Neutral Citation Number: [2025] EWHC 1117 (Ch)

Case No: BL-2024-BRS-000017

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
BUSINESS LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 13 May 2025

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

BENJAMIN LUKE CRUSHCOV	**Respondent/ Claimant**
- and -	
(1) KAREN LOUISE HYLAND **(2) JAMES RICHARDSON** **(3) SKY UK LTD**	**Applicants/ Defendants**

- -
- -

Edward Granger (instructed by **Lee & Thompson**) for the **First Applicant**
Sam Carter (instructed by **ACK Media Solicitors**) for the **Second Applicant**
Jonathan Hill (instructed by **Wiggin LLP**) for the **Third Applicant**
The Respondent/Claimant appeared in person

Hearing dates: 20-21 February 2025

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This judgment was handed down remotely at 10 am on 13 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ Paul Matthews :

Introduction

1. This is my judgment on three applications (one by each of the three defendants) for reverse summary judgment on, alternatively to strike out, the claim brought by the claimant. The claim itself is one alleging an unlawful means conspiracy by the defendants. The alleged conspiracy was to cover up the theft of a television drama script written by the claimant and its use in the production of a television series called *Britannia*, broadcast by the third defendant. The claimant says that the first defendant stole the script from the claimant, which was then passed to the second defendant (the producer of *Britannia*), and it was made and ultimately broadcast by the third defendant. The claim is entirely put as an unlawful means conspiracy. There is no claim, for example, for infringement of the claimant's copyright. (For the record, I make clear now that I have never seen *Britannia*. My acquaintance with it comes only from the materials in this case.)

2. Each of the three applicants was (separately) represented at the hearing by counsel and solicitors. The respondent (the claimant) appeared in person. The matter was argued before me over two days on 20 and 21 February 2025. I record here that the respondent was accompanied at the hearing by his son, who acted as his McKenzie friend, assisting him and (on occasions) quietly reminding or prompting him, entirely in accordance with the relevant practice direction. The respondent is a man of obvious intelligence, who articulated his concerns and made his submissions with clarity and skill, as well as courtesy. Although he is evidently not a lawyer, he nonetheless was able to explain his points to me, and I am satisfied that I have understood the case that he was seeking to put.

3. Having reached that conclusion, I should make this point. The law that the court applies, whether substantive or procedural, is not different according to whether the parties are represented or not. In general terms, we do not have one set of rules for parties who are legally represented and another set of rules for those who are not. In *Barton v Wright Hassall* [2018] 1 WLR 1119, a decision of the Supreme Court, Lord Sumption (with whom Lords Wilson and Carnwath agreed) said:

> "18. … At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court … "

Lord Briggs (otherwise dissenting), with whom Lady Hale agreed, said much the same thing on this point (at [42]). So, I must judge this case by reference to the ordinary law.

4. In most cases, a litigant in person will not be able to express his or her case with the clarity and precision of the professional lawyer. The judge will therefore take extra care to try to understand exactly what that case is. But, having once understood it, the judge cannot reformulate the case, just to make it more potent, let alone invent a new case in place of that put forward. The case to be judged must be the case which the litigant wishes to put.

5. As the Supreme Court made clear in *Barton*, there are no special privileges attached to being a litigant in person. I cannot, for example, advise the litigant what to do, or otherwise "look after" his or her interests. Nor can I add weight to the litigant in person's case in order to compensate for the fact that he or she has no legal training, or has a fulltime job and therefore less time to prepare, or does not have access to the library, IT or backup facilities that lawyers have available. Equality of arms for this purpose is equality of procedural opportunity. All I can do is to take the cases made by each side at face value, and decide accordingly.

Procedure

6. The claim form is dated 30 April 2024, but was actually issued on 1 May 2024. The particulars of claim are dated 28 May 2024 and appeared to have been filed then. I will summarise the detailed claim made by the claimant later in this judgment. All three defendants separately filed an acknowledgement of service, indicating an intention to contest the claimant. None of them has so far filed a defence. This is not required, for so long as it takes for the applications to which I refer next to be determined (CPR rule 24.4(4)).

7. On 2 December 2024, each of the three defendants issued a separate notice of application (in materially identical terms) for summary judgment or alternatively an order striking out the claim. The application of the first defendant was supported by witness statements from the first defendant herself, her nieces Lauren Hyland and Erin Hyland, her brother John Hyland and her solicitor Neha Tarabadkar. The application of the second defendant was supported by his own witness statement. This exhibited (*inter alia*) scripts from *Britannia*. (In fact, these were not released to the claimant until 10 December. after he had given a confidentiality undertaking.) The application of the third defendant was supported by two witness statements of Joanna Silver, senior legal counsel employed by the third defendant.

8. The claimant thereafter filed and served three separate witness statements of his own in response to this evidence, together with a witness statement from his mother, Margaret Silwood, and his son Kristo Crushcov. The claimant's first witness statement responded to the evidence filed by the first defendant, his second to the evidence filed by the second defendant and his third to the evidence filed by the third defendant. A further witness statement from the first defendant and a witness statement from Abigail Hawkes, the second defendant's solicitor, were filed and served in response to the claimant's evidence. I will deal further with the evidence later in this judgment.

Striking out and summary judgment

Procedural rules

9. In the present case, self-evidently there has so far been no trial of the issues between the parties. By these applications, the defendants say that there is no need for a trial, because the claim as formulated by the claimant has no real prospect of success, or indeed should be struck out as not amounting to a proper cause of action. In other words, this case should be terminated (in the defendants' favour) at this early stage, before ever reaching trial. These are therefore applications by the defendants for either of (i) summary judgment in favour of the defendants or (ii) an order striking out the claimant's claim. I must therefore consider the relevant rules of procedure governing such applications. These are CPR rule 3.4(2) and CPR rule 24.3 (until recently rule 24.2).

10. The former rule, which governs striking out, relevantly provides:

> "(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of the statement of case.
>
> (2) The court may strike out a statement of case if it appears to the court—
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order."

11. In addition, CPR Practice Direction 3A relevantly provides:

> "1.2 The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):
>
> (1) those which set out no facts indicating what the claim is about, for example 'Money owed £5,000',
>
> (2) those which are incoherent and make no sense,
>
> (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.
>
> 1.3 A claim may fall within rule 3.4(2)(b) where it is vexatious, scurrilous or obviously ill-founded."

12. The latter rule, which governs summary judgment, provides:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if—

> (a) it considers that—
>
> > (i) that claimant has no real prospect of succeeding on the claim or issue; or
> >
> > (ii) that defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

On an application for summary judgment, the burden of proof rests on the applicant: *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, [9]. In the present case, that is the defendants.

Case law

13. These two ways of summarily terminating a claim without a trial are frequently combined in the same application, as in this case. But an application under rule 3.4 is not one for summary judgment: see *eg Dellal v Dellal* [2015] EWHC 907 (Fam). It is generally concerned with matters of law or practice, rather than with the strength or weakness of the evidence. So, on an application to strike out, the court usually approaches the question on the assumption that the respondent will be able at the trial in due course to prove its factual allegations. But it *is* only an assumption, for the sake of the argument. On the other hand, on an application for summary judgment, the court is concerned to assess the strength of the case put forward: does the respondent's case get over the (low) threshold of "real prospect of success"? If it does not, then, unless there is some other "compelling" reason for a trial, the court will give summary judgment for the applicant. For this purpose, a "real" prospect of success is one that is "realistic rather than fanciful": *Tanfern v Cameron McDonald* [2000] 1 WLR 1311, [21].

14. In making their applications, the defendants cited a number of authorities dealing with these procedural rules, including the well-known decision of Lewison J (as he then was) in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 329 (Ch), and the decision of Cockerill J in *King v Stiefel* [2021] EWHC 1045 (Comm), which was cited with approval by the Court of Appeal in *National Highways v Persons Unknown* [2023] EWCA Civ 183, [4].

15. In *King v Stiefel* the judge referred to the decision in *Easyair*, and to other authorities, and said:

> "21. The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that – even bearing well in mind all of those points – it would be contrary to principle for a case to proceed to trial.

> 22. So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up …
>
> […]
>
> 26. There is one potential distinction between the position in relation to an application for summary judgment under CPR r. 24.2 and an application to strike out under CPR r. 3.4(2)(a). As just noted, under CPR 24 evidence is admissible to show that the pleaded allegations are fanciful – albeit that the court will be very cautious about rejecting a claimant's factual case at the summary judgment stage.
>
> 27. When considering an application to strike out however the facts pleaded must be assumed to be true and evidence regarding the claims advanced in the statement of case is inadmissible … ”

16. The relationship between the two forms of summary disposal was also discussed in *Begum v Maran (UK) Ltd* [2021] EWCA Civ 326. Coulson LJ (with whom Bean and Males LJJ agreed) said:

> “20. The Appellant's application before the judge sought an order pursuant to r.3.4(2)(a) that the particulars of claim disclosed ‘no reasonable grounds’ for bringing the claim and should be struck out and, in the alternative, a claim for summary judgment pursuant to r.24.2(a)(i) that the Respondent had no real prospect of succeeding on the claim. There can sometimes be procedural consequences if applications are made under the 'wrong' rule (which do not arise here) but, in a case like this (where the striking-out is based on the nature of the pleading, not a failure to comply with an order), there is no difference between the tests to be applied by the court under the two rules.
>
> 21. Accordingly, I do not agree with the judge's observation at [4] that somehow the test under r.24.2 is ‘less onerous from a defendant's perspective’. In a case of this kind, the rules should be taken together, and a common test applied. If a defendant is entitled to summary judgment because the claimant has no realistic prospect of success, then the statement of claim discloses no reasonable grounds for bringing the claim and should be struck out: see *Global Asset Capital Inc* v *Aabar Block SARL* [2017] EWCA Civ 37; [2017] 4 WLR 16 at [27].”

The parties’ cases

The claimant

17. The claim form summarises the claim in this way:

> “I allege that Ms Hyland took a copy of my work and it was then passed over to Mr Richardson, and that Richardson passed off the intellectual property contained within it, as being his own, during the creation and writing of the final version of ‘Britannia’ (as broadcasted and sold by Sky). Furthermore, I contend that each of the defendants then engaged in a

conspiracy: a systematic cover-up, in an attempt to hide the true origins of 'Britannia's' creation".

18. The particulars of claim run to 16 pages of closely spaced typescript. But the claimant has helpfully placed at the beginning what he calls a "concise statement of facts", which contains a summary of the main allegations made. This is as follows:

> "5. The Claimant, while a university student and as part of his course, wrote an original and heavily fictionalised historical drama series titled 'Tribus'. This body of work exhibits numerous striking similarities to 'Britannia', a historical drama series created by James Richardson (and others), which was later written, produced, and then broadcast by Sky UK. The extent of these similarities has been described as 'staggering' and 'too numerous and too exact to be coincidental' by an expert.
>
> The only person outside the Claimant's university and immediate family to have accessed the script — and had access to other parts of the work — was Karen Hyland. Ms Hyland has knowledge and first-hand experience of intellectual property theft in television. She has connections to both her co-conspirators, either directly or through immediate family members.
>
> The timeline of Britannia's sudden redevelopment 'from scratch' and the rewriting of its first episode, precisely supports the Claimant's initial suspicions that Ms Hyland had stolen a copy of his script in March 2016.
>
> Furthermore, each Defendant would go on to lie to the Claimant, making representations he is now certain were fraudulent, in relation to matters connected to the conspiracy. Sky UK has refused to disclose key documentation to the Claimant related to the case.
>
> The Claimant will provide multiple strands of evidence to the Court, which he asks to be considered holistically: when combined, these strands clearly demonstrate the Defendants have conspired unlawfully against him.
>
> The Claimant seeks appropriate accreditation, fair compensation, interest, and a variety of damages for the unauthorised use of his work, alongside a formal apology."

19. The particulars of claim then go on to make a more detailed set of allegations. For the purposes of dealing with this application, I do not need to set these all out. However, I will summarise, largely in my own words, but sometimes quoting directly from the particulars, the ones which I think are the most important for those purposes. They are as follows:

(1) The claimant was a mature student of creative writing at Bath University in December 2013, when he had the idea for the television series. He developed various elements of it between January 2014 and March 2016. These included scripts, treatment and character profiles for a three season, 27-episode historical drama set in ancient Britain at about the time of the Roman invasion in 43 AD.

(2) He met the first defendant early in 2014. She is a former television writer and editor for various publications owned by News UK. She had an extensive network of industry contacts. The claimant shared some basic details about his idea for a television series with the first defendant, in confidence. She offered to help the claimant pitch the idea to the television industry.

(3) Over the next two years, the claimant and the first defendant kept in touch (mainly through Facebook Messenger), and also met in person on a number of occasions. The first defendant showed great interest in the project, and the claimant regularly updated her about his progress. She specifically mentioned wanting to pitch the series to the second defendant.

(4) On 26 March 2016, the claimant and the first defendant met at his home. The claimant had just submitted a draft of the first episode of the series to the University. He discussed the narrative of the story in some detail with the first defendant, and read the first couple of scenes to her. The claimant now alleges that the first defendant stole a copy of his script from him on that day.

(5) They met again at his apartment on 18 June 2016, when the claimant gave the first defendant a hard copy of an updated version of the draft script.

(6) By this time the claimant was working freelance as a writer for a website that the first defendant worked for, called *Entertainment Daily*. On 29 June 2016, the claimant attended a meeting at *Entertainment Daily*'s offices in Bath. He handed over his laptop to an IT specialist during the meeting so that work could be done to it "to keep it 'in sync' with others at the office".

(7) On 12 July 2016 the claimant lost his writing job at *Entertainment Daily*, and on about 22 July 2016 the first defendant deleted him from Facebook.

(8) On 23 December 2016, the claimant found out that in August 2016 Sky UK and Amazon Video had commissioned a television series with a similar synopsis, called 'Britannia'. In early 2018, he found out that the second defendant was credited as being one of the three official creators of *Britannia* together with the writers Jez and Tom Butterworth.

(9) The first season of *Britannia* was broadcast on Sky Atlantic beginning in January 2018. The second season was broadcast beginning in November 2019. The third season was broadcast beginning in August 2021. It ran for 27 episodes over three seasons, which was the same format as the claimant had designed for *Tribus*.

(10) In February 2018 the claimant contacted the first defendant asking whether she had contacted the second defendant or shared the claimant's script with him. She replied in substance denying that she had done so. The claimant says this was a fraudulent representation, made to mislead him.

(11) In February 2019 the claimant wrote to the second defendant raising his concerns. A reply on behalf of the second defendant's company said that no one involved in the development and production of *Britannia* was aware of the claimant's television series, and neither had the claimant's script been given to

any of the creators or writers of *Britannia*. The claimant says these were fraudulent representations.

(12) In May 2019 the claimant discovered a photograph of the first defendant and a person whom he believes to be the second defendant, standing arm in arm together. The first defendant says that the man in the photograph is one of her brothers, David Hyland, who has since died.

(13) In January 2020 the claimant wrote to Sky UK setting out his complaints and asking it to stop broadcasting *Britannia*. In its reply, Sky UK denied any wrongdoing and made the following statements:

i) "the drafting of [Britannia's] final treatment [was] concluded in November 2013" by Terry Cafolla;

ii) "Mr Cafolla produced an early draft of the Ep One script on 20 June 2014, and throughout 2015 and 2016, scripts were drafted and honed with a final draft submitted on 6 April 2016";

iii) "in April 2016 Jez and Tom Butterworth were brought into the creative team to provide further input into Ep 1 and Ep 2";

iv) "Mr Richardson has never had sight of your script";

v) "Mr Richardson has never met Ms Hyland and he is not in the photograph you alleged to be of him and Ms Hyland".

The claimant says that these statements contain a number of fraudulent representations.

(14) The claimant says that *Britannia* "was suddenly started again from scratch in or after April 2016, shortly after the claimant had finished his own fourth draft script and just after he first suspected it had been stolen by Ms Hyland and possibly given to Mr Richardson".

(15) The claimant says that the defendants are linked by a number of circumstances, including:

i) messages shared between Ian Hyland, another of the first defendant's brothers (and a television critic), and the second defendant's company via Twitter specifically about Britannia;

ii) the first defendant's niece Erin Hyland did an internship with Sky UK;

iii) another brother of the first defendant, John Hyland, worked for Sky Entertainment as a Head of Department between 2013 and 2015.

(16) The claimant says that "a number of different unlawful means were used by the different defendants at different stages within the course of the conspiracy", including

i) the theft by the first defendant of the claimant's script "and other elements" of his series;

ii) breach of confidence by the first defendant and misuse of the claimant's confidential information by the first and second defendants;

iii) handling of stolen goods by the second defendant (the stolen script "and other elements" of his series);

iv) misappropriation by the second and third defendants of the claimant's work, constituting passing off;

v) fraudulent misrepresentations by the defendants;

vi) conspiracy to defraud by the defendants.

20. However, at the hearing, the claimant told me that he had decided to abandon the parts of his claim relating to passing off, conspiracy to defraud, handling stolen goods and breach of confidence. However, as part of his claim in unlawful means conspiracy, he still relied on the allegations of theft, breach of trust and fraudulent misrepresentation against the first defendant, and of fraudulent misrepresentation against the second and third defendants.

The defendants

21. As I have already noted, because these applications for summary judgment or to strike out were issued, none of the defendants has so far filed a defence. That means I must ascertain the defendants' respective positions from the evidence they have filed. At this stage, however, I am only concerned with the position that they take in relation to the claimant's assertions, rather than with the strength of the evidence that they adduce. I begin with the first defendant, who is said by the claimant to be "the only person outside the Claimant's university and immediate family to have accessed the script — and had access to other parts of the work". Moreover, in the particulars of claim she is the only channel alleged by which the second and third defendants could have been able to make use of the claimant's work. Her position is therefore key.

22. The first defendant's witness statement dated 29 November 2024 makes the following assertions, amongst others:

i) she did not steal the claimant's script;

ii) she visited the claimant's home only once, on 18 June 2016; she did not visit it on 26 March 2016, which is when the claimant claims that she stole his script;

iii) the claimant did not give her a copy of his script on 18 June 2016;

iv) she accepts that they talked about his script, that he showed or read one or two scenes from it to her, and that she offered to try to help him get it off the ground;

v) she did not tell the claimant that she wanted to pitch his series to James Richardson, whom at the time she did not know and had never met or spoken to;

vi) the photograph relied on by the claimant as showing the first and second defendant together is actually a photograph of the first defendant with her brother David Hyland (who died in October 2022) together with his daughter (the first defendant's niece) Lauren, and it was taken on Christmas Eve in 2012;

vii) neither the first defendant's brother John nor her niece Erin knows the second defendant or had anything to do with Britannia;

viii) the first defendant's brother Ian does not know the second defendant either, though he reviewed Britannia as part of his job as a television critic, and the second defendant's company thanked him for his positive comments.

23. The second defendant's witness statement dated 2 December 2024 makes the following assertions, amongst others:

i) he has never met or spoken to the first defendant and did not know of her prior to these proceedings;

ii) the photograph relied on by the claimant is not a photograph of the second defendant;

iii) he did not receive any documents relating to the claimant's television series, whether from the first defendant or anyone else;

iv) he had the idea for Britannia in 2011, when he approached Terry Cafolla as a possible scriptwriter, and discussed the matter with Sky later that year;

v) during 2012 a "pitch" document, synopsis and development document for Britannia were prepared, and in 2013 Terry Cafolla prepared a "treatment" and pilot episode outline;

vi) the second defendant's company entered a development agreement with Sky in July 2013 to produce Britannia;

vii) Terry Cafolla wrote a number of draft scripts, for the first two episodes, up to March 2016, but with amendments made in April 2016; these are exhibited to the second defendant's witness statement;

viii) pre-production began in February 2016;

ix) in April 2016, Jez and Tom Butterworth were brought in to replace Terry Cafolla and to rewrite scripts, using the sets that had already been built and the actors that had already been cast; the scripts exhibited to the second defendant's witness statement include the Butterworths' first drafts of the first two episodes both dated 5 June 2016, a "shooting

double pink" script of episode 2 dated 30 August 2016, and a "shooting double yellow script" of episode 1 dated 29 November 2016;

x) shooting began on 27 June 2016;

xi) the second defendant did not know of the claimant or the claimant's own work at any time in the development of the series.

24. The application notice filed on behalf of the third defendant relies on the various witness statements filed by the first and second defendants, believing the assertions made in those witness statements to be true. The evidence filed on behalf of the third defendant simply exhibits certain documents containing episode synopses that were produced contemporaneously with the series. It is not necessary for me to refer further to this evidence at this stage.

The court's approach to the written evidence

25. I have referred to a number of witness statements which have been made in this case. None of the witnesses who made those statements was cross-examined at the hearing. Indeed, there was no suggestion by either side that there should be any cross-examination. Accordingly, although I am not obliged to accept all the evidence presented (because the witnesses may for example be mistaken), and I can weigh it up, for present purposes I am not at liberty to *disbelieve* the evidence contained in the affidavits, unless I consider that it was manifestly incredible in light of all the circumstances: see *Long v Farrer & Co* [2004] BPIR 1218, [57], which was applied by the Court of Appeal in *Coyne v DRC Distribution Limited* [2008] EWCA Civ 488, [58].

The unchallenged narrative

26. *Britannia* and *Tribus* deal with the same period in history, namely, before, during and after the Roman invasion of Britain in AD 43. Both look at the historical events from the point of view of the Britons. Both have stories based on real people as well as invented characters. It is common ground that, from early 2014 until about July 2016, the claimant and the first defendant were friends. The claimant told her about his project and she was supportive of it. She was aware of at least some of the detail of *Tribus*. They discussed its progress from time to time, and she offered to help the claimant "get it off the ground". The first defendant has a background in the media, as do other members of her family. The second defendant through his company developed *Britannia* for the third defendant. Terry Cafolla wrote initial scripts, but was replaced by the Butterworth brothers in April 2016, who produced their own drafts from June 2016. Shooting began later that month, though final shooting scripts for the first two episodes were not produced until August and November 2016. The series was broadcast from 2018 onwards.

The disputed narrative

27. The second defendant says he came up with the idea for *Britannia* in 2011, and discussed it with both a potential writer and Sky later that year, whereas the claimant says he had the idea for *Tribus* in December 2013. The second

defendant says he developed his idea during 2012 and entered into a development agreement with Sky in July 2013. He further says that *Britannia* went into pre-production in February 2016, with scripts being written by Terry Cafolla. The claimant says that the first defendant stole a copy of his *Tribus* script from his home on or before 26 March 2016 and passed it to the second defendant, whom (according to him) she knew. The first defendant denies this. The claimant says that this script and his ideas were plagiarised by the Butterworth brothers, who were brought in to replace Terry Cafolla from April 2016, and whose scripts were used for shooting the first episodes of the first series from June 2016. The second and third defendants deny that the claimant's script was available to them, or indeed that it was plagiarised.

The law of unlawful means conspiracy

28. I can take the relevant law from the recent decision of Foxton J in *Lakatamia Shipping v Tseng* [2023] EWHC 3023, [18]-[19]:

> "18. … In short, Lakatamia must show the elements of unlawful means conspiracy as stated by Cockerill J in *FM Capital Partners Ltd v Marino* [2019] EWHC 768 (Comm) at [94]:
>
> > 'The elements of the cause of action are as follows:
> >
> > i) A combination, arrangement or understanding between two or more people. It is not necessary for the conspirators all to join the conspiracy at the same time, but the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of: *Kuwait Oil Tanker* [*Company SAK v Al Bader* [2000] EWCA Civ 160] at [111].
> >
> > ii) An intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention: *Kuwait Oil Tanker* at [108]. Moreover:
> >
> > > a) The necessary intent can be inferred, and often will need to be inferred, from the primary facts – see *Kuwait Oil Tanker* at [120-121], citing *Bourgoin SA v Minister of Agriculture* [1986] 1 QB: "[i]f an act is done deliberately and with knowledge of the consequences, I do not think that the actor can say that he did not 'intend' the consequences or that the act was not 'aimed' at the person who, it is known, will suffer them".
> > >
> > > b) Where conspirators intentionally injure the claimant and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests: *Lonrho Plc v Fayed* [1992] 1 AC 448, 465-466; see also *OBG v Allan* [2008] 1 AC 1 at [164-165].

> c) Foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention: *OBG* at [166].

iii) In some cases, there may be no specific intent but intention to injure results from the inevitability of loss: see Lord Nicholls at [167] in *OBG v Allan*, referring to cases where:

> "The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort."

iv) Concerted action (in the sense of active participation) consequent upon the combination or understanding: McGrath at [7.57].

v) Use of unlawful means as part of the concerted action. There is no requirement that the unlawful means themselves are independently actionable: *Revenue and Customs Commissioners v Total Network* [2008] 1 AC 1174 at [104].

vi) Loss being caused to the target of the conspiracy.'

19. Further, as Bryan J noted in *Lakatamia Shipping Co Ltd v Su* [2023] EWHC 1874 (Comm) at [106]:

> '(1) *Dishonesty* is not itself an element of the tort, see *Arcelormittal USA LLC v Ruia* [2020] EWHC 3349 (Comm), at [27(3)].
>
> (2) *Justification* is not a defence, see, for example, *Palmer Birch v Lloyd* [2018] EWHC 2316 (TCC); [2018] 4 WLR 164, at [192]–[193]; the [2021 Judgment], at [81]; *Seneschall v Trisant Foods Ltd* [2023] EWHC 1029 (Ch), at [151]–[160]. Justification cannot be a defence since the element of unlawful means connotes the absence of justification, see *JSC BTA Bank v Khrapunov* [2018] UKSC 19; [2020] AC 727 at [10] …
>
> (3) The combination element requires that 'at least one of' (but not necessarily all of) the conspirators will use unlawful means - see *Revenue and Customs Commissioners v. Total Network SL* [2008] UKHL 19; [2008] 1 AC 1174, at [213]. Thus, there is no requirement that all of the conspirators will use unlawful means. It is also unnecessary that the combination be, for example, contractual in nature, or that it be an express or formal agreement, see *Kuwait Oil Tanker Co SAK v. Al Bader (No.3)* [2000] 2 All ER (Comm) 271 (CA), at [111].
>
> (4) The element of unlawful means comprises conduct lacking "just cause or excuse" (see *JSC BTA Bank*, at [10]). Contempt of court and

> steps taken to prevent the enforcement of judgments constitute unlawful means (see at [16]).
>
> (5) The intention to injure need not be the defendant's predominant intention, see *JSC BTA Bank*, at [13]. Nor need he or she act maliciously in the sense that harm to the claimant need not be the end sought.
>
> (6) It is enough that harm to the claimant was the means by which the defendant sought to achieve his or her end, *i.e.*, that the defendant knew (or turned a blind eye to the fact) that injury to the claimant would ensue – see *ED&F Man Capital Markets Ltd v. Come Harvest Holdings Ltd* [2022] EWHC 229 (Comm) 487, [500]. In *The Eurysthenes* [1977] QB 49 (CA) at 68, Lord Denning MR said that "If a man, suspicious of the truth, turns a blind eye to it, and refrains from inquiry – so that he should not know it for certain – then he is to be regarded as knowing the truth".
>
> (7) The damage requirement calls for proof of "*damage caused by the conspiracy*", *Palmer Birch v. Lloyd*, supra, at [239]'."

Rules of pleading

29. CPR rule 16.4(1) relevantly provides:

> "(1) Particulars of claim must include—
>
> (a) a concise statement of the facts on which the claimant relies;
>
> … and
>
> (e) such other matters as may be set out in a practice direction."

30. The Practice Direction to CPR Part 16 relevantly provides

> "8.2. The claimant must specifically set out the following matters in the particulars of claim where they wish to rely on them in support of the claim –
>
> (1) any allegation of fraud;
>
> (2) the fact of any illegality;
>
> (3) details of any misrepresentation;
>
> (4) details of all breaches of trust;
>
> (5) notice or knowledge of a fact …"

31. The Chancery Guide (2024) relevantly provides:

> "4.8 Paragraph 8.2 of PD 16 requires the claimant specifically to set out any allegation of fraud relied on. Parties must ensure that they state:
>
> > (a) full particulars of any allegation of fraud, dishonesty, malice or illegality; and
> >
> > (b) where any inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged.
>
> 4.9 A party should not make allegations of fraud or dishonesty unless there is credible material to support the contentions made. Setting out such matters without such material being available may result in the particular allegations being struck out and may result in wasted costs orders being made against the legal advisers responsible: for the relevant principles, see *El Haddad v Al Rostamani* [2024] EWHC 448 (Ch) at [177]-[182]."

Arguments for the applicants

No sufficient evidence of combination

32. First, the applicants say that the claimant makes no sustainable allegation against them of a combination sufficient for the purposes of the tort of unlawful means conspiracy. For such a combination to exist,

> "the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of".

33. They say that the claimant's case on this point amounts to this. The first and second defendants knew each other. The first defendant has connections with the third defendant. A copy of the claimant's script was stolen by the first defendant and passed to the second defendant just before the Butterworth brothers rewrote the first and second episode scripts for *Britannia*. There are clusters of similarities between the claimant's script and *Britannia* as broadcast.

34. The applicants say that the only connections between the first and third defendant alleged are (i) that the first defendant's brother John was employed by the third defendant between September 2013 and February 2015 as the head of editorial and digital entertainment, and (ii) her niece was employed as an 18-year-old intern on Friday afternoons for four months in 2018. They say that these are simply insufficient. They further say that the evidence shows that the first and second defendants did not know each other. They point to the hundreds of messages between the claimant and the first defendant, none of which refers to the second defendant. They criticise the claimant's reliance on the photograph which he says is of the first and second defendants together, but the first defendant says is of her and her late brother David. (This is supported by the witness statement of her niece Lauren.) They say that the contemporaneous documents show that the first defendant did not visit the claimant on 26 March 2016, so that there is no coincidence in time between the first defendant having a copy of the script and the involvement of the Butterworths and the rewriting

of the *Britannia* scripts. They criticise the alleged similarities between the claimant's script and those for *Britannia*. (I consider this aspect further below.)

Insufficient pleading on intention to harm

35. Second, the applicants say that there is no attempt to plead that the defendants had the intention to harm the claimant. An element of the tort of unlawful means conspiracy is an "intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention". So the pleading is defective, and the claim must fail.

No sufficient evidence of unlawful means

36. The applicants say that the claimant has no sustainable case in respect of the alleged unlawful means. As noted above, the claimant has now abandoned the parts of his claim depending on allegations of misuse of confidential information, passing-off, handling stolen goods and conspiracy to defraud. I therefore deal only with the remaining parts, depending on allegations of theft and breach of trust (against the first defendant) and fraudulent misrepresentation (against all three defendants).

37. The allegation that the first defendant stole the claimant's script (and thus committed a breach of trust) is said to be "utterly fanciful and without any evidential support". As I have already said, the applicants say that the contemporaneous documents show that the first defendant did not visit the claimant on 26 March 2016. They further say that, by the time that it is accepted that the first defendant visited the claimant (18 June 2016) the first draft Butterworth scripts had already been written.

38. The allegations of fraudulent misrepresentation are not freestanding claims in the tort of deceit, but instead put forward as the unlawful means for the purposes of the conspiracy claim. The claimant says that fraudulent representations were made "in a subsequent and systemic attempt to cover up [the defendants'] wrongdoings against him". These fraudulent representations are not said to amount to the tort of deceit. They are however said to violate section 2 of the Fraud Act 2006. In order for an offence to be committed under section 2, a person must dishonestly make a false representation, intending by so doing to make a gain for, or cause loss (or the risk of loss) to, him- or herself or a third person. However, the applicants say, the claimant makes no allegation that any of the alleged misrepresentations was made with the intention of making a gain or causing a loss. So, there is no sufficient pleading of anything unlawful under section 2, and the claim must fail.

39. As to the fraudulent misrepresentation said to have been made by the first defendant to the effect that the second defendant was not her contact, the problem is that the claimant's case is that he thought at the time that this was a lie. Accordingly, it could not have induced the claimant to do or not do anything, or to cause him any loss. The applicants also say that there is no factual basis alleged for this to have been made as part of any conspiracy.

40. The fraudulent misrepresentations said to have been made by the second defendant are that (i) no one involved in the development and production of *Britannia* was aware of the claimant's television series, and (ii) neither had the claimant's script been given to any of the creators or writers of *Britannia*. The applicants say that the first is irrelevant, but in any event true. They say that the second is true but there is no allegation of any intention to cause gain or loss, and that it could not have done so, and also say that there is no factual basis alleged for this to have been made as part of any conspiracy. The point is also made that the statements concerned were not actually made by the second defendant at all, but by his company's Head of Legal and Business Affairs, on behalf of the company.

41. The fraudulent misrepresentations said to have been made by the third defendant are those set out in the letter of February 2020 referred to in sub-paragraph (13) of paragraph [19] above. The applicants say that it is unclear how those statements are relevant, but that they are in any event true. In any event, the statements at (13)(iv) and (v) simply repeat statements made by the first two defendants, in respect of which (the applicants say) no claim lies anyway.

Limitation

42. The tort of unlawful means conspiracy is subject to a six-year primary limitation period under the Limitation Act 1980, section 2. For a claim issued on 1 May 2024, this means that the cause of action should have accrued on or after 1 May 2018, otherwise it is out of time. Any claim based on theft of the script would have accrued in 2016. The fraudulent misrepresentation alleged against the first defendant was made in February 2018. Neither of these claims therefore could have accrued within the primary limitation period. Only the fraudulent misrepresentation claims pleaded against the second and third defendants fall within that period.

43. The extension of the primary limitation period is dealt with by section 32 of the Limitation Act 1980. This turns on the question when the claimant first knew or could reasonably have known the essential facts needed to complete the claims. This must have been in January 2018, at the latest, because that was when *Britannia* was first screened. Accordingly, there is no real prospect of the claimant being able to rely on section 32.

Arguments for the respondent

44. In summary, the claimant says that "this claim involves significant factual disputes that cannot be resolved without a full trial". He further says that "the similarities between *Britannia* and *Tribus* are too extensive to be coincidental and have been supported by expert academic analysis and opinion". He does not suggest that the two projects were carried out in precisely the same way. But he says that the narrative strands, character arcs and plot points in *Britannia* align too closely with *Tribus* to be coincidental. He says that *Tribus* was used as a "blueprint" for *Britannia*. He originally alleged over 200 points of similarity between the two series. He was invited by the applicants for the purposes of this application put forward his 10 best points. Accordingly, he now relies on 10

"clusters of similarities" that appear both in *Britannia* and in *Tribus*. These are set out clearly in his written submissions.

45. I have of course read the full written submissions, and the claimant also addressed me on them at the hearing. For present purposes, and in particular for the benefit of the reader of this judgment, I can summarise the 10 clusters in the following way:

i) the show and episode format is the same in both series, *ie* three seasons and a total of 27 episodes;

ii) the first episode in both series has a "cold" opening (where the action starts before the credits) involving a prisoner who is forced to accompany a military leader on an unwanted journey;

iii) after the opening titles, each show introduces a young protagonist alone, who runs through a field towards his or her family;

iv) later the protagonist becomes intoxicated and the night has a bad end;

v) next day the protagonist follows a new friend into the woods, and is saved from danger by that new friend;

vi) horse-riders led by a Gaul ambush a wedding, kill the groom and the priest/priestess and capture the bride;

vii) a Celtic prisoner is taken on a journey across the British countryside;

viii) a Celtic male is bound and gagged, and dragged through the woods, to be threatened sexual violence before escaping;

ix) there are similarities in the character arcs of the two protagonists, including education by druids, being trained to lead a rebellion, becoming part of a band of seven, leading an uprising, losing the final battle and being captured by the Romans;

x) the protagonist arrives in Rome, walks with confidence and pride and appears to be "saved".

46. The claimant is at pains to make clear that he is not suggesting that *Britannia* is a direct copy of *Tribus*. What he says is that the contents of his script were obtained by the first defendant and passed to the second defendant,

> "who then deconstructed them. This allowed him to extract the key narrative 'beats' related to storylines, events, scenes and character arcs, as well as the overall structure."

He says that the combination of narrative beats in his script was incorporated into *Britannia*. He says that this enabled the Butterworth brothers to take only about three weeks to completely rewrite the first draft of the first two episodes of *Britannia* so that there was a finished script for shooting. He says it would

not have been possible for them to achieve this unless they had access to a pre-existing script.

47. It is important to note that the clusters of similarities are expressed at a high level of generality. The actual stories that they relate to in the two series are quite different. For example, point (iii) is "the protagonist becomes intoxicated and the night has a bad end". In *Tribus*, the protagonist is Caratacus ("Cal"), who is present at a gathering of the various southern tribes. He is asked to look after a young Prince of another tribe during the course of the festival, which is focused on the elders. They steal some food and drink from a tent which they are not supposed to enter, Cal gets drunk, gets a tattoo, and passes out in a ditch. In *Britannia*, the protagonist is a girl called Cait, who is to take part in a coming-of-age/naming ceremony for young girls of her tribe (no other tribes are involved). The focus is on them. The ceremony involves the ritual smoking of a substance which makes Cait intoxicated, and a ritual cut of her skin with a knife. The ceremony is attacked by Romans, who kill or capture many of the Celts. Cait's sister is killed, but she manages to escape.

48. To take another example, point (vii) is "a Celtic prisoner is taken on a journey across the British countryside". In *Tribus*, the prisoner is the protagonist Caratacus, who is being taken to Rome to face trial for having led resistance to the Roman invasion (this is historically correct). During the course of the journey Caratacus is interrogated, and his answers are the main action of the series, shown as flashbacks. In *Britannia*, the prisoner is not the protagonist, but is in a subordinate role, the father of the protagonist Cait. He is not being taken to Rome. He is just one of a number of Celtic prisoners who have been captured and will be used as slaves. He is not interrogated, and there is no flashback device.

49. Even in relation to point (vi) (the wedding ambush), which may be thought to be the most story-specific, the story similarities are less than the differences. In *Tribus*, the wedding takes place in a tree circle. There is no suggestion that the wedding has any political significance, though the bride is of the Atrebates tribe (the groom's tribe is unknown). It is ambushed and attacked by a Gallic slave trader, who kills the priestess. The groom helps his bride to escape, but is then himself killed by the slave trader. The bride is later captured again by the trader but she again manages to escape, and makes her way to the king of the Catuvellauni. While with the slave trader, she has stolen a coin from him, having overheard that it had been given to him "in payment". The coin is shown to be one from the Regini tribe, suggesting that that tribe had instigated the ambush. The Atrebates and Catuvellauni are outraged, and kill the Regini present.

50. In *Britannia*, the bride and groom are from different tribes (Regni and Cantii respectively) and the wedding is intended to help broker peace between them. The wedding takes place in a "handfasting" meadow, near some standing stones. It is ambushed and attacked by the Regni themselves, and the priest (part of the plot) kills the groom. The priest is then himself killed by a Gaul allied to the Cantii, who captures the bride and takes her hostage. She does not escape. The massacre at the wedding reopens hostilities between the two tribes.

51. The notion of an ambush and massacre at a wedding is not a new one. For example, in his novel "*A Storm of Swords*", published in 2000, George RR Martin featured a wedding between rival clans for political purposes, in which one of the clans turns on the other during the wedding celebration and massacres them. This became known as the "Red Wedding". It featured in an episode (called "The Rains of Castamere") of the mediaeval fantasy television series "*Game of Thrones*", first broadcast on 2 June 2013. Given this recent example, there can be little originality in the idea as such of an ambush and massacre at a wedding or other celebration. And it is historically accurate that the Catuvellauni, Cantii, Regni/Regini and Atrebates were all Celtic tribes present in Britain at the time of the Roman invasion, and that there were power struggles between them.

52. The gravamen of the claimant's complaint is not that his actual stories have been copied, but that his unique sequence of "narrative beats" has been used. Since an original arrangement of non-copyright material may qualify for copyright protection, it may be (though it was not argued, and I am not deciding) that a unique sequence of "narrative beats" could also qualify. Accordingly, it might be possible to claim an infringement of such copyright, in an appropriate case. But that is not this case. The claimant here does not make any complaint of copyright infringement. His cause of action is the tort of unlawful means conspiracy. It is therefore against the law relating to that cause of action that I must decide these applications.

Discussion

53. In my judgment, the story which the claimant tells to support his unlawful means conspiracy claim is not an impossible one, but it is certainly improbable. How improbable is something that I shall have to consider. But the evidence which I have so far seen (which of course would not be the whole of the evidence at trial) is at least unhelpful, if not against it. At this stage, there is no "smoking gun" in its favour, merely a number of what might be called "straws in the wind", which might be followed up for the purposes of a trial. It is, to say the least, an unpromising case. But that is not the test which I have to apply. In fact, there are two stages for me to consider in resolving these applications.

54. The first is whether, even assuming that the claimant can prove every allegation of fact which he has so far made, he would succeed in his cause of action. This is essentially a matter of pleading. If the claimant has not pleaded a complete case for the cause of action chosen, he cannot succeed, and the claim should be struck out. If he *has* pleaded a complete case, and the case is not struck out on that basis, the second stage is to ask whether the material before me demonstrates (and the burden is on the applicants) that the claim has no real prospect of success and that there is no other compelling reason for trial. If so, then the court may give summary judgment in favour of the applicants. I will deal with each of the two stages in turn.

Striking out the claim

55. The cause of action is unlawful means conspiracy. I set out the constituent elements of this at an earlier stage of this judgment. One of those elements is an

arrangement or understanding between two or more persons who share the same object and can be said to be acting in concert. The only express allegation of both the existence *and the nature* of such an arrangement or understanding by the claimant in his statements of case is contained in the claim form itself. That first of all makes (i) the allegation of theft against the first defendant, and (ii) the allegation against the second defendant of passing off the intellectual property contained in the claimant's script as his own. It then goes on:

> "Furthermore, I contend that each of the defendants then engaged in a conspiracy: a systematic cover-up, in an attempt to hide the true origins of Britannia's creation. This included making fraudulent representations, manipulating facts, and withholding critical information to mislead me and prevent the discovery of the truth".

The use of the word "then" in the first line of the quotation is significant.

56. So far as I can see, there is no allegation anywhere by the claimant that the alleged theft of the claimant's script by the first defendant or its use by the second defendant was any part of the shared object of the conspiracy. The conspiracy as expressed in the claim form was simply *to cover up* what was said to have had happened earlier. And, so far as the third defendant is concerned, there is no allegation that the third defendant knew about, much less desired to join in, a conspiracy to steal the claimant's script and for it to be used in some way in the production of *Britannia*, or indeed that it knew that the script had been stolen and so used. So, the allegations of fraudulent misrepresentation against the third defendant as part of such a conspiracy to cover up what the first and second defendants had allegedly done go nowhere. (Also in relation to the third defendant, the claimant does not identify which of the statements referred to were fraudulent representations. He simply says that *some* of them were.)

57. As against the first and second defendants, there are allegations that they knew each other (though these are denied), but, as stated above, the only allegation of conspiracy is in relation to their alleged cover-up. The problems with this are threefold. First, the claimant pleads simply that certain statements made by the defendants were "fraudulent representations". But no details of the misrepresentation are given (CPR PD 16, para 8.2(3)) and no particulars of fraud are given (Chancery Guide, para 4.8). Second, there are no sufficient allegations of wrongdoing to violate section 2 of the Fraud Act 2006, and in particular no allegations of intention to make a gain or cause loss. Third, in relation to the second defendant, there is no sufficient allegation that the statements by the Head of Legal and Business Affairs at the second defendant's company were made as agent for the second defendant.

58. These defects mean that, as it stands, the claimant's claim cannot succeed in law against any of the three defendants. In *Kim v Park* [2011] EWHC 1781 (QB) Tugendhat J said:

> "40. However, where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right

> the defect, provided that there is reason to believe that he will be in a position to put the defect right … "

This dictum has been often applied, and was referred to recently with approval by the Court of Appeal in *Alton v Powszechny Zaklad Ubezpieczen* [2024] EWCA Civ 1435, [17]. But, before I consider whether it would be appropriate to give the claimant the opportunity in this case to put right the defects identified, I will go on to consider the other part of the application, namely for reverse summary judgment.

Reverse summary judgment

59. I have already set out above the relevant test to apply at this second stage, namely, whether the claimant has no real prospect of success, *and* there is no other compelling reason why there should be a trial. In so doing, I am entitled (amongst other things) to evaluate the evidence produced so far, and, if appropriate, to conclude that on that evidence there is no real prospect of success. But I must bear in mind the potential for other evidence to be available, and I must not conduct a "mini-trial".

60. I therefore approach the matter in this way. There are a number of contested issues on which the claimant must succeed in order to succeed overall in the claim he now advances. These include the following:

(1) whether the first defendant was present at the claimant's home on or about 26 March 2016;

(2) whether the first defendant stole his script from his home on that occasion;

(3) whether the first defendant knew the second defendant;

(4) whether the first defendant passed the claimant's script to the second defendant;

(5) whether the claimant's script was plagiarised by the Butterworth brothers in preparing the shooting scripts for *Britannia*;

(6) whether the defendants, or any two of them, conspired to cover up the preceding events.

Issue (6) only arises if the first five are proved.

61. In his first witness statement the claimant says:

> "46. … It is only through an analysis of the similarities and a combination of the other supporting evidence, including the timelines of when Britannia was started again 'from scratch', that the theft of my work around this time [*ie* 26 March 2016] can be proven."

62. As the claimant himself there accepts, his belief in his case on the first four issues stems from his belief in his case on the fifth, that is, that his script was plagiarised by the Butterworth brothers. As it happens, that is the only one of

the issues in which the evidence before me is likely to be most of the evidence before the judge at any trial. I have had the advantage of reading the claimant's written submissions on this issue, and of hearing his oral submissions. But, more importantly, I have also had the advantage of reading both the claimant's script and the scripts prepared by the Butterworth brothers for the first two episodes of *Britannia*. (I add that I have also read those of Terry Cafolla.) Of course, at trial there would be the oral evidence of the second defendant himself and probably the oral evidence of one or both of the brothers, and perhaps others too. They would be cross-examined, and that would form part of the basis for the trial judge's decision. But, that apart, I am in much the same position as the trial judge would be.

63. I turn to the clusters of similarity put forward by the claimant. Given the importance to him of the invention of the idea and the creative efforts involved in writing the script, I do understand his concern that his work may have been plagiarised. However, these clusters are couched in a language with a high level of generality. That is a problem. Not only are the stories that are told in the claimant's script and the Butterworths' scripts completely different, but the descriptions of the similarities are so general that they could apply to a great many things which do not resemble each other in any significant way. And that is without even considering the possibility of coincidence. After all, all the scripts (including those of Terry Cafolla) are written against the same historical background: the invasion of Britain by the Romans in 43 AD, at a time when the British tribes were not united, but feuding between themselves. I do not find it at all surprising that professional television scriptwriters should think along the same lines, introducing moments of calm, happiness, tension, terror and so on at appropriate intervals, using tried and tested dramatic tropes.

64. Turning to the question of the coincidence of timelines, it is true that there was not much time between April 2016 (when the Butterworths became involved) and the beginning of shooting on 27 June 2016. However, although first drafts of the first two Butterworth episodes are dated 5 June 2016, *shooting scripts* are dated 29 November 2016 and 30 August 2016 respectively. This considerably extends the timeline, and weakens the argument from lack of time to produce an original script. On the material before me I am clearly of the view there is no real prospect of the claimant establishing that his script was used in the preparation of the shooting scripts for *Britannia*.

65. I should also say that, in relation to issue (3), whether the first defendant knew the second defendant, the only positive evidence that the claimant put forward in favour of his case that the first defendant did indeed know the second defendant was the photograph which he says is of the two of them together. The first defendant says it is not the second defendant, but her brother David. Very sadly, David Hyland is now dead. It is not going to be possible to resolve the matter at trial by calling him as a witness. The next best thing, which we have now, and the trial judge will also have, are the photographs themselves. Having studied the photograph relied on by the claimant and the photographs supplied of the second defendant, I can only say that, although there is a resemblance, they are clearly of different people. In my opinion, the claimant has reasoned backwards from his conviction that his script was used in *Britannia* to

convincing himself that this photograph *therefore* must be of the second defendant. Of course, that does not show that the first defendant did not know the second defendant. But it does take away the central plank of the claimant's case that she did.

66. Once issue (5) is taken out of the equation, the claimant's whole case really loses steam. The claimant has no positive evidence on issue (4), and both the first and second defendants deny it. Of course, if there is to be a trial, there will be disclosure beforehand and cross-examination during it, and something may turn up. But, as the judge said in *King v Stiefel*, "it is not enough to say, with Mr Micawber, that something may turn up …" Nor, once we take away the evidence of the photograph, does the claimant have any positive evidence on issue (3). All he has are a few straws in the wind about possible connections (such as contacts between the second defendant's company and the first defendant's brother Ian). On the material before me, there is no real prospect of success on issues (3) and (4).

67. In relation to issue (2), the alleged theft of the script, again the claimant has no direct evidence. He does not say, for example, anything so direct as "I saw the first defendant take the script." He does not even say that, after her visit, he was missing a copy of his script. What he *does* say, in his first witness statement, is that the first defendant had access to his laptop computer on that day, whilst he went out to the shops. Again, his evidence really comes to this, that he cannot explain what he regards as the similarities between *Britannia* as broadcast and his script, *without* there having been sight by the *Britannia* scriptwriters of his script. Then, working backwards, he considers that the only plausible explanation is that it was stolen from him, and then that the only plausible suspect is the first defendant, who, he says, was at his home on 26 March 2016. In effect, his evidence is circumstantial.

68. On the other side, the first defendant denies being at the claimant's home at all on that day (which is issue (1)), let alone stealing the script (issue (2)). If the script was not used by the writers of *Britannia*, the whole idea of the theft is highly improbable, although not impossible. But there is a clear conflict of evidence on that point, and whilst I think that the claimant's case on it is weak, I cannot decide that matter at this stage. In particular, there are a number of documentary messages between the parties (some adduced by each side) which would need to be considered. If the only issues in the case were the first two, then in my view they could be resolved only by a trial, with the benefit of prior disclosure, and then of cross-examination at the trial. But they are not the only issues in the case. They are just the starting point for a more complex claim, depending as it does on use ultimately being made of the claimant's script in the production of *Britannia*. If I ask myself the question, Is there a real prospect of the claimant proving all six of the issues set out above, the answer must be No.

69. I may say that I do not consider that there is any other compelling reason for a trial. Accordingly, in my judgment the defendants are entitled to reverse summary judgment on this claim. It is not therefore necessary for me to go on and consider the question of limitation. Nor is it now necessary for me to consider the point raised in *Kim v Park* about giving the claimant the opportunity to re-draft his pleaded case to avoid its being struck out as defective.

If the substantive claim has no real prospect of success anyway, I see no point in giving the claimant the chance to redraw its formal parameters.

Conclusion

70. For the reasons given above, I will grant summary judgment to the defendants, and dismiss the claimant's claim. I thank all parties for their helpful submissions. I should be grateful to receive for approval an agreed minute of order giving effect to this judgment.