. Article 152 provides in material part:

> "Any breach of this Code or the Appendices thereto, of the national rules or their appendices, or of any Supplementary Regulations committed by any organiser, official, competitor, driver, or other person or organisation may be penalised or fined.
>
> Penalties or fines may be inflicted by the stewards of the meeting and ASNs as indicated in the following articles.
>
> …"

60. Articles 152 and 153 make express provision for penalties to be imposed by stewards and the ASNs. The WMSC or other organs of the FIA are not specifically mentioned. Articles 16 and 27 of the Statutes are not relied on by Mr Massa, but even without them it is clearly arguable that the first sentence of Article 152 (cited above) is wide enough to empower the WMSC to impose sanctions in appropriate cases, in particular when the jurisdiction of the stewards has lapsed. The first sentence of Article 169 (not drawn to my attention by the parties) also implicitly acknowledges the FIA's power to impose sanctions.

61. Chapter XII of the Sporting Code dealt with "Protests". The right to protest lay only with a competitor: i.e. a team rather than a driver. By Article 179(b), under the rubric "Right of review":

> "If, in events forming part of a FIA Championship, a new element is discovered, whether or not the stewards of the meeting have already given a ruling, these stewards of the meeting or, failing this, those designated by the FIA, must meet on a date

> agreed amongst themselves, summoning the party or parties concerned to hear any relevant explanations and to judge in the light of the facts and elements brought before them.
>
> The right of appeal against this new decision is confined to the party or parties concerned in accordance with the final paragraph of Article 180 and the following Articles of this Code.
>
> Should the first decision already have been the subject of an appeal before the National Court of Appeal or before the International Court of Appeal, or successively before both of these courts, the case shall be lawfully submitted to them for the possible revision of their previous decision.
>
> The period during which an appeal in review may be brought expires on 30 November of the current year."

62. This provision is not free from interpretative challenge. It was the provision, read in conjunction with Article 152, which Mr Mosley invoked in order to bring what he considered to be a "new element" (i.e. Mr Piquet Jr's sworn statement) to the attention of the stewards of the Belgian Grand Prix who were to carry out further inquiries availing the FIA's investigation. On one reading of Article 179(b), this provision is not about the FIA instigating an investigation but the stewards reviewing a case of which they are seized, whether or not they have already given a decision, in light of new evidence.

63. The second sub-paragraph of Article 179(b) is not free from difficulty either. It is Mr Massa's case that but for the conspiracy (I précis) the crash allegations would, one way or another, have come before stewards before the end of November 2008, either on a free-standing basis or as part of an investigation instigated by the FIA. It is also Mr Massa's case that had the matter come before the WMSC and its decision been adverse to him, he would have challenged that decision as a concerned party by way of appeal to the ICA. The Defendants do not dispute the final stage of this analysis for these present purposes; indeed, they rely on it in support of their submissions on the Time Limit Ground. In those circumstances, the second paragraph of Article 179(b) merits no further analysis.

64. Finally, Article 4 of the Sporting Regulations provides:

> "**Licences**
>
> All drivers, competitors and officials participating in the Championship must hold a FIA Super Licence. Applications for Super Licences must be made annually to the FIA through the applicant's ASN."

Relevant Principles of French Law: An Overview

65. The FIA's constitutional and regulatory instruments are subject to French and not to English law. Mr Massa's French law expert is Maître Romain Soiron and the Defendants collectively rely on the expert evidence of Professor Jean-Sébastien Borghetti. At the material time, the primary source for French contract law was the Code Civil of March 1804 ("the CC"), as amended from time to time (it was superseded by a new Code Civil in 2016). In my view, the following provisions of the CC are relevant for present purposes:

> "Article 1134 CC: Legally formed agreements take the place of law for those who have made them … They must be performed in good faith".
>
> Article 1135 CC: Contracts bind not only as to what is expressly stated, but also as to all consequences that fairness, usage, or law attach to the obligation by its very nature.
>
> Article 1147 CC: The debtor shall be liable, if applicable, for the payment of damages, either due to non-performance of the obligation or due to delay in performance, whenever he cannot justify that the non-performance arises from an external cause that cannot be attributed to him, provided that there is no bad faith on his part.
>
> Article 1156 CC: In contracts, one must seek the common intention of the contracting parties, rather than stopping at the literal meaning of the terms.
>
> Article 1158 CC: Words susceptible of two meanings must be taken in the meaning that best suits the subject matter of the contract.
>
> Article 1160 CC: the contract must include customary clauses, even if they are not expressly stated therein.
>
> Article 1161 CC: All the clauses of the agreements are interpreted with reference to each other, giving each the meaning that results from the contract as a whole."

(I have set out Maître Soiron's translations with a couple of minor changes.)

66. In relation to Article 1156 CC, it is common ground that evidence from before and after the date of contracting is admissible for the purposes of establishing the common intention of the parties.

67. Given the parties' submissions, I consider that the issues arising in the context of these applications on the competing expert evidence are as follows:

(1) whether the Sporting Code should be interpreted, in light of Articles 1135, 1156, 1158 and 1161 of the CC in particular, in a way that fixes the FIA with a duty to investigate serious wrongdoing.

(2) whether, in light of Articles 1134, 1135 and 1160, the contract between Mr Massa and the FIA was subject to an implied term that the FIA would investigate serious wrongdoing.

(3) whether, if any relevant term is not enforceable at the suit of Mr Massa in the case of its breach, Mr Massa may rely for the purposes of his two tort claims governed by English law on the fact that another party in contractual nexus with the FIA could enforce that term.

(4) whether Mr Massa may advance a separate tort claim in French law notwithstanding the existence of a contract.

(5) whether two rules of French law, viz. the "Bootshop Rule" and the "Non-Cumul Rule", preclude either or both of (3) and (4) above.

How Mr Massa's case is Formulated in the Re-Am PoC

68. Mr Massa's primary case is that Mr Piquet Sr informed Mr Whiting that the crash was deliberate. His alternative case is that Mr Piquet Sr informed Mr Whiting that the crash may have been deliberate. On both iterations, Mr Massa's case is that Mr Whiting informed Mr Mosley and that Mr Whiting and/or Mr Mosley informed Mr Ecclestone (see paras 14-16). This information was then deliberately concealed (see para 17) by the conspiracy whose terms I have already summarised (see para 18).

69. In his March 2023 interview, Mr Ecclestone admitted the conspiracy and that the conspirators knew in 2008 that the crash was deliberate (see para 22).

70. In addition to the contractual provisions set out in the FIA's Statutes and the Sporting Code, Mr Massa avers a contractual duty to preserve the fairness, equity, integrity and regularity of sporting competitions. Here, reliance is placed on Articles 1135 and 1160 of the CC and various overarching principles (see para 38A).

71. Para 40 of the Re-Am PoC provides:

> "40. The effect of the provisions in the preceding paragraphs 37 and/or 38A above is that:
>
> a. The FIA was contractually obliged under its own regulations promptly to investigate allegations of serious wrongdoing, such as a deliberate crash at the Singapore Grand Prix. As the WMSC Decision noted, the deliberate crash at the Singapore Grand Prix constituted a most serious form of wrongdoing.
>
> b. on discovering "*a new element"* relating to the Singapore Grand Prix, which would include information from Mr Piquet Sr that Mr Piquet Jr crashed deliberately "*to meet on a date agreed amongst themselves, summoning the party or parties concerned to hear any relevant explanations and to judge in the light of the facts and elements brought before them"*.

> c. The FIA was obliged not to conceal potential serious wrongdoing." (italics in original)

72. Para 40A of the Re-Am PoC provides:

> "40A. Further or alternatively, pursuant to its Statutes, the FIA owed duties to uphold the interests of its membership (Article 2, Statutes), promote the development of motorsport (Article 2, Statutes), enforce regulations for the encouragement and control of automobile competitions and records (Article 1, Sporting Code) and exercise its powers in a *fair and equitable manner"* and so as not to *"prevent or impede a competition* " (Article 2, Sporting Code)." (italics in original)

73. The case covered by what the parties have called the Contract Ground is advanced in the following ways. First, there is a straightforward claim based on the FIA's breach of its obligations under the contract. As I have said, this is the pure contract claim. The breach inhered in the failure to investigate in 2008 (see para 41). Secondly, there is a similar breach of contract claim based on Article 151 of the Sporting Code (with identical particulars of breach) (see para 42). Thirdly, it is averred that the same breaches of contact amounted to what are described as "Breaches of Duty" owed by the FIA under its Statutes (see para 42A). Although not fully spelt out, these "Breaches of Duty" are tortious. Fourthly, there is a claim based on what are said to be "Additional Breaches" of contractual obligations owed by the FIA to its Members (see para 42B).

74. The case in the tort of inducing breach of contract, brought only against FOM and Mr Ecclestone, is straightforward enough. It is based on the proposition that Mr Ecclestone decided with Mr Mosley to bring about a breach by the FIA of its contractual obligation to investigate (see paras 43 and 44).

75. In addition, Mr Massa pleads an unlawful means conspiracy against all three Defendants. Para 48 of the Re-Am PoC provides:

> "48. The unlawful means carried out pursuant to the Conspiracy were (i) the Breaches of Contract [paras 41 and 42]; and/or (ii) Mr Ecclestone's and/or FOM's actions in inducing the Breaches of Contract … [paras 43 and 44]; and/or (iii) the Additional Breaches [para 42B]; and/or (iv) the Breaches of Duty [para 42B]"

76. So, the "Breaches of Duty" feature in two ways. First, they are said to found a standalone claim in tort (see para 42A). Secondly, they are relied on as the unlawful means which are an essential element of the unlawful means conspiracy. The "Additional Breaches" claim features in only one way. It does not found a standalone claim in breach of contract, but these breaches (see para 42B) are relied on as the unlawful means which, as before, are an essential element of the unlawful means conspiracy.

77. Any further analysis of the Re-Am PoC is not required. Subject only to the Time Limit Ground, breach, causation and loss are not in issue.

Pausing and Taking Stock

78. As I hope is clear by now, what is described by the parties as "the Contract Ground" entails an element of ellipsis. The Contract Ground also covers the two tort claims, governed by English law. The reason why the term has been used is that both tort claims depend for their existence on a breach of contract.

79. With respect to counsel, the Re-Am PoC is a Byzantine pleading which requires much effort to unpack. Something far simpler might have been attempted. To my mind, this whole case is about an alleged conspiracy: the actions of two individuals acting in concert to cover up egregious wrongdoing. The alternative formulation of inducing a breach of contract is predicated on exactly the self-same conspiracy, although in certain respects this claim is less complex because it has fewer components. Here, Mr Massa needs to prove either that Mr Ecclestone induced a breach of the contract between him and the FIA, or a breach of contract between the FIA and its Members. Subject to this refinement, I may take the two tort claims governed by English law together.

80. The pure contract claim is problematic, and Mr De Marco came close to accepting as much when he said in the different context of limitation that such a claim would not have been worthwhile in 2009. In my opinion, it is not worthwhile now. The answer to the pure contract claim viewed in isolation from the alleged conspiracy is that the FIA decided not to investigate because it did not have a statement from Mr Piquet Jr. Unless it could be said that the duty to investigate in the face of an allegation of serious wrongdoing was absolute, which I strongly doubt, that would have been a reasonable course of action. Once the conspiracy is brought into consideration, however, that answer falls away for present purposes; but the point remains this: the *raison d'être* of the pure contract claim is to supply a necessary plank for the conspiracy claim. Put another way, insofar as the pure contract claim relies on the conspiracy, it adds nothing to the two tort claims.

81. As I have said, the contract claim has two iterations which are both highly relevant to the conspiracy claim. The first iteration is that the FIA owed contractual duties to Mr Massa directly. The second iteration is that the FIA did not owe contractual duties to Mr Massa directly but owed them to third parties, such as the FIA's Members; and these duties (or rather their breach) may be relied on by Mr Massa for the purposes of the unlawful means conspiracy. Both iterations will need to be addressed. They may be slightly different, because the FIA's Statutes are not directly relevant to the first iteration but they are to the second. This is because the FIA's Statutes are incorporated into the contracts between the FIA and its Members. Furthermore, the second iteration is less challenging for Mr Massa because he does not have to establish a breach of duty owed to him.

82. In my judgment, the separate tort claim governed by French law introduces unnecessary layers of complexity, and if I were able to I would be inclined to strike it out. My starting point is that Mr Massa does not need this tort claim (described as his "Breaches of Duty" claim) if he succeeds on the second iteration of his contractual claim (described as his "Additional Breaches" claim). Furthermore, Mr Massa could not in practice

succeed on this tort claim unless all the facts necessary for his "Additional Breaches" claim are established. The tort claim serves no purpose.

83. In addition, the tort claim is not free from difficulty. Professor Borghetti argues that standard principles of French law preclude the possibility of a tort claim where the parties, as here, are in contractual nexus. I examine that contention below.

Discussion of the Contract Ground

The Submissions of the Parties in Outline

84. I do not propose to summarise all of the parties' submissions. The written submissions, copious and detailed, are available for review if this case goes further; and I have endeavoured to do them full justice in the course of preparing this judgment. The oral argument has been transcribed and I have of course studied the transcript.

85. Mr Quest led for the Defendants on the Contract Ground. He helpfully identified the two different ways in which the pure contract claim is advanced by Mr Massa, and I have reflected that in my formulation of the issues (see §67 above). The first is that the FIA's Statutes and the Sporting Code must be interpreted in a manner which imposes this duty (I will call this the "Interpretative Route"). The second is that there must be implied into the contract created by the Super Licence, which incorporates the Sporting Code by reference, a duty to investigate (I will call this the "Implied Term Route").

86. Mr Quest took me through the various provisions of the Statutes and the Sporting Code which I have referenced, and submitted that none of these created a duty to investigate anything, still less "an allegation of serious wrongdoing", whatever that may mean. For example, he argued that the general provisions in Articles 1 and 2 of the Sporting Code are no more than introductory provisions or recitals, and that it is impossible to distil out of them the specific duty that Mr Massa requires. He submitted that Mr Massa's reliance on Articles 151, 152 and 179(b) is misplaced: in particular, these first two provisions are located in a chapter dealing with "Penalties", and can have nothing to do with the position of the FIA itself; and Article 179(b) is concerned with the role of the stewards when asked to review a decision that has either been made or of which they are seized. It does not confer a duty on the FIA to investigate.

87. Mr Quest's overarching submission on all these documents is that they constitute a self-contained framework for the regulation of the sport; that the FIA owes no duties under it; and, that drivers agree to submit to that framework and enjoy no rights themselves under it (as opposed to their teams, which have a right to protest).

88. Mr Quest accepted that evidence of common intention is admissible under Article 1156 of the CC. However, it is Mr Massa's difficulty, he submitted, that he has not pleaded any factual matrix relevant to the issue of common intention, has not given any evidence as to his intention, and has failed to link his assertions about this to particular provisions in the Sporting Code and Sporting Regulations which might be relevant. It follows, as Mr Quest put the matter in his Reply, that Mr Massa is forced back to the literal meaning of the words used.

89. As for the case founded on implied terms, Mr Quest undertook a forensic demolition of Maître Soiron's report. He submitted that, on close analysis, there was no basis for any implied term to the effect that the FIA might owe a duty to investigate serious wrongdoing. Such a term did not ensue from a general obligation to ensure fairness in sport. Mr Mehrzad entered the fray with helpful submissions on the *Lex Sportiva*, the Olympic Charter and the Court of Arbitration for Sport ("CAS").

90. At the beginning of his submissions in reply, Mr Quest contended that the FIA may well owe duties, "perhaps in public or administrative law, or in some arbitral context". However, he observed that the only obligations relied on are those set out under para 40 of the Re-Am PoC.

91. Mr De Marco submitted that the Contract Ground was particularly unsuited to summary disposal. He argued that the Defendants have mischaracterised Mr Massa's case which is not that the result of the 2008 Singapore Grand Prix should be re-opened. He pointed out that the FIA itself recognised that it was under a duty to investigate in 2009, and:

> "… I was very surprised at the defendants' central argument, my Lord, on this point, which with the greatest respect can be summarised as follows: an international sports governing body, whose whole purpose and reason it has power is to protect the integrity of the sport it governs, whose powers are derived from that purpose, that sports governing body itself has no responsibility to those to whom it contracts with and over those who it governs to do what it says on the tin. To govern the sport, to ensure integrity and fairness and prevent manipulation and cheating.
>
> It is a very surprising submission, it's one I have never heard before and it's one that would be dismissed by an English court very easily, there are plenty of cases in English law -- irrelevant to you because we are dealing with French law here -- that would give that short shrift."

92. Ms Kendrah Potts, who led on the Contract Ground, advanced extremely able submissions on Mr Massa's behalf. As for the Interpretative Route, she relied on the following submissions. She drew attention to Articles 1 and 2 of the Sporting Code in support of a submission that the FIA's overarching responsibility to enforce the regulations in a fair and equitable manner carried with it a duty to investigate in appropriate cases. She also relied on the terms of Articles 151, 152 and 179(b) in support of her argument that a duty to investigate arose in circumstances such as these, where a new element was known only to the FIA.

93. Ms Potts drew my attention to the decision of Meade J in *Optis Cellular Technology LLC v Apple Retail UK Ltd* [2021] EWHC 1739 (Pat); [2022] RPC 6, at paras 365-367:

> "365. In any event, the upshot is that I should make an assessment of the common intention of the parties. I may use subjective evidence (e.g. of what the parties actually thought) or objective evidence (e.g. what was the commercial context).

> 366. It was also common ground that the role of the "literal meaning of the words" is constrained in the way set out in art. 1156. I must not "stop" at them. Various texts refer to this in terms that the "spirit prevails over the letter" or "what has been said matters little, only what has been wanted matters", or "we must investigate the common intent of the parties rather than focus on the literal meaning of the terms".
>
> 367. It is therefore clear that French law is materially different from English law. It would be pointless as well as very difficult to try to define the exact scope of the difference and unprincipled to try to work out what the answer would be in English law and then modify it. I must try to work in the same way that a French judge would."

94. Ms Potts also relied on a decision of the High Court sitting in Paris on 5 January 2010. In those proceedings, the FIA stated in terms that it was required to take necessary measures against both Renault and the individual perpetrators.

95. Ms Potts advanced detailed submissions on Articles 1134, 1135 and 1160 of the CC. She accepted that there was no French case she could draw to my attention which supported her argument that a term could be implied from usage and equity, but observed that the absence of authority is not surprising. Her overarching argument was that the sources relied on by Maître Soiron, and which I will be considering in some greater detail below, did not directly bind the FIA but they could nonetheless be deployed as illustrative of the customary rules, in recognition of the integrity, regularity, fairness and equitable nature of sporting competitions being legitimate objectives, which have been habitually applied across a range of sporting contexts. Given, she submitted, that under French law an implication could arise "by any means", Maître Soiron was entitled to rely on these diverse sources – not directly applicable it is true – to the exercise at hand.

Analysis and Conclusions

96. I begin with a number of introductory observations. First, I am not deciding the underlying issue. My task is to decide whether Mr Massa's case has a real prospect of success. In that regard the burden of persuasion is on the Defendants. They have to persuade me that Mr Massa's case on foreign law is "so clearly wrong" that it is fit for summary disposal under CPR Part 24.

97. Secondly, I do not accept Mr Quest's submission that the FIA's belief that it owed an investigative duty, and was discharging it, is just some massive jury point. In my judgment, it is capable of throwing light on the FIA's intention, although I accept that would not be determinative of the parties' common intention. So, the references in the WMSC report of September 2009 to "the interests of the sport" (para 9) and the FIA's role as "guardians of the sport" (para 36) are not irrelevant. Indeed, the FIA, speaking through the WMSC, appear to have regarded it as axiomatic that it should investigate in these circumstances. Had the FIA refused to do so in 2009, I consider that it is likely

that it would have faced litigation, probably in the French courts, by an aggrieved person with standing to bring a private law claim. I draw the inference that every step the FIA and then the WMSC took in 2009 was under close legal advice. I also draw an inference from Renault's failure to take any point before the WMSC that the latter did not have jurisdiction in these circumstances because the investigation instigated by the FIA was *ultra vires* its powers. Renault was not a Member of the FIA, but in contrast with the individual culprits it was a licence holder.

98. Ms Potts drew my attention to Judgment No 09/16490 issued by the High Court of Paris, 5th Chamber, on 5 January 2010. That court was seized of applications brought by Messrs Briatore and Symonds that the WMSC's decision should be set aside because they were neither Members nor licence holders of the FIA. Those applications succeeded on the narrow and simple basis that the WMSC could not exercise jurisdiction over these individuals. Ms Potts relied on the High Court's decision not for its ruling on that narrow issue but because the FIA advanced the following clear submission:

> "the decision is in accordance with the statutes and regulations of the FIA which required it to take the necessary measures to protect the physical integrity of the persons present on the circuits and to ensure compliance with the rules relating to motor racing, with regard to the claimants as well as to anyone else; it has the discretionary power to choose its members and determine the conditions they must meet; it can refuse the issue of a super-licence and to grant access to the areas placed under its control; it has used its powers wisely; it is moreover subject in general to the obligation to ensure safety during the events it organises; ***the [WMSC] was competent to render the criticised decision, with the international sports code for which it is responsible to apply authorising the taking of any measures likely to allow motor sport to be practised in complete safety, fairness or regularity (article 2)*** …" [my emphasis]

99. The FIA adopts a different stance before me. The FIA did not consider it necessary to develop submissions in these proceedings on the clear contrary case it had advanced before the Paris Court. Furthermore, at trial the Court would have the benefit following disclosure of the written submissions the FIA made in Paris, as well as any assistance the FIA might give on the role it may have played in relation to other scandals in the sport, assuming that there have been any.

100. The primary case advanced by Mr De Marco, consistent with the FIA's submissions advanced in Paris, is that the FIA itself carried out the investigation and that the stewards were acting under its aegis. I consider that he is right about that. On this primary case, the WMSC's references at para 15 of its decision to Articles 179(b) and 152 of the Sporting Code were probably unnecessary. These Articles of the Sporting Code are relevant to Mr Massa's alternative case, and I will come to consider them in that context below.

101. As I have pointed out, Mr Quest, although not adopting a definitive position, suggested that the FIA may owe duties yet these arise only under public law or in an arbitral

context. He did not explain the latter, and provided no authority for the former. If the position were governed by English law, a domestic body such as the FIA exercising contractual powers would not be regarded as susceptible to judicial review: see, for example, *R v Football Association Ltd, ex parte Football League Ltd* [1993] 2 All ER 833. No evidence has been filed as to what the position is or might be under French Law. In those circumstances, I cannot assume that the FIA could be subject to an administrative law procedure in France (I am aware that there are French Administrative Courts), and it is noteworthy that *Briatore v FIA* appears to be a private law case.

102. I also turn Mr Quest's submission against him. In my judgment, Mr Massa has a real prospect of establishing at trial that the duties the FIA have accepted it may owe are justiciable only within a contractual framework. That does not mean of course that Mr Massa is entitled to bring a claim, but it is at least some indication that relevant duties exist.

103. My final introductory observation touches on an authority relied on by Ms Potts. In *Modahl v British Athletic Federation Ltd* [2001] EWCA Civ 1447; [2002] 1 WLR 1192, the Court of Appeal (Mance, Latham and Jonathan Parker LJJ) held that a contractual obligation existed between Ms Modahl and the governing body. Ms Potts did not need this authority for that proposition: here, we have the Super Licence. Ms Potts' reason for citing *Modahl* was to support Mr De Marco's submission (see §91 above) that the FIA owed an overarching duty to ensure integrity and fairness, and to prevent manipulation and cheating. My reading of Latham LJ's judgment is that an implied duty to act fairly in connection with the disciplinary process was owed to Ms Modahl, but on the facts of the case it was discharged by the inquiry and appeal process laid down in the rules. This case does lend some support to Mr Massa's high-level argument, although the implied duty to act fairly arose in the context of a disciplinary procedure that the British Athletics Federation had implemented under its procedures.

104. Mr De Marco and Ms Potts were unable to draw to my attention a case decided in this jurisdiction which vouched the duty on which reliance is placed. However, I have found several references in textbooks (see, for example, Wade & Forsyth on *Administrative Law*, 11th edition, page 543) which do support a general principle that sporting bodies owe an implied duty to act fairly. I consider that it is at least reasonably arguable that in this jurisdiction such a duty would encompass an obligation to act fairly as between competitors, and to take proactive steps to ensure the integrity of competition. That proposition is not counter-intuitive.

105. I turn now to address the Interpretative Route. Under Mr Massa's Super Licence, he enjoyed the "rights, prerogatives and advantages" enuring under the Sporting Code and the Sporting Regulations. However, the reference to "rights" cannot permit a process of reasoning which assumes what needs to be proved. Mr Massa *did* enjoy rights, including the right to participate under the panoply of rules laid down. But that does not mean that the FIA owed the duty at issue, or, if the FIA did owe a duty to investigate, Mr Massa enjoyed a correlative right to see that duty enforced and to sue in the event of breach.

106. As I have said, Mr Quest's overarching submission was that the FIA has created a self-contained regime for the adjudication of disputes and the imposition of sanctions, and

that nothing within that regime imposes a duty on the FIA to instigate a process. Instead, the FIA, acting through its own organs and independent stewards, operates reactively to matters drawn to its attention within a race or whatever. There is some force in that submission, and I have little doubt but that it caters for the vast majority of disputes that fall to be resolved under the FIA's auspices.

107. Mr Quest's granular submissions on the text of the Sporting Code were also quite persuasive, albeit predicated on the sort of textual approach that an English lawyer would conduct. His submissions became less persuasive the more I reflected on them after the hearing. However, I continue to have in mind his argument that Articles 1 and 2 of the Sporting Code are essentially preambular in nature and do not impose specific obligations; that Article 141 makes the stewards the principal focus of adjudication in the event of dispute; and, that Articles 151 and 152, appearing under the heading "Penalties", do not provide that the FIA itself is under a duty to investigate. Finally, there is some force in Mr Quest's textual submission that Article 179(b) is confined to the narrow and specific circumstances of the stewards having made a decision or considering whether to make a decision, and a new element (brought to their attention by whatever means) triggering a duty in the stewards to undertake a review.

108. However, I have come to the clear conclusion that this is not the only possible approach to these provisions. How a French lawyer would apply the "General Principles" set out in Articles 1 and 2 of both the Statutes and the Sporting Code is unclear. If, as I have held, stewards have power to investigate under Article 141 of the Sporting Code as a necessary incident of the power to impose sanctions, a similar analysis might well lead a civil lawyer to conclude that the FIA, acting through the WMSC or otherwise, may exercise a similar power when enforcing the Sporting Code and, for example, imposing sanctions under Article 152 of the Code for a violation of Article 151(c).

109. I have reflected further on Article 179(b). Even adopting an English law approach, I can see force in the contention that Article 179(b) is capable of having a wider remit than I previously adumbrated. By that I mean, it applies whether or not a protest has been made to stewards, and contemplates that the FIA itself may have to appoint different stewards. Thus, if the new element comes to light significantly after the race has concluded, the FIA may well have a role in deciding whether to bring it to the attention of new stewards at all. That may require the FIA to set in motion an investigation, as happened in the summer of 2009.

110. As for Mr Quest's submission that in the absence of any evidence as to common intention, one is forced back to the literal meaning of the words used, initially I was attracted to the simple logic of that argument. I remind myself that the Super Licence created what the French (and Diplock LJ, as he was then, first in *Hong Kong Fir Shipping Company v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26, and then with more explanation in *United Dominions Trust (Commercial) Ltd v Eagle Aircraft Services Ltd* [1968] 1 WLR 74, at 82H) choose to call a "synallagmatic" contract (per Article 1102 of the CC) rather than a "unilateral contract" (per Article 1103). However, the Super Licence is a particular species of bilateral contract. Its terms were not negotiated by both parties, as they would have been in a paradigm commercial context. Rather, the regime has been enacted, and amended from time to time, by one party, the FIA, leaving it to the driver either to accept what is on offer (by signing the Super Licence) or walking away. The driver has not contributed in any way to the formulation of the

regime in all its various manifestations; and his intention is, therefore, nothing to the point. In these circumstances, I would want to know what a French lawyer would say about the operation of the concept of "common intention" in a case such as the present, but that advantage has not been afforded to me. Further, if the "spirit" prevails over the letter, as Meade J explained in *Optis*, I would want further assistance as to exactly what that means in practice.

111. In any event, Ms Potts made the extremely powerful point that the experts in French law have not opined on what any of these specific provisions mean, either individually or in combination. In my judgment, the wording of the provisions I have analysed may appeal to an English lawyer but they are far from being so clear that I can rule out the real prospect that a French lawyer, working of course from the French text which has primacy, would approach this exercise somewhat differently.

112. In my view, the following specific issues arise:

(1) how Article 1161 of the CC applies to the body of provisions under consideration.

(2) the interpretation and application of Articles 1 and 2 of the Statutes and Articles 1 and 2 of the Sporting Code, in light both of Article 1161 and more generally. In particular, would a French lawyer regard these provisions as being merely in the nature of recitals? If so, or even if not, how if at all do these general principles govern the interpretation of later provisions?

(3) the correct interpretation of Articles 151, 152 and 179(b) in the light of the foregoing. On Article 179(b), the issue which particularly interests me is whether, if the FIA has express power to appoint different stewards if a new element comes to its attention, there is a companion power or duty to investigate the credibility of that new element.

(4) the correctness of the WMSC decision of September 2009 in the context of jurisdiction, and of the concessions made by the FIA before the High Court of Paris.

Ms Potts did not rely on Articles 16 and 27 of the Statutes and I therefore say nothing more about them.

113. The parties have used throughout the language of "duty" but my preferred analysis, subject to correction by a French lawyer, would be slightly different although I arrive at the same end point. The first question is whether the FIA had power to initiate an investigation, either in its own right or through the involvement of stewards. In my judgment, there is a more than respectable argument that the FIA did have such a power in light of the provisions I have referenced. Under English law, where a power or discretion exists in any regulatory context, the Courts would not intervene to check its exercise (or non-exercise) unless it were clearly established that the regulator was acting unreasonably. In this latter circumstance, the failure to exercise the power may be envisaged as a duty. Short of that, a failure to exercise a power would not ordinarily be justiciable. At the moment, I fail to see why a French lawyer would not envisage the issue in similar terms.

114. Regardless of my preferred analysis, I am content to proceed on the basis of Mr Massa's formulation that the FIA owed a duty to preserve the fairness, equity and integrity of the sport, and to enforce the Sporting Code and Sporting Regulations against the backdrop of that duty. That formulation still leaves it open for determination in any particular case whether the FIA was in breach of duty by failing to investigate, but that is not an issue currently before me.

115. Mr Quest submitted that the concept of a "serious allegation of wrongdoing" is too diffuse and inherently uncertain to be justiciable. On my preferred formulation, there is no difficulty, because any power to investigate would be subject to a range of considerations which it would be for the FIA to weigh up in any given case. Those considerations would include the seriousness of the allegation of wrongdoing. On Mr Massa's formulation, there would still be questions of fact and degree because on no sensible view could the duty be absolute; and the issue of breach is, I repeat, not presently before me. These potential complications are, in any event, largely academic in the present case. If the true facts were as set out under para 7 of the WMSC ruling, the decision not to investigate in 2008 was reasonable. If, on the other hand, there was a conspiracy to prevent the truth coming out in connection with an underlying allegation of serious wrongdoing, at this stage at least I have no real difficulty with the proposition that the non-exercise of the power could not be supported, alternatively that the FIA had violated its duty to preserve the fairness etc. of the sport. The same sort of analysis would apply if the FIA had unreasonably refused to investigate in 2009 once it had Mr Piquet Jr's offer to give evidence.

116. I emphasise that I am continuing to assess whether Mr Massa's case has a real prospect of success. In that same context, I should add that the Defendants' recourse to "floodgates" presented me with a somewhat hyperbolic scenario. Breaches of the Sporting Code and Sporting Regulations will usually occur in plain sight, whether in the context of a race or otherwise. I note that there is a separate regime for doping offences (which do not usually occur in plain sight), but I need not examine that. The present case is exceptional, because on Mr Massa's case the FIA was itself party to a cover-up which ensured that there could not be an investigation.

117. Overall, for all these reasons I have concluded that Mr Massa has a real prospect of persuading the Court that the FIA owed a duty to investigate in 2008 via the Interpretative Route. However, that does not mean that the duty in question was owed to Mr Massa. I will have to address that issue once I have analysed the Implied Term Route.

118. The Implied Term Route requires an examination of Articles 1134, 1135 and 1160 of the CC in the context of the regulatory schema under consideration. Here, the French law experts have provided greater assistance.

119. Both Mr Quest and Mr Mehrzad provided a detailed and helpful critique of Maître Soiron's report on the issue of implied terms. In many respects, their criticisms struck home. For example, at para 22 of his report, Maître Soiron states that "French Courts have consistently relied on Article 1135 of the CC to address a wide range of situations". The situations he then references have nothing to do with sport. At para 24, Maître Soiron continues:

> "Otherwise, in the event an organiser and/or an entity responsible for implementing the applicable regulations of a sporting competition fails to uphold and implement the fundamental principles of integrity and fairness of sporting competitions, any competitions organized by the latter would cease to qualify as a "sporting competition" and would instead be reduced to a form of circus (or any other spectacle), devoid of the regulatory safeguards inherent to sporting competitions."

The language deployed is somewhat emotive but the underlying point is a fair one.

120. Then, at para 25:

> "Therefore, in the context of a sporting competition, both usage and equity imply that the organiser and any entity responsible for the enforcement and implementation of applicable regulations adhere to their obligations to ensure the fairness, equity, integrity, and regularity of such competitions. Several decisions support the existence of this well-established principle. For example …"

121. The examples given do not support Maître Soiron's contention that Articles 1135 and 1160 may operate to imply the terms which are asserted. Rather, what is provided is a list of administrative and constitutional law cases which are not in point, a decision of the CAS whose regime did not apply to the FIA in 2008 and is not a source of French law, a reference to the Olympic Charter which did not bind the FIA in 2008/9, and a reference to the *Lex Sportiva* which is a concept developed by CAS and does not apply to the FIA for the reason already explained.

122. These considerations, amongst others, lead Professor Borghetti to conclude as follows:

> "38. After having carried out careful research, I am not aware of any French law statute or usage whereby a term to preserve the fairness, equity, integrity and regularity of sporting competitions for which the sporting body is responsible, or a term imposing on a sporting organisation to promptly investigate any newly discovered fact that may constitute a breach of the "regulations in force", should be implied into contracts between sporting bodies and sporting participants.
>
> 39. I am not aware either of any case in which a French court found that any of those terms had been implied into such a contract by the parties themselves. I am also not aware of, and authorities to which Mr Soiron refers in his report do not mention either, any case in which a French court has implied into a contract between a sporting body and a sporting participant a contractual term to preserve the fairness, equity, integrity and regularity of sporting competitions for which the sporting body is responsible, or a term imposing on a sporting organisation to

> promptly investigate any newly discovered fact that may constitute a breach of the "regulations in force"."

123. These are powerful arguments, although Professor Borghetti has not been asked to comment on the particular factual structure with which I am concerned. Furthermore, and as Ms Potts submitted, one possible explanation for the absence of case-law on this issue is that the existence of a conspiracy (as an assumed fact for these purposes) or of similar egregious conduct not occurring in plain sight is so unusual that the French Courts are being invited to traverse *terra incognita*.

124. I should mention Mr Mehrzad's submissions about *Lex Sportiva*. He was correct in submitting that the FIA is not strictly speaking subject to the CAS. Mr Mehrzad drew my attention to paras 312 and 313 of *Sports Law*, 7th edition, by Buy and others:

> "312. Proposal for a definition. – Sum of *leges sportivae*, "*set of rules governing the organisation of sporting events*", transnational sports law, transnational sports law developed by the CAS, "*set of rules* of *anational law that should apply to free the law applicable to the merits of sports disputes from any influence of the various national laws*", the *Lex Sportiva* is a bit of all of these things at the same time. But since *lex sportiva* is the transnational law of sport, this is not the whole of sports law. It is a set of written and unwritten, concordant rules, structured by transnational guiding principles, highlighted by the arbitration bodies of sport, first and foremost the CAS. In this way, it spares the person who renders sports justice the often very difficult task of explaining the normative foundations of its reasons and solutions. It is a "refined form of *ipse dixit*".
>
> **The content of the *lex sportiva***
>
> 313. General principles of sports law. – Among the principles, which structure the *lex sportiva*, some express the fundamental requirements of sport and more particularly of competitive sport: fair play, sporting equity, equality of competitors, integrity, sincerity rules of law that could be used as a visa for a judgment of the Court of Cassation, and that the latter can be applied in inter-individual relationships. But the judicial judge did not push the audacity too far and took care to justify their application by the tacit will of the interested parties. As with the violation of a national regulation, the sanctions that can be envisaged will be mainly of a sporting or disciplinary nature."

125. During the course of Mr Mehrzad's submissions, I alighted on the "refined form of *ipse dixit*". Mr De Marco naturally picked up on this. Mr Massa's argument is that this set of written and unwritten rules, admittedly developed by the CAS and not directly applicable to the FIA via the normative authority of the CAS, applies to sporting bodies generally because they are so obvious that they go without saying. Moreover, this principle was apparently applied by the Court de Cassation in a case decided in 2010

(and which is not in the bundle) albeit only on the basis apparently of "the tacit will of the interested parties".

126. As I have already said, Ms Potts did not rely on any of Maître Soiron's materials as directly applicable to the exercise at hand. Instead, her submission was that a term may be implied "by any means", and in this context relied on para 25 of Professor Borghetti's report:

> "25. It is generally accepted that, despite the provision's reference to "equity, usage or legislation", there are four sources of implied terms in French law: statutes, the courts, usages, and the parties themselves. Specific statutes commonly imply terms in specific types of contracts, but I am not aware of any statutory term applying specifically to contracts between sporting bodies and their members or participants in the competitions they organise. Usages are customary rules applying in a specific trade or business, the existence and content of which can be proven ***by any means*** before a French court." [my emphasis]

It follows, Ms Potts submitted, that although the *Lex Sportiva*, for example, may not be directly applicable, it may be referred to as an acceptable means of implying a term under Articles 1135 and 1160 of the CC.

127. In my judgment, Maître Soiron has been outgunned on this issue by Professor Borghetti albeit not completely so. Ms Potts' core submission amounted to an elegant attempt to circumvent the difficulty that all the routes to the predicated implication have been closed off by Professor Borghetti. It is true that an implication may arise "by any means", but the means relied on still have to be pinpointed and analysed. If I were deciding the issue now, I would hold that the balance of the argument falls in the Defendants' favour.

128. However, there are a number of features of this case which continue to trouble me. First, the idea that an international sporting federation could conceal information which only it knows in order to avoid a scandal is so anathema to fundamental principles of sporting fairness and equity that it must be seriously arguable that French law would deploy the relevant provisions of the Code Civil to imply a term should the need arise. The appeal to *ipse dixit* as a free-standing concept is attractive, and in my judgment it may well be capable of supporting an argument based on considerations of fairness as between sporting competitors, and equity. Secondly, I take Ms Potts' point about the absence of French case-law illuminating the issue, linked as that point is with the highly unusual facts of the instant case. Thirdly, I cannot rule out the real possibility that Professor Borghetti might shift somewhat under focused cross-examination.

129. Finally, and perhaps slightly adapting the powerful submission of Ms Potts summarised under §111 above, the experts have advised on the Implied Term Route in somewhat of a vacuum. They have not been asked to direct their attention to relevant provisions of the Statutes and the Sporting Code. Their disembodied approach to this exercise of implication is an obvious lacuna which weakens the analysis both experts have provided. Additional considerations, amongst others, that might lead a French lawyer

to say that a term should be implied are those I have already discussed under the rubric of the Interpretative Route: see, in particular, §57, 60 and 108 above.

130. Overall, I assess the Implied Term Route as not being particularly strong on the expert evidence currently available, but sufficiently arguable as to give Mr Massa a real prospect of success. Put another way, Mr Massa's case is not so clearly wrong that I should dismiss it summarily.

131. The next question for my determination is whether the investigative duty I have identified was owed to Mr Massa. In my judgment, although French law continues to apply, it plainly was not. Mr Massa was not a Member of the FIA and by agreeing to race on the basis set out in his Super Licence, he submitted to the regulatory regime we see displayed in the Sporting Code and Sporting Regulations. That regime certainly placed obligations on him (not in issue here), but he enjoyed very few rights. In the event of a violation by some other driver in the context of a particular race, any protest to the stewards could not be made by him directly but only by his team. If Mr Massa were right about the FIA owing duties under Article 179(b), it is clear that these duties would not be owed to him: again, they would be owed to his team. Given that all the express provisions in the Sporting Code and Sporting Regulations are not justiciable at the suit of Mr Massa, it is impossible to see how and why he might be in a better position in the context of the broader investigative duty he invokes.

132. Mr Massa's skeleton argument raised a point that was not developed orally, but I should nonetheless address it. Reliance is placed on Articles 1147 and 1149 of the CC. These provide that a party in breach of its obligations must compensate the innocent counterparty. I do not believe that these help Mr Massa. These provisions do not address the prior issue of whether relevant obligations were owed to him.

133. This conclusion disposes of Mr Massa's pure contract claim, but it does not touch on the whole of the Contract Ground, which includes (1) a conspiracy claim, (2) an inducement claim, and (3) Mr Massa's claim in tort.

134. It is convenient to begin with the claim in tort. The experts are agreed that there is a rule of French law based on a Cour de Cassation decision (insofar as a code-based system has any rules derived from judicial decisions: see Article 5 of the CC), that a breach of contractual obligation owed by A (i.e. the FIA) to B (i.e. its Members) can be a source of tortious liability to C (i.e. Mr Massa) if he suffers loss. This is the "Bootshop Rule" which both experts are agreed about.

135. However, Professor Borghetti draws attention to a limitation on this principle which is to be found in the "Non-Cumul Rule". That "gives precedence to the contractual cause of action over any tortious cause of action when the conditions of both are met between two parties". As his report explains, the existence of a contract between A and B precludes a tort claim by A, unless the contract is wholly unrelated by the loss claimed. Maître Soiron has not had the opportunity to comment on this limitation, and Ms Potts submitted that the issue is not clear-cut because it is difficult to understand why a contractual claim which (as I have now found) cannot be brought somehow precludes the possibility of a tort claim. Mr Quest's answer to that submission (per para 98 of his skeleton argument) was that the impossibility of bringing a claim against a contractual counterparty was "a basic principle of civil law" of which the Court could take judicial

notice: see Lord Leggatt in *Brownlie v FS Cairo (Nile Plaza) LLC* [2021] UKSC 45; [2022] AC 995, at paras 159 and 160.

136. These paragraphs in *Brownlie* make it clear that in a civil law system concurrent contractual and tortious claims are not possible. The Supreme Court did not state that it was the existence of a contract that mattered; what was critical was the possibility of concurrent claims. Professor Borghetti has not addressed this possible distinction or the Defendants' primary case that Mr Massa has no claim in contract that he could bring. I have hesitated on this issue because the tort claim adds no real value to the unlawful means conspiracy claim. However, ultimately I am persuaded by Ms Potts that on the materials presently available Mr Massa has a real prospect of success on the tort claim.

137. Turning now to the conspiracy claim, Mr Massa pleads the unlawful means as including a breach of contract owed by the FIA not to him but to other persons, including FIA Members. At §81 above, I pointed out that the Statutes are directly relevant to this aspect of Mr Massa's case. Under Article 2(5) of the Statutes, the FIA exercises jurisdiction in relation to disputes between Members and in relation to any of its licence holders (here, Renault) having contravened its obligations. A number of entities and persons are relevant Members for these purposes, including the ASNs. Renault and Ferrari were not Members of the FIA.

138. In any event, on the premise that there was a contractual duty at all, I consider that the FIA must have owed it to someone with a correlative right to sue, and not just to the sport in general: see Hohfeld in his *Fundamental Legal Conceptions* (1913). In a private law context, a contractual duty without a correlative right would be a wholly atypical type of duty.

139. Mr Quest, but not I think Mr Mehrzad, conceded that in the context of this "Additional Breaches" claim that the FIA did have certain obligations to its Members, and that at least in principle these could be relied on by Mr Massa as the unlawful means component of the conspiracy claim. Mr Quest's submission was that, if the FIA did not owe Mr Massa a duty to investigate, it is difficult to see how such a duty could be owed to anyone else. That submission was simply a reprise of his argument that the FIA did not owe a duty to investigate *tout court*. If that were right, Mr Quest would be correct in submitting that the FIA's Members can be in no better position than Mr Massa. However, if that were wrong (as I have found it to be, at least for the purposes of CPR Part 24), it would follow that Mr Quest accepts that Mr Massa is entitled to recruit the FIA's "Additional Breaches" *vis-à-vis* its Members as the unlawful means component of the conspiracy claim.

140. In any case, the issue is covered by authority. As Andrew Smith J stated in *Fiona Trust & Holding Corp v Privalov* [2010] EWHC 3199 (Comm) at [69]:

> "The law does not require that the unlawful means should themselves be actionable at the suit of the claimant: the means might be a criminal action, a breach of contract, a director's fiduciary duty to a company or fraud."

More recently, in *JSC BTA Bank v Ablyazov* [2018] UKSC 19; [2020] AC 727, the Supreme Court explained that:

> "Conspiracy being a tort of primary liability, the question what constitute unlawful means cannot depend on whether their use would give rise to a different cause of action independent of conspiracy." (see para 11)

141. In my judgment, it is sufficient for Mr Massa's unlawful conspiracy claim under the rubric of "Additional Breaches" to satisfy me that the FIA was in breach of duty to someone if not to Mr Massa directly. Mr Mehrzad's submissions in reply in relation to the "Bootshop Rule" and the "Non-Cumul Rule" are not relevant to Mr Massa's conspiracy claim predicated in this regard on a contractual breach owed by the FIA but not to him. They are relevant only to the "Breach of Duty" claim.

142. The conspiracy claim is governed by English law but one of its elements is a breach of contract claim governed by French law. The parties have not addressed submissions to the interface between English and French law in this particular regard. I have proceeded on the basis that all aspects of the pure contract claim as well as the unlawful means element of the conspiracy claim are governed by French law. Para 40 of Mr Massa's skeleton argument supports this approach *sub silentio*, and the Defendants have not advanced a contrary case. If I am wrong about this to the extent that English law governs the unlawful means element of the conspiracy claim, that makes no difference to the outcome. Similar considerations apply to the inducement claim.

Conclusions

143. I have concluded that Mr Massa does, in principle, have a real prospect of establishing at trial that the FIA owed a duty to investigate via both the Interpretative Route and the Implied Term Route. However, he has no real prospect of establishing that the FIA's duties were owed to him. These duties were owed, in my judgment, to the FIA's Members. It follows that Mr Massa does not have a real prospect of success in relation to the pure contract claim, but he does have a real prospect of proving at trial all the components of his unlawful means conspiracy. The same analysis applies to the inducement claim.

144. The French law tort claim has just survived summary determination under CPR Part 24, but only just. Given my concerns, I direct that Mr Massa must obtain Maître Soiron's opinion as soon as possible as to whether the mere existence of a contractual relationship, even if the injured party has no claim under it, precludes a claim in tort under French law. I deal with this formally under §223 below.

THE TIME LIMIT GROUND

145. Mr Quest submitted that this is a very short point. In essence, the contention is that Mr Massa's failure to appeal the WMSC decision of September 2009 amounted to a *novus actus* which broke the chain of causation, or was a failure to mitigate. Mr Quest did not submit that the WMSC's decision was binding on Mr Massa, whether or not it could be appealed by him, and/or that its conclusions precluded his claim.

146. The short answers to this short point are that, first of all, assuming that Mr Massa could bring an appeal – and it is his case in relation to 2008 that he could – its outcome can only be the subject of speculation. For the Time Limit Ground to prosper, the Defendants have to persuade me that the appeal that Mr Massa should have brought would have succeeded, not that it might have succeeded. Not merely is that contention flat contrary to the Defendants' primary case, I cannot possibly reach that conclusion at this stage. Secondly, Mr Massa's case is that, but for the Defendants' breaches, the WMSC would have been seized of the matter the year before, and that the outcome then would or might have been different.

147. Now is an opportune moment to record that Mr Massa's case, were it to go further, faces a number of obstacles on causation which he would need to surmount.

148. These include:

(1) Whether the true cause of his obtaining no points at the 2008 Singapore Grand Prix and losing out on the 2008 World Drivers' Championship was not the crash but the disastrous pit stop at lap 17.

(2) Whether there was any real prospect of the case ever coming before the WMSC in 2008: Mr Piquet Jr remained under contract with Renault, and without his co-operation telemetry evidence by itself would not have been sufficient.

(3) Whether there was any real prospect of the WMSC reaching a different decision in 2008 had there been no conspiracy, still less a decision which would have resulted in him winning the Championship. It might be said that the 2009 decision is the best evidence of what the 2008 decision would have been. Further, I have in mind a number of possible issues, including the fact that the crash was at an early stage of the race (rendering the possibility that the results would have been adjusted on the basis of who happened to be in the lead just before the crash unlikely) and the WMSC would have needed to act fairly to all the drivers (including Mr Hamilton).

(4) Whether there was any real prospect of the ICA on appeal from the WMSC's notional 2008 decision, had Mr Massa needed to appeal and assuming that he could appeal, allowing that appeal in terms favourable to him.

149. Issues (2) – (4) predicate that Mr Massa would have been bound by the WMSC/ICA decisions had they been made in 2008, and that he was bound by the September 2009 decision. My preliminary view is that this assumption must be the correct analysis.

150. I am not to be interpreted as expressing or indicating a view on any of these issues. Mr Massa has clearly applied his mind to them with the able assistance of his legal team. The reason why I have raised them is simply to show that this litigation would not necessarily be plain sailing for Mr Massa were this case to go to trial. Given that this judgment is likely to attract public interest, I would not want the impression to be gained that I am oblivious to at least the possible obstacles.

THE LIMITATION GROUND

Key Legislative Provisions and Introduction

151. Article 2224 of the CC provided that claims in contract and in tort:

> "… are subject to a five year period of limitation from the day on which the holder of a right became aware or should have become aware of the facts enabling him or her to exercise that right."

152. There is no material dispute between the experts as to how this provision should be interpreted and applied.

153. Section 2 of the Limitation Act 1980 provides a general limitation period of six years for contract and tort claims. Given that this period has expired, Mr Massa must bring his case within section 32, which provides in material part:

> "**32 Postponement of limitation period in case of fraud, concealment or mistake.**
>
> (1) Subject to subsections (3), (4A) and (4B) below, where in the case of any action for which a period of limitation is prescribed by this Act, either —
>
> (a) the action is based upon the fraud of the defendant; or
>
> (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or
>
> (c) the action is for relief from the consequences of a mistake;
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.
>
> ….
>
> (2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty."

154. The onus at trial would be on Mr Massa to bring himself within one of these exceptions. At this stage, however, he has to show merely that he has a real prospect of doing so. The Defendants concede for the purposes of these applications that the assumed conspiracy was deliberately concealed by the conspirators from, amongst others, Mr Massa. It follows that section 32(1)(b) is fulfilled and Mr Massa does not need section 32(2).

155. The Defendants' focus is on the publication of the WMSC report on 22 September 2009. They say that all the facts essential to Mr Massa's pleaded rights of action were

available to him by late September 2009, alternatively could with reasonable diligence have been discovered.

156. By way of broad outline, the matters to be addressed fall under two headings, the second of which entails two steps or stages. Under the first heading, the centre of attention must be on whether the essential facts necessary to complete the cause of action under consideration were available to Mr Massa (or a reasonable person in his position and possessing his characteristics, the test being objective) from late September 2009. Thus, this first heading focuses on the statutory wording, "the period of limitation shall not begin to run until the plaintiff has discovered the … concealment". Under the second heading, step 1 requires a consideration of whether there was anything to put Mr Massa on notice of a need to investigate; and, step 2 of what a reasonable investigation would then have revealed: see Males LJ in *OT Computers Ltd v Infineon Technologies AG* [2021] EWCA Civ 510; [2021] QB 1183, at para 47.

157. Ms Day warned me that when reading the authorities on section 32 care must be taken to discern which heading (and, in relation to the second heading, which step) the Court is addressing. I agree that these conceptual streams must be kept pure, but there is on occasion a lack of clear definition in the authorities as to where the first heading stops and the second begins. That may be because the boundary between the drawing of inferences which bear on the essential facts, and those which may serve to trigger the exercise of reasonable diligence bearing on the attribution of constructive knowledge, may sometimes be difficult to identify.

158. Furthermore, I think that at times Counsels' submissions on the facts failed to differentiate between the two headings and the two steps within the second heading.

Mr Massa's Amended Reply

159. It is not necessary to examine the whole pleading, which is somewhat lengthy.

160. By paras 9-13 of the Amended Reply, Mr Massa pleads that he was not aware until Mr Ecclestone's interview published in March 2023 of all the essential facts necessary to bring the conspiracy and inducement claims, and those facts were deliberately concealed. Mr Massa was aware that the crash may have been deliberate and that there had been no FIA investigation in 2008. However, Mr Massa did not know that Mr Piquet Sr's intelligence was to the effect that the crash was deliberate (as opposed to may have been); he did not know that Mr Mosley's knowledge was shared with Mr Ecclestone; he did not know the existence of any conspiracy; and, he did not know the key terms of the conspiracy.

161. Para 34 of the Amended Reply addresses paras 24 and 25 of FOM's Amended Defence which accept that there was a conversation between Messrs Whiting and Mosley but avers that the timings are unclear. In his autobiography, Mr Mosley suggested that the revelation was in early 2009. In answer to that averment, Mr Massa pleads as follows:

> "f. As to paragraphs 24 and 25:

> i. It is ***inconceivable***, if it is alleged, that Mr Whiting did not inform Mr Mosley, as the long-serving President of the FIA, of the serious allegations made by Mr Piquet Sr promptly after having had the conversation with Mr Piquet Sr on 2 November 2008;
>
> ii. Mr Massa also relies on the Interview, in which Mr Ecclestone stated that he and Mr Mosley knew of Mr Piquet's allegations in 2008. …" [my emphasis]

162. Para 35 of the Amended Reply addresses paras 29-31 of FOM's Amended Defence and the assertion that the FIA alone took the decision not to investigate in 2008. Mr Massa pleads to that assertion in these terms:

> "a. It is denied that the FIA took its own decision and/or was not induced or influenced to act in accordance with the actions and decisions made by FOM and/or Mr Ecclestone.
>
> b. Mr Ecclestone and Mr Mosley were in a position to take the decisions pleaded at paragraph 18 of the Amended PoC, acting on behalf of FOM (and/or in Mr Ecclestone's case, on his own behalf) and FIA respectively, and give effect to them given: (i) Mr Ecclestone's position as CEO of the Formula 1 group and director of FOM; (ii) Mr Mosley's role as President of the FIA, which he had held since 1993; (iii) ***Mr Ecclestone's influence and/or control over the sport for approximately 40 years. Further, Mr Ecclestone and Mr Mosley had known and/or worked together in the sport since the 1970s***." [my emphasis]

Here, the adjective "inconceivable" is not used. The premise of this averment is the facts set out under para 18 of the now Re-Am PoC, namely the essence of the conspiracy.

163. Para 57 of the Amended Reply is particularly important. It contains Mr Massa's answer to paras 16(2) and 17 of Mr Ecclestone's Amended Defence in which the latter denied that he was aware of whatever Mr Piquet Sr had told Mr Whiting until 2009. I set out the remainder of this paragraph:

> "… Paragraph 22 of the Amended PoC setting out Mr Ecclestone's confirmation in the Interview that he knew in 2008 is repeated. Whilst this will be a matter for evidence at trial, Mr Massa's position is that it is ***inconceivable*** given the role of Mr Ecclestone in the sport and the close relationship between Mr Ecclestone and Mr Mosley, that Mr Ecclestone was not informed in 2008." [my emphasis]

164. As I have highlighted, the adjective "inconceivable" appears twice in the Amended Reply. Elsewhere, Mr Massa pleads actual and inferential facts, albeit in relation to the latter my reading is that the inference is not said to be irresistible. The first "inconceivable", which is in para 34(f) of the Amended Reply, needs to be understood

in context. Mr Massa's pleaded case is that, noting that FOM allege that the Whiting/Mosley conversation was in early 2009, that is incorrect, and it is inconceivable that it was other than shortly after Mr Piquet Sr's intelligence was imparted. That averment makes sense to me, and the use of "inconceivable" (as a synonym for an irresistible inference) creates no difficulty for Mr Massa. The "inconceivable" in para 57 of the Amended Reply also needs to be understood in its proper context. Mr Ecclestone has now disavowed the contents of the March 2023 interview. Mr Massa's riposte is that (1) what Mr Ecclestone said at interview is clear, and (2) it is an irresistible inference from all the surrounding circumstances, including Mr Ecclestone's close relationship with Mr Mosley, that the latter did inform the former in 2008. An important issue for me to resolve is the nexus, if any, between (1) and (2). Mr De Marco's submission was that (2) is inextricably linked to (1), and that without (1) the irresistible inference could not arise. The case advanced by Mr Quest and Ms Day is that Mr Massa is accepting that an irresistible inference arises regardless of (1). If that is correct, Mr Massa should have drawn that inference in 2009.

Further Evidence

165. The Defendants have filed a mass of evidence from newspaper articles, reports of interviews and autobiographies bearing on the deliberate nature of the crash and who told what to whom. I have considered all of it but can be selective.

166. There are three pieces of evidence which may be relevant to the "reasonable diligence" limb of the statutory test. First, in an interview broadcast shortly before his death in May 2021, Mr Mosley said the following:

> "While Whiting did tell Mosley about what Piquet had said, the FIA steered clear of launching a formal investigation straight away.
>
> Reflecting on the reasons for that, Mosley, who was a former barrister, said that despite Piquet Sr's word, the FIA could not launch charges because there was no concrete proof that Piquet had been told to crash deliberately.
>
> "This [Piquet's chat to Whiting] confirmed what I suspected and it also confirmed what a lot of other people suspected," Mosley told the film makers. "But of course, I said nothing to anyone. There was no evidence."

This interview suggests that Mr Mosley did not inform Mr Ecclestone.

167. Secondly, in Mr Ecclestone's biography published in 2011:

> "During his stay [in Brazil] Ecclestone had met many old friends including Nelson Piquet Senior Beyond their banter, he was unaware that his former driver had privately pulled aside Charlie Whiting, FIA's race director, with whom he had worked for

> seven years at Brabham. "Flavio's a shit", Piquet said, explaining the intrigue behind his son's crash in Singapore. Whiting, a reserved man, cautioned Piquet: "If you do something now it will be bad for Nelson Junior. He'll be forced out of Formula One". Although Whiting had been sworn to secrecy, he repeated Piquet's allegations soon after to Mosley. Mosley gave it some thought but decided to do nothing, Under contract to Briatore, Piquet Junior would not testify and the data from the car was inconclusive. Nothing could be done until there was more evidence.
>
> Unusually, Mosley did not tell Ecclestone. …"

This final sentence has been omitted from para 60 of Mr Ecclestone's skeleton argument. It cuts both ways.

168. Thirdly, I return to the *Corriere's* report of the leaked Piquet Sr transcript. When interviewed by FIA investigators in August 2009, Mr Piquet Sr had the following to say about Mr Ecclestone:

> ""In Hungary ... Bernie came to my place ... I was beside myself ... he asked me what the problem was between Nelson and Flavio .... I told Bernie ... I told him the whole story... I said that he had to know the worst thing, which is that in Singapore he (Briatore - *Ed.*) he had convinced Nelson to cause an accident to let Alonso win the race ... He told me not to tell the press. I asked him, what should I do? He answered me: fuck it"."

For a number of reasons this fragment is difficult to interpret. Taken literally, even on the English translation of the (itself translated from the English) Italian text that we have, this reported conversation between Mr Piquet Sr and Mr Ecclestone, whenever it was (and July 2009 is the date suggested by Ms Day, being when the Hungarian Grand Prix took place), does not indicate the existence of a possible conspiracy involving Mr Mosley, still less that Messrs Whiting and/or Mosley were the source of Mr Ecclestone's knowledge. I note that the *Mirror's* interpretation of the transcript, which they obviously saw in English, was that the first that Mr Ecclestone heard of the Piquet Sr revelations at all was during the Hungarian Grand Prix between 24-26 July 2009. In my view, that is not the only interpretation, but overall this segment of the transcript does not harm Mr Massa's case.

The Key Authorities

169. I do not intend to review all the authorities drawn to my attention. My review is only relevant to the two tort claims governed by English law.

170. The leading case on what I am calling the first heading is *Potter v Canada Square Operations Ltd* [2023] UKSC 41; [2024] AC 679. The judgment of the Supreme Court was given by Lord Reed PSC. At para 96 he held:

> "What section 32(1)(b) requires is that the defendant has "deliberately concealed" "a fact relevant to the plaintiff's right of action". The words "the plaintiff's right of action" must refer to the right of action asserted by the plaintiff in the proceedings before the court. That follows from the terms of section 32(1), so far as material: "… where in the case of any action for which a period of limitation is prescribed by this Act … any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant …" The right of action asserted by the plaintiff may or may not be well-founded: that is a matter which will only need to be determined if the plea of limitation is rejected. As to the words "a fact relevant to the plaintiff's right of action", ***that phrase has been interpreted as referring to a fact without which the cause of action is incomplete***: see, for example, *Arcadia Group Brands Ltd v Visa Inc* [2015] EWCA Civ 883; [2015] Bus LR 1362. That interpretation is not in issue in this appeal, but it makes sense: if the claimant can plead a claim without needing to know the fact in question, there would appear to be no good reason why the limitation period should not run." [my emphasis]

171. In *Arcadia*, the Court of Appeal (Sir Terence Etherton C, Richards and Patten LJJ) examined the previous decision of the same Court (Buxton and Rix LJJ, Sir Martin Nourse) in *The Kriti Palm* [2006] EWCA Civ 1601; [2007] 1 Lloyd's Rep 555. Sir Terence Etherton C (as he then was) addressed what Buxton LJ had said in that case:

> "48. Buxton LJ (at para 453) agreed with Rix LJ that *Johnson's* case stands as authority for the proposition that what must be concealed, to satisfy section 32(1)(b), is "something essential to the cause of action". He said:
>
> > "It is not enough that evidence that might enhance the claim is concealed, provided that the claim can be properly pleaded without it. The court therefore has to look for the gist of the cause of action that is asserted, to see if that was available to the claimant without knowledge of the concealed material."
>
> 49. *Johnson's* case, the *Mirror Group Newspaper* case and *The Kriti Palm* are clear authority, binding on this court, for the following principles applicable to section 32(1)(b) of the 1980 Act: (1) a "fact relevant to the plaintiff's right of action" within section 32(1)(b) is a fact without which the cause of action is incomplete; (2) facts which merely improve prospects of success are not facts relevant to the claimant's right of action; (3) facts bearing on a matter which is not a necessary ingredient of the cause of action but which may provide a defence are not facts relevant to the claimant's right of action.
>
> …

> 51. I do not agree that, so far as concerns the proper approach under section 32(1)(b), competition claims are to be treated in principle in any different way to other claims. There are many areas of the law where a cause of action is dependent not simply on the primary facts but rather on whether those primary facts give rise to a particular consequence or inference. Furthermore, the policy considerations of finality and certainty in the law of limitation, emphasised by Neill LJ in the *Mirror Group Newspapers* case, are as important to competition claims as to those under consideration in *Johnson's* case, the *Mirror Group Newspapers* case and *The Kriti Palm*."

172. *Arcadia* is of value for a number of purposes. First, it (together with other authorities which I need not mention) underlines the distinction between "the essential facts without which the cause of action is incomplete", and evidence which merely improves a claimant's prospects of success. Secondly, this authority draws on the principle that secondary facts or inferences should be taken into consideration when deciding whether a claimant possesses the essential facts. The Court in *Arcadia* did not address the question of how strong the inference needs to be before the Court should conclude that a claimant was in possession of all the essential facts. In my opinion, that must be a case-specific assessment which depends on all the circumstances. Thirdly, as Ms Day emphasised, "the court has to look at the gist of the cause of action that has been asserted".

173. Finally under the first heading is the decision of the Court of Appeal (Sir Geoffrey Vos MR, Green and Birss LJJ) in *Gemalto Holding BV v Infineon Technologies Ltd* [2022] EWCA Civ 782; [2023] Ch 169. I set out three paragraphs from the judgment of the Master of the Rolls:

> "45. In my judgment, the parties were right to submit that, after *FII* [in the Supreme Court], ***limitation begins to run in a deliberate concealment case when the claimant recognises that it has a worthwhile claim, and that a worthwhile claim arises when a reasonable person could have a reasonable belief that (in a case of this kind) there had been a cartel.*** Gemalto's four propositions overcomplicate the position. The *FII* test must be applied with common sense. As the judge held, there is unlikely in most cases, as in this case, to be a real difference between the application of the statement of claim test and the *FII* test. Indeed, the statement of claim test is, perhaps, little more than a gloss on the *FII* test. It is also worth noting that competition cases are not to be treated differently from other cases under section 32 (see *Arcadia* at [51]).
>
> 46. First, the *FII* test makes clear that the claimant is not entitled to delay the start of the limitation period until it has any certainty about its claim succeeding. So, whilst in a fraud case, if there were an essential fact about the fraud that the claimant had not discovered, without which there would have been no fraud, it would make sense to say that the claimant had not discovered the fraud. But in concealment, what needs to have been discovered is just that, the concealment. Once the claimant knows objectively that a cartel has

> been concealed, it does not need to have certainty about its existence or about the details of that cartel. That is why the Supreme Court made clear that the claimant needs only sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking advice and collecting evidence. The term "worthwhile claim" is also not to be construed as a deed. It requires a commonsense application. ***A claim in respect of a concealed event would not be a worthwhile one if it were pure speculation, but it would be if, as in this case, an authoritative regulator had thought it sufficiently serious, having investigated all the evidence available, to lay charges or issue a statement of objections.***
>
> 47. … The question of whether a claim is worthwhile is not a complex balance of the chance of success as Mr Turner suggested. The limitation period is not postponed until the claimant can show that it is more likely than not to succeed. Of course, if the putative claim would be struck out as not disclosing a cause of action, it would be right to say that the claimant had not discovered that it had a worthwhile claim (see the comparisons with *Earl Beatty*, *Paragon*, *Sephton* and *Molloy* above at [37]). That is why I say that I am far from sure that there is a real difference between the statement of claim test and the *FII* test so far as concealment cases are concerned." [my emphasis]

174. Green LJ gave a concurring judgment in which he expressed some doubts over the result but was, I think, *ad idem* with the Master of the Rolls on the principle:

> "74. Next, applying FII (paras 193 and 195), limitation runs from the point in time when the claimant either (i) knows, or could with reasonable diligence know, of the concealed facts with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking advice and collecting evidence or (ii), (applying earlier dictum from case law) discovers or could with reasonable diligence discover the concealed facts in the sense of recognising that a worthwhile claim arises."

175. Thus, applying *Gemalto*, the key question is whether, judged on an objective basis, Mr Massa ought to have realised that he had a "worthwhile claim" before March 2018 (this being the date more favourable to him because if the Defendants are right his time expired in September 2015, but it matters not). That means: ought Mr Massa, or a reasonable person in his position, to have had a reasonable belief that there had been a conspiracy, or that Messrs Mosley and Ecclestone had combined to bring about a breach of contract, even if he did not know all the participants and all its terms? On the facts of *Gemalto*, the possible existence of a cartel could reasonably be inferred from all the surrounding circumstances on a basis that went beyond pure speculation.

176. Moving now to the second heading, the starting point is the decision of the Court of Appeal (Millett, Pill and May LJJ) in *Paragon Finance plc v DB Thakerar & Co* [1999]

1 All ER 400. Millett LJ (as he then was) gave the lead judgment. At 418B-F he said this:

> "In my judgment this reasoning is misconceived. The question is not whether the plaintiffs *should* have discovered the fraud sooner; but whether they *could* with reasonable diligence have done so. The burden of proof is on them. They must establish that they *could not* have discovered the fraud without exceptional measures which they could not reasonably have been expected to take. In this context the length of the applicable period of limitation is irrelevant. In the course of argument May LJ observed that reasonable diligence must be measured against some standard, but that the six-year limitation period did not provide the relevant standard. He suggested that the test was how a person carrying on a business of the relevant kind would act if he had adequate but not unlimited staff and resources and were motivated by a reasonable but not excessive sense of urgency. I respectfully agree.
>
> As Chadwick J observed in the Thakerar case, it is not easy to believe that a solicitor acting for the borrower in this kind of mortgage fraud can be ignorant of the fraudulent nature of the mortgage application. It is very difficult to believe when he has acted for several such borrowers. In my judgment Timothy Lloyd J should not have been satisfied on the material before him, in summary proceedings in the absence of discovery and without the benefit of cross-examination, that the plaintiffs could not with reasonable diligence have discovered the fraud before the relevant date. This is not to say that he should have reached a concluded view. He should have refused leave to amend and left all to play for in fresh proceedings."

The context of *Paragon* is important. On the facts of that case, there was reasonable cause to believe that there had been an underlying fraud. The reasonable diligence duty had, therefore, been triggered.

177. Ms Day also relied on *Law Society v Sephton* [2004] EWCA Civ 1627; [2005] QB 1013, a decision of the Court of Appeal (Carnwath, Neuberger and Maurice Kay LJJ)[3]. Neuberger LJ (as he then was) dissented in the result, but I do not read the majority as disagreeing with para 116 of his judgment expressed in these terms:

> "So far as the first step is concerned, I consider that the judge was right in his conclusion that it is inherent in section 32(1) of the 1980 Act, particularly after considering the way in which Millett LJ expressed himself in *Paragon*, that there must be an assumption that the claimant desires to discover whether or not there has been a fraud. Not making any such assumption would rob the effect of the word "could", as emphasised by Millett LJ, of much of its

[3] This case went to the House of Lords but on a different point.

> significance. Further, the concept of "reasonable diligence" carries with it, as the judge said, the notion of a desire to know, and, indeed, to investigate."

I do not interpret this passage as suggesting that a claimant must always start from the working assumption that there must have been a fraud regardless of the circumstances. It all depends. There must be something that puts him on inquiry. On the facts of the *Law Society* case, there clearly was (see Neuberger LJ's summary of the facts and para 123 of his judgment). On that footing, there was then an assumption that the claimant desires to discover whether or not there had been a fraud.

178. This last point finds support in the analysis of Nicklin J in *Baroness Lawrence v Associated Newspapers Ltd* [2023] EWHC 2789 (KB); [2024] 1 WLR 3669. Nicklin J referred to Marcus Smith J's valuable summary in *Bilta (UK) Ltd v SVS Securities plc* [2022] EWHC 723 (Ch); [2022] BCC 833, which has also been drawn to my attention but does not require direct citation. At para 93 of his judgment, Nicklin J encapsulated the position as follows:

> "93 As to whether the claimants could, with reasonable diligence, have discovered the concealment:
>
> (1) see *Bilta* [2022] BCC 833, para 31(7) (quoted in para 86 above);
>
> (2) the test is objective, informed by the position of the actual claimant not by reference to some hypothetical claimant: *OT Computers* [2021] QB 1183, para 48;
>
> (3) the requirement of reasonable diligence applies throughout, ***but it may often be helpful to consider whether there has been something to put the claimant on notice of a need to investigate***, and then what a reasonably diligent investigation would have revealed. At the first stage, the claimant must be "reasonably attentive"; at the second stage the claimant is taken to know those things that a reasonably diligent investigation would have revealed: *OT Computers* para 47;
>
> (4) ***a claimant may be put on notice where they know that something has gone wrong or has suffered an injury sufficient to prompt the claimant to ask "why"? It is not necessary to know that there is or might be a legal claim***: *Kyla Shipping Co Ltd v Freight Trading Ltd* [2022] EWHC 1625(Comm) at [332]; *Gemalto* [2023] Ch 169, para 47; and
>
> (5) nevertheless, ***if there is no relevant trigger for an investigation, the obligation to investigate with reasonable diligence does not arise***: *JD Wetherspoon plc v Van de Berg & Co Ltd* [2007] PNLR 28, para 42 per Lewison J." [my emphasis]

179. Mr De Marco relied on a further passage in Nicklin J's judgment:

> "96. In my view, in an appropriate case, there may be scope for overlap on the facts between the issue of concealment and whether the concealed facts could have been discovered with reasonable diligence. The fact that a defendant simply disputes an element of the cause of action does not mean that commencement of the limitation period is further postponed: *Various Claimants v MGN Ltd* [2022] EWHC 1222 (Ch) at [57]. But if a defendant is also responsible for misleading a claimant that s/he has no claim, those facts may be relevant to the issue of whether the concealment could with reasonable diligence have been discovered. ***For example, if the defendant took steps to put the claimant "off the scent" that may be relevant both to the factual issue of concealment and also to whether that concealment could with reasonable diligence have been discovered:*** *JD Wetherspoon plc v Van de Berg & Co Ltd* [2007] PNLR 28, para 44; *Various Claimants v MGN Ltd* at paras 120—121, 143, 170. Put shortly, the more extensive and effective the efforts to conceal the alleged wrongdoing, the more difficult it may be to discover, even with reasonable diligence." [my emphasis]

Outline of the Parties' Submissions

180. It is unnecessary to summarise Mr Mehrzad's submissions on Article 2224 of the CC.

181. Mr Quest and Ms Day submitted that the pure contract claim is time-barred because by the end of September 2009 Mr Massa knew from para 7 of the WMSC report that the FIA had failed to investigate Mr Piquet Sr's serious allegation that the crash may have been deliberate. Counsel (including on this point, Mr Mehrzad) submitted that the distinction between "may have been deliberate" and "was deliberate" is without a difference. Either Mr Massa should have drawn the inference that Mr Piquet Sr was saying, one way or another, that his son had been telling him that the crash was deliberate, or basic further inquiries would have brought this fairly obvious point to their attention.

182. Counsels' focus then shifted to the conspiracy/inducement claims. Here, they advanced a number of submissions which I consider may be fairly summarised in this fashion. Mr Massa knew that the FIA carried out no investigation in late 2008 despite Mr Piquet Sr making a serious allegation. He also knew, or should have deduced, that this information was transmitted by an FIA official to someone else in the FIA. That much may be inferred from the last sentence of para 7 of the WMSC report. He must have known that Messrs Whiting, Mosley and Ecclestone were very close and that their personal and professional links went back a long way (as paras 34(f) and 35 of the Amended Reply expressly plead). It is clear from Mr Mosley's interviews and autobiography that he was in the know in late 2008, and the Piquet Sr transcript of September 2009 may also have lent support to that. It was at the very least a strong inference that Mr Mosley told Mr Ecclestone; and that inference is pleaded at para 57 of the Amended Reply, backed by a Statement of Truth, to be irresistible

("inconceivable"). Ms Day in particular submitted that all of these actual and inferential facts constituted the "essential facts" required for the cause of action, or those facts sufficient to bring a worthwhile claim; alternatively, Mr Massa ought to have realised that something had gone wrong. Thus, the relevant trigger existed: he was put on notice, and ought to have taken all those appropriate investigatory and/or preliminary steps that "reasonable diligence" required. Finally, Ms Day submitted that the 2023 interview amounted to no more than evidence which supported an already completely constituted claim.

183. In oral argument, counsel did not specifically pick up on a point made by Ms Rachel Lidgate, Mr Ecclestone's solicitor, at para 92 of her first witness statement and repeated in Mr Ecclestone's skeleton argument. Her argument is that had a breach of contract claim been brought in 2009, in the course of that litigation Mr Ecclestone's acts of inducing the FIA's breach of contract (and, I would add, by parity of reasoning, the conspiracy) would have come to light.

184. Mr De Marco submitted that a distinction remains to be drawn between his primary case ("was deliberate") and his alternative case ("may have been deliberate"). He conceded that the alternative case was statute-barred. Mr De Marco placed heavy reliance on the terms of para 7 of the WMSC report. He contended that this amounted to a perpetuation of the conspiracy, and on any view was deliberately misleading. Mr De Marco submitted that a conspiracy could not be inferred from the available evidence, and that at Males LJ's step 1 any further inquiries could not have been triggered by any or all of the materials in the public domain to which the Defendants have made such copious reference. As I have already indicated, his submission on para 57 of the Amended Reply was that it was predicated on Mr Ecclestone's interview having been given, and that "inconceivable" did not mean that without the interview any relevant inference could be drawn.

185. Mr De Marco relied on the negative legal advice given by Ferrari in September/October 2009. He submitted that suing the FIA in 2009 for breach of contract would have been the sort of "exceptional measure" referred to by Millett LJ in *Paragon Finance*; and, in any case, it is not possible to say what would have been revealed by an investigation aimed solely at the FIA.

Analysis and Conclusions

186. Given that the present context is a CPR Part 24 application where my role is confined to identifying a real prospect of success, I felt that the parties' submissions were unnecessarily elaborate and complex. They left no stone unturned, but at times treated this application as if it were a trial of a preliminary issue. True, the stakes are high, but in distilling their submissions to their quintessence, and putting to one side some of the elaboration, I hope that I have managed to identify the essential matters for my determination.

187. The pure breach of contract claim is governed by Article 2224 of the CC, and case-law from this jurisdiction (e.g. Coulson J's decision in *Ford & Warren v Dr Warring-Davies*

[2012] EWHC 3523 (QB)[4]) is not relevant. However, although he did not direct any submissions to the relevant provision in the CC, Mr De Marco's concession that the alternative contract claim is statute-barred was realistic. If his case is that a serious allegation of wrongdoing is sufficient to trigger an investigation by the FIA, Mr Piquet Sr's revelation met that criterion. Moreover, and as the Defendants collectively point out, it is but one small step from the alternative case to the main case. Mr Piquet Sr's intelligence must have come, one way or another, from his son. Many people would infer that his son must have gone further than saying or implying that the crash may have been deliberate, although I accept Mr De Marco's point that the inference is not irresistible. Nonetheless, the inference that Mr Piquet Jr told his dad that the crash *was* deliberate is a strong one, and in my view it constituted an essential inferential fact which completed the cause of action in its primary iteration. If it did not, the reasonable diligence requirement was triggered and simple research would have unearthed Mr Piquet Sr's evidence to the FIA given in September 2009.

188. Notwithstanding his concession, Mr De Marco submitted that even if both formulations of the pure contract claim were statute-barred, any such claim would not have been "worthwhile". I am not entirely sure what he meant by that. If he was submitting that the pure contract claim without the conspiracy claim would have failed, I understand his point, but it is not relevant to when time starts to run.

189. The foregoing reasoning also applies to the standalone tort claim (the "Breach of Duty" claim) which is also governed by French law. It is statute-barred.

190. It follows that Mr Massa should have brought these contract and tort claims within six years of September 2009. A breach of contract, alternatively a breach of duty under French law, is an essential plank of both English-law tort claims, but that does not mean that the conspiracy and inducement claims must also be statute-barred. Each cause of action pleaded merits a separate limitation analysis. The real questions for determination are whether, for the purposes of either or both of those claims, (1) a reasonable person could reasonably have believed on an inferential basis (a) that Mr Mosley or Mr Whiting spoke to Mr Ecclestone *and* (b) that Messrs Mosley and Ecclestone must have colluded to cover up the truth in order to forestall an investigation; or (2) the reasonable diligence requirement was triggered.

191. I have given very careful consideration to the conspiracy/inducement claims, which I examine together. The first issue is whether the essential facts necessary to complete the cause of action were knowable or inferable from the materials I have been shown. Mr Massa did not have to believe that a conspiracy claim would probably succeed; the threshold is much lower (viz. a credible claim which would survive a strike out or reverse summary judgment application). The Defendants' extensive trawl through newspaper articles, biographies and the like did not materially advance their case. In terms of what was available in the public domain, there was material from September 2009 and then around 2011 indicating that Mr Mosley knew about the Piquet Sr intelligence in 2008. However, that material also points to Mr Mosley deciding, on taking his own counsel, that without a statement from Mr Piquet Jr, the FIA could do nothing. There is nothing in these materials to indicate that Mr Mosley discussed the

[4] This case is authority for the proposition that a contract breaker's motive is irrelevant. That is of course true. But, even were this case to apply here, motive would only be irrelevant to the standalone breach of contract claim.

matter with Mr Ecclestone, and the book and interview citations set out above rather suggest that he did not.

192. So, the Defendants' case hangs on the drawing by Mr Massa of inferences which could reasonably have led him to the case he has now pleaded. That requires, or at least would require at trial, an examination of all the circumstantial evidence in the public domain as well as the nature of the relationship between these two men.

193. Messrs Mosley and Ecclestone were close and had run the sport for 40 years. Mr Ecclestone sat on the WMSC. That Mr Mosley would share the Piquet Sr intelligence with Mr Ecclestone was a reasonable inference if the inquirer had some reason to start to think about it, but that by itself is not sufficient. The reasonable person would also have to possess a reasonable belief that the real reason why the crash was not investigated in 2008 was that these two men conspired to ensure that it was not. In assessing Mr Massa's real prospects of persuading a court at trial that a reasonable person would not draw the second of these inferences in particular, I am required to make some sort of evaluation of their strength, taking into account the inherent probabilities and the seriousness of the conspiracy alleged.

194. Mr Massa would not have to know all the terms of the conspiracy before time started to run against him: he would have to know its gist. I consider that the gist means essentially this: that the named conspirators agreed that the Piquet Sr revelations would be covered up to avoid a timely investigation.

195. The deduction that there was a conspiracy is two stages removed from the breach of contract that may be inferred by the reasonably attentive, inquisitive person from para 7 of the WMSC report and all the surrounding circumstances. Furthermore, there is force in Mr De Marco's submission that para 7 was misleading, particularly the final sentence. In my judgment, it is strongly arguable even a reasonable person as aggrieved as Mr Massa and therefore desirous to know, would be led to believe that whoever within the FIA made the decision referenced under the final sentence, and it could have been more than one individual, did so on the unexceptionable basis that there was not enough evidence to investigate. Para 7 steers the reader away from any speculative notion that the decision-maker within the FIA (not named, but Mr Mosley's identity could have been deduced by exercising reasonable diligence if there were reasonable cause to exercise it, so I mention it now) may have been acting in concert with another outside the FIA to preclude the very investigation that was being considered.

196. Many of the Defendants' submissions put the cart before the horse. Although I entirely agree with Ms Day that it is "topsy-turvy" to begin with the interview, I consider that it is false logic to start from the premise that there might have been a conspiracy. A combination of the two inferences that may be drawn – the first, that the failure to investigate was a breach of contract; the second (if the inquirer had some reason to think about it) that Mr Mosley might have shared the Piquet Sr revelations with Mr Ecclestone – does not lead the reasonable person to a possible conspiracy.

197. Mr Massa relies on the advice given to him by a Ferrari lawyer after the WMSC report was published. The terms of that advice have not been divulged: privilege has not been waived. Maybe the lawyer felt that it was simply too late to alter the result. If that was his thinking, it would be hard to disagree. Whereas it is of course true that the Ferrari

lawyer would not have been turning his mind to the possibility of a civil claim, still less a claim in the tort of conspiracy, I do not consider that this point avails Mr Massa. He said to the press shortly after the Ecclestone interview, "I thought so many times about hiring a lawyer and making a case". Yet, had a lawyer practising in this jurisdiction been asked to advise in 2009, it is of course difficult to say exactly what advice would have been given. Even so, Mr Massa has more than a reasonable prospect of persuading the Court at trial that a reasonably competent lawyer would not have been put onto the scent of a conspiracy or inducement claim.

198. Overall, the Defendants have failed to persuade me that Mr Massa does not have a real prospect at trial in demonstrating (the burden at that stage being on him) that on the largely inferential basis argued against him all the essential facts were not in place.

199. Turning to what I am calling the second heading - reasonable diligence - step 1 entails a consideration of whether Mr Massa, still being reasonably attentive and possessing a desire to know, was put on notice that something might have "gone wrong", thereby triggering the requirement to initiate further inquiries. The relevant "something going wrong" is a possible conspiracy, not simply, a failure to investigate. I may address this point briefly. If I am incorrect in concluding that Mr Massa surmounts the first hurdle, this second hurdle or heading does not arise. Time would start running against him because all the essential facts necessary to complete his cause of action were available or could be inferred. If, on the other hand, my first conclusion is correct, I consider that Mr Massa has a real prospect of establishing at trial that this second hurdle could be surmounted.

200. In the circumstances of this case, there is very little difference between the issues bearing on the first heading and step 1 of the second heading. The most obvious difference is that the involvement of Mr Mosley does not spring from the wording of para 7 of the WMSC report, but the exercise of reasonable diligence could have discovered this if there had been sufficient reason to make inquiry. In my judgment, Mr Massa has a real prospect of persuading the Court that an attentive person in his position, with a desire to know etc, would or could not infer from all the surrounding circumstances that something might have gone wrong so as to trigger further inquiry. I repeat the reasons I have already given. A breach of contract was, without more, an insufficient foundation to cause a reasonable person to draw the inference or reasonably to believe that what went wrong was along the lines pleaded in respect of either or both of the torts relied on. All the cases where the Courts have held that the exercise of reasonable diligence was triggered were cases where it ought to have been deduced from the surrounding circumstances that there might have been a fraud, a cartel, or some other impropriety.

201. I address Ms Lidgate's point that had the pure contract claim been brought in 2009 Mr Ecclestone's role would have come to light. *Pace* para 84 of Mr Quest's skeleton argument ("it is not credible for Mr Massa to contend that the FIA could have defended such a claim without [all facts necessary for the conspiracy claim] emerging in the course of that litigation"), it is far from clear that this would have been so. Given the apparently informal nature of this conspiracy, it is unlikely that relevant documentation would exist. The evidence filed on behalf of FOM and the FIA implies that it does not exist: a point that cuts both ways on the issue of liability, but favours Mr Massa on the issue of limitation. It is even more doubtful that the parties to the conspiracy would

have admitted it during the course of litigation. I note that Newey J, as he then was, concluded in *Constantin Meridien v Ecclestone* [2014] EWHC 387 (Ch) that Mr Ecclestone was not a reliable and truthful witness. In any event, this is an issue which bears on Males LJ's step 2 and is not apt to be resolved on the existing materials on a summary basis.

202. More generally, the Defendants did not advance submissions on step 2 of Males LJ's formulation on the premise that step 1 might be fulfilled. I do not think that I must take it as a given that the exercise of reasonable diligence would have unearthed the conspiracy without taking exceptional measures. It might have done, but that is a point for determination at a trial.

203. For all these reasons, I conclude, subject to the correct interpretation of para 57 of his Amended Reply, that Mr Massa has a real prospect of success in bringing his case within the ambit of section 32 such that the primary limitation period is disapplied.

204. Thus, the final issue to be determined is whether Mr Massa should have defeat snatched from the jaws of victory on account of the wording of para 57 of the Amended Reply. Naturally enough, the Defendants made merry hay of this. They say that there is no possible ambiguity about para 57, and that its carefully considered wording is backed by a Statement of Truth.

205. I have given the Defendants' submissions very careful consideration. Initially, I was attracted by it, and the parties will scarcely have ignored the ramifications of the questions I asked Mr De Marco at the conclusion of his oral argument. After the hearing, I have reflected further. This is not an issue where I am evaluating whether Mr Massa's case has a real prosect of success; it is an all or nothing point. Para 57 could have been better phrased. No application was made during the hearing to amend para 57, and those responsible for the drafting are bound by the words they chose to use. In my judgment, if one examines the position at all material times up to the date of the publication of the interview, it was not inconceivable that Mr Mosley would have done anything other than to speak to Mr Ecclestone on this topic; and those responsible for this pleading would not have believed that it was. As I have already said, Mr Mosley informing Mr Ecclestone was a reasonable inference if there was a reason to start drawing that inference, and its platform is the matters set out under para 35 of the Amended Reply. Taking everything into account, I have come to the conclusion that Mr De Marco's submissions are correct and that the adjective "inconceivable" must be read in context, in particular that it is now known that Mr Ecclestone has given an interview, the apparently clear terms of which he now disavows. Thus, what the pleader is saying is this: if Mr Ecclestone is now claiming that the interview is incorrect in its transcription or does not reflect his true state of mind in all respects or in any material respect, *on that premise* it is inconceivable that Mr Mosley did not inform Mr Ecclestone. Put another way, now that we have the interview, we can join up the dots by drawing an irresistible inference.

206. Moreover, para 57 merits closer examination than the Defendants have given it. Para 57 does not say that it is inconceivable that Messrs Mosley and Ecclestone conspired. All it says is that Mr Mosley must have told Mr Ecclestone. This is but the first stage in the correct analysis, because without the further inferential conclusion that these two

may have conspired on more or less the basis pleaded by Mr Massa in the Re-Am PoC, this sharing of information is not sufficient.

207. I recognise that Mr Massa may fail on limitation at trial, as he may fail on any or all of the other contested issues in this case. That having been said, he has persuaded me that he has a real prospect of establishing at trial that the six year primary limitation period for the two tort claims governed by English law could be extended under section 32.

208. I have reflected on the ramifications of my overall conclusion. Lest it be thought that the outcome is surprising, I should point out that it was the Defendants' choice to proceed down the CPR Part 24 route rather than to apply for the determination of a preliminary issue. If that had happened, the submission could not have been advanced that the Court is being invited to determine questions which are quintessentially inapposite for summary disposal.

THE DECLARATIONS GROUND

209. Mr De Marco submitted that Mr Masa has a real prospect of demonstrating that the declarations he seeks are the most effective means of doing justice in this case, specifically because they avoid overruling the results of the 2008 Championship whilst remedying an historic injustice which has harmed Mr Massa's reputation. Mr De Marco submitted that it would be wrong to describe the declarations sought as having an impact on the rights of third parties, including Mr Hamilton. Mr Massa is not seeking to change the result of the championship. It is for that reason that all the Defendants' related objections about Mr Massa attempting to interfere with the workings of the FIA, a body with exclusive jurisdiction over sporting disputes, are misplaced. Mr De Marco further submitted that damages are not an adequate remedy. Finally, he relied on the decision of the Court of Appeal (Lord Denning MR, Danckwerts and Salmon LJJ) in *Nagle v Feilden* [1966] 2 QB 633.

210. Mr Day, junior counsel for Mr Ecclestone, very ably and succinctly advanced what he characterised as a series of principled objections to the claim for declaratory relief. First, he submitted that the declarations as formulated do not seek to declare Mr Massa's rights or remedies. Relatedly, they seek to declare not an existing state of affairs but a counterfactual. Secondly, he submitted that Mr Massa has failed to identify a legitimate purpose for the claim for declaratory relief, and courting publicity is not such a purpose. Thirdly, given that Mr Massa appears to accept that these declarations would not make Mr Massa the 2008 Drivers' World Champion, they serve no legitimate purpose. Conversely, they certainly have the appearance of interfering with the workings of an international body with exclusive jurisdiction over disputes of this nature, and do so in circumstances where clearly interested parties such as Mr Hamilton would not be heard. Mr Day made other submissions which I have noted but do not need to reflect in this judgment.

211. I have reached the firm conclusion that it is clear that declaratory relief would not be granted in this case, largely for the reasons advanced by Mr Day. It follows that I may give my own reasons quite briefly.

212. The general principles applicable to this application are located in two authorities. First, as Lord Rodger of Earlsferry explained in *Ashley v Chief Constable of Sussex Police* [2008] UKHL 25; [2008] 1 AC 962:

> "68. It is, of course, well established that the courts will not entertain cases which serve no sufficient or legitimate legal purpose. Courts of law have no concern with hypothetical or academic questions and are "neither a debating club nor an advisory bureau": *Macnaughton v Macnaughton's Trs* 1953 SC 387, 392, per Lord Justice Clerk Thomson. So the House dismissed a claim for a declaration of incompatibility in relation to a statutory provision which was, in practice, a dead letter: *R (Rusbridger) v Attorney General* [2004] 1 AC 357. A court will also dismiss proceedings which might have had a legitimate purpose when they began, but no longer do so, because of a change of circumstances: *Clarke v Fennoscandia Ltd* [2007] UKHL 56; 2008 SLT 33."

213. In *Rolls Royce plc v Unite Union* [2009] EWCA Civ 387; [2010] 1 WLR 318 the Court of Appeal (Arden, Wall and Aikens LJJ) explicated at para 120 the principles governing claims for declaratory relief:

> "120. For the purposes of the present case, I think that the principles in the cases can be summarised as follows.
>
> (1) The power of the court to grant declaratory relief is discretionary.
>
> (2) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.
>
> (3) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question.
>
> (4) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue; (in this respect the cases have undoubtedly "moved on" from *Meadows*).
>
> (5) The court will be prepared to give declaratory relief in respect of a "friendly action" or where there is an "academic question" if all parties so wish, even on "private law" issues. This may particularly be so if it is a "test case", or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned.

> (6) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must therefore ensure that all those affected are either before it or will have their arguments put before the court.
>
> (7) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question it must consider the other options of resolving this issue." (per Aikens LJ at para 120)

214. I consider that Mr De Marco's reliance on *Nagle* was misplaced. That was an example of the court, admittedly in the context of a private law claim, exercising a quasi-supervisory role over the Jockey Club on public policy grounds.

215. In my judgment, Mr Massa is not entitled to claim declaratory relief for reputational or publicity reasons. The present claim cannot of course rewrite the outcome of the 2008 Drivers' World Championship, but if declaratory relief along the lines sought were granted that is how Mr Massa would present his victory to the world and it is also how it would be perceived by the public. The second declaration is in the terms that were it not for the FIA's breaches of duty, Mr Massa would have won the championship: in other words, that he should have won the championship. The FIA, as an international sporting body outside the reach of this Court, could and would simply ignore any such declaration. That underscores its lack of practical utility, but the declaration comes too close in my view to impinging on the right of the FIA to govern its own affairs.

216. Mr Massa is caught on the horns of a self-imposed dilemma. On the one hand, he accepts that any declaration would not have any legal and practical effect on the FIA, the body with exclusive jurisdiction over all disputes of this type. On the other hand, Mr Massa has to demonstrate a legal effect in order to be entitled to declaratory relief in the first place.

217. Thus, to the extent that Mr Massa seeks to persuade me that the declaration sought would have utility, he confronts the obvious difficulty that he is inviting this Court to interfere in the affairs of the FIA in circumstances where a number of third parties, including Mr Hamilton, would have something to say. Unlike the Jockey Club in *Nagle*, the Court has no supervisory role over the FIA.

218. I cannot accept Mr De Marco's submission that declaratory relief in different terms might be ordered. That submission implicitly recognised that Mr Massa's more realistic case is that he has lost the chance of a more favourable outcome. However, I must examine the second declaration on the basis of the current pleading. If Mr Massa's more realistic case is that he has lost a chance of a more favourable outcome, in my view on ordinary principles that should be reflected by an award of damages alone.

219. Contrary to Mr De Marco's submission, there is no real prospect of the Court making the first declaration in isolation. If no practical purpose would be served by the second declaration, the position as regards the first is *a fortiori*. Even if my conclusion that Mr Massa has no actionable contractual right is incorrect, there is no real prospect of the Court declaring, without more, than the FIA acted in breach of its duties to him by failing to investigate.

DISPOSAL

220. Save in relation to (1) the pure breach of contract claim governed by French law, (2) the standalone tort claim governed by French law, and (3) the claims for declaratory relief (in respect of which the CPR Part 3.4(2) application also succeeds), the Defendants' application under CPR Part 24 fails and must be dismissed.

221. The Defendants' CPR Part 3.4 application otherwise fails and must be dismissed.

222. Given that the conspiracy and inducement claims have survived, and that breach of contract and breach of duty (in tort) form part of those claims, the Re-Amended Particulars of Claim will require further amendment to reformulate Mr Massa's case in the light of my judgment.

223. Leaving aside my conclusion on limitation, I have expressed serious doubts about the viability of the standalone tort claim governed by French law. I direct that Mr Massa either abandon that claim now for the purposes of supplying unlawful means for the conspiracy claim, or obtain a further opinion from Maître Soiron on the application of the "Non-Cumul" rule to these particular facts. I would not grant permission to re-re-amend without seeing positive advice from Maître Soiron on this topic.

224. The parties must endeavour to agree a form of Order which reflects the terms of my judgment. I have prepared a draft to set the ball rolling.