NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 53

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO: FSD 18 OF 2026 (DDJ)

BETWEEN

SUPCON INTERNATIONAL HOLDINGS PTE LTD

PLAINTIFF

AND

(1) ASCENDENT CAPITAL PARTNERS III GP LIMITED
(in its capacity as the General Partner of Ascendent Capital Partners III GP, L.P., the General Partner of Skyline Automation Technologies, L.P., a British Virgin Islands limited partnership without legal personality)

DEFENDANT

Before:	The Hon. Justice David Doyle
Appearances:	Justin Fenwick KC instructed by Harriet Ter-Berg, William Porter and Sofia Kranjec of Appleby (Cayman) Ltd for the Defendant Paul Lowenstein KC instructed by Neil McLarnon of Travers Thorp Alberga for the Plaintiff
Heard:	21 and 22 May 2026
Draft Judgment Circulated:	30 June 2026
Judgment delivered:	2 July 2026

Determination of an application for strike out/summary judgment

JUDGMENT

Introduction

1. On 21 and 22 May 2026 I heard submissions in respect of the Defendant's application for strike out and summary judgment and reserved judgment. I now deliver my judgment. I have dismissed the Defendant's application for the reasons contained in this judgment.

The Plaintiff's position

2. I have considered the Plaintiff's 55-page skeleton argument dated 15 May 2026. The Plaintiff opposes the application for strike out and summary judgment.

3. The Plaintiff says that its claim sounds in the tort of causing loss by unlawful means.

4. The Plaintiff says that its claim arises from its investment as a strategic investor of over US$95 million through Guolian Securities Global Investment SPC ("Guolian") in the Defendant's "Skyline Fund". It adds that the Skyline Fund was then used to acquire and purchase Hollysys Automation Technologies Ltd ("Hollysys") in July 2024 and that the Defendant knew at all material times both before and after soliciting the Plaintiff's investment, and at the completion of the privatisation, that the Plaintiff is a commercial competitor of Hollysys.

5. The Plaintiff says that the Plaintiff, through Guolian (1) had information and other rights, (2) would be entitled to participate in the direction and management of the Skyline Fund, and (3) would have rights to participate in any further rounds of investment that might be raised.

6. The Plaintiff says that the imposition of Guolian between the Plaintiff and the Skyline Fund was required by the Defendant. It adds somewhat vaguely that there was "an understanding" between the Plaintiff and the Defendant that "after about a year" when Hollysys was privatised, the Plaintiff

could call for Guolian to be removed from the structure and the Plaintiff would become a direct investor in the Skyline Fund.

7. The Plaintiff says that the Defendant has engaged in the following wrongful conduct against it:

(1) dilution of its investment without consultation or opportunity to participate;

(2) transfer of investment not consented to; and

(3) failure to provide financial information.

8. The Plaintiff says that it has been a victim of a concerted plan by the Defendant to deprive it of (1) its full rights as a direct investor in the Skyline Fund, (2) its right to participate in new equity funding (and so avoid dilution), and (3) information rights.

9. The Plaintiff vigorously denies that Guolian is somehow a "creature" of the Plaintiff.

10. The Plaintiff refers to the fact that, on 30 April 2026, the court granted leave to the Plaintiff to amend its pleading.

11. The Plaintiff adds that the Defendant's summons dated 2 April 2026 should be dismissed "in toto" because the Defendant, having not opposed the amendments at the 30 April 2026 hearing, thereby accepted that the amended claim has a real prospect of success.

12. In the alternative, the Plaintiff submits that the Defendant's summons should be dismissed for the following alternative reasons:

(1) *Primary submission*: the claim is plainly not suitable for summary resolution, either on the basis of strike-out or summary determination against the Plaintiff. A quick glance at the significant number of contested issues and disputes dictate that this claim should go to trial. The court should not be drawn into conducting a mini-trial.

(2) *Alternative submission*: there is in effect nothing in the most prominent points in the morass of material served by the Defendant which, prior to receipt of the Defendant's skeleton argument, appeared to the Plaintiff to be:

(a) a contention that the Defendant did not engage in any unlawful acts (specifically it did not breach any of its contracts with Guolian). The Plaintiff disagrees. If the court finds that all or even some of the breaches alleged against the Defendant raise triable issues the Defendant's summons should fail on this ground; and

(b) a contention by the Defendant that there was no intention to cause loss to the Plaintiff. Again, the Plaintiff disagrees. However, if the court finds in favour of the Defendant on this ground, it would bring an end to the claim of causing loss by unlawful means.

13. The Plaintiff refers to what it describes as the "legal principle" that a proposed amendment must have a real prospect of success before it will be permitted, which it says is the same test applied for summary judgment. In advancing these submissions, the Plaintiff relies on *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] EWCA Civ 33; [2021] 3 ALL ER 978 at [16]-[18]. Popplewell LJ, sitting in the Court of Appeal of England and Wales, at [17] stated that the court will refuse permission to amend to raise a case which does not have a real prospect of success. At [18] he added that (1) it is not enough that the claim is merely arguable; it must carry some degree of conviction, (2) the pleading must be coherent and properly particularised, and (3) the pleading must be supported by evidence which establishes a factual basis that meets the merits test; it is not sufficient simply to plead allegations which, if true, would establish a claim; there must be evidential material which establishes a sufficiently arguable case that the allegations are correct.

14. The Plaintiff also relied on *Williams v Cayman National Bank Limited* 2021 (1) CILR 538 where Segal J at [18(b)(vi)] referred to a submission that where a claimant seeks leave to amend, he must show that he has a real as opposed to a fanciful prospect of success. At [33] Segal J stated that the law and principles in respect of applications for leave to amend were substantially agreed by the parties "as is clear from my summary of their respective submissions above."

15. The Plaintiff says that by consenting to, or at least not opposing, the amendments, the Defendant has accepted that the amended case has satisfied the merits threshold set out in *Kawasaki* and therefore is not susceptible to either a strike-out or summary judgment.

16. The Plaintiff adds that it does not matter that the Defendant "purported to give conditional or without prejudice consent".

17. The Plaintiff also deals with the Defendant's other complaints.

18. The Plaintiff denies that there is any ulterior motive or ulterior purpose to the proceedings it has brought in the Cayman Islands. It says it has brought the claim for the legitimate purpose of recovering damages. There is a genuine damages claim. The Plaintiff pleads that it has suffered loss as a result of (1) the proposed transfer being obstructed or not being consented to, (2) its shares being diluted, and (3) information being withheld.

19. The Plaintiff says that its case is that the Defendant's intention when carrying out various unlawful acts was to cause harm to the Plaintiff. The Plaintiff's case is based on inferences to be drawn from the pleaded primary facts (Amended Statement of Claim ("ASoC") at paragraph 64A).

20. On the issue of intention, the Plaintiff says that the Defendant argues that the Plaintiff has failed to plead knowledge or attribution, and therefore has failed to plead intention. In particular, the Defendant argues that the Plaintiff has failed to plead the identity of the individuals with the relevant intention and, therefore, the claim is liable to be struck out. The Plaintiff in effect says there is nothing in these points that would justify strike-out or summary judgment.

<u>The Defendant's position</u>

21. From its relatively concise but intensely packed 29-page skeleton argument dated 15 May 2026, it appears that despite the filing of the ASoC, the Defendant still advances the application for strike out and summary judgment.

22. Strike out is sought on various grounds:

(1) no reasonable cause action;
(2) an abuse of process; and
(3) scandalous and/or frivolous and vexatious pleading.

23. The Defendant says that evidence is not admissible in respect of (1) (the no reasonable cause of action ground) but is in respect of the other grounds, as well as on the summary judgment application.

24. The Defendant says that its primary position is that the application can be decided by the court solely by reference to the pleadings and on the assumption that the facts pleaded by the Plaintiff are true.

25. The Defendant says that whilst it only needs to succeed in establishing that the Plaintiff's claim in respect of a single element of the cause of action ought to be struck out (because if the Plaintiff cannot succeed on all elements, it cannot succeed at all), the Defendant's position is that each and every element of the Plaintiff's claim is misconceived and bound to fail.

26. The Defendant refers to *OBG Ltd v Allan* [2008] UKSC 24; [2008] 1 AC 1 (HL) ("*OBG*") and the claim in causing loss by unlawful means and the elements which the Plaintiff has to prove.

Strike-out application

27. Stripped of their detail and unnecessary complication, the Defendant makes a number of points in support of its strike out application on the basis of no reasonable cause of action, including the following:

(1) it is necessary for the Plaintiff to identify and prove the natural person or persons who are said to have had the relevant intention, and their capacity so as to make the Defendant responsible for that person's state of mind, and the Plaintiff has failed to do this. There is no proper and sustainable plea of intention and the Defendant says that the claim in intentionally causing loss by unlawful means is liable to be struck out;

(2) in terms of causation, the Plaintiff has failed to plead adequately, or at all, how either the alleged withholding of information, or the delay in agreeing the transfer of shares to the Plaintiff, caused it to suffer any loss. Further, as to the alleged dilution, the Plaintiff has failed to plead an arguable (or any) case that it would have been prepared and able to take up their alleged rights by making further payments to avoid dilution; and

(3) damage is the gist of the claim in causing loss by unlawful means and, in this context, damage means actual pecuniary loss. It follows that, absent proof of actual pecuniary loss, there is no cause of action.

Summary judgment application

28. In support of its ambitious summary judgment application, the Defendant seeks to advance complicated legal and factual arguments under various headings: alleged unlawful acts and/or "concerted action"; release from liability; application of transfer conditions; "dilution"; withholding of information, and wrongful interference with Guolian's freedom to deal with Supcon, and intending to cause loss. I have considered all that has been written and said in respect of the summary judgment application.

Abuse of process, frivolous and vexatious pleading allegations

29. In respect of its allegations of abuse of process, and of frivolous and vexatious pleading, the Defendant asks the court to take into account:

(1) the use of the Cayman courts to bring a claim in causing loss by unlawful means when the Plaintiff could and should have brought proceedings in Hong Kong under the relevant arbitration provisions; and

(2) the Plaintiff had an ulterior motive in bringing the Cayman proceedings. Reference is made to a "wholly unnecessary and gratuitous attempt to cause damage to" the Defendant.

Scandalous nature of the obstruction and withholding of information allegations

30. The Defendant refers to allegations contained in paragraphs 39-42A, 52-56B and 64-65 of the ASoC and says that none of those matters are alleged to have resulted in pecuniary damages which the Plaintiff seeks to recover in the proceedings and they are accordingly, "gratuitous, immaterial, and have no bearing on the relief sought" or, alternatively, "those paragraphs should accordingly be struck out as scandalous."

Determination

31. I now turn to the determination of the application for strike out and summary judgment.

Need for clear, plain and obvious grounds

32. It is a serious step to shut out a plaintiff from having its claims determined on the merits after a full hearing. It should not be taken unless there are clear, plain and obvious grounds justifying it.

33. The hearing of a strike-out application is not the place for a mini-trial or the determination of disputed factual issues. The court, however, should remain vigilant to ensure that its processes are not abused by the prosecution of hopeless claims that are obviously unsustainable.

34. In this case, neither counsel has seemed keen to remove complication and detailed arguments in respect of *prima facie* complicated points have been presented to the court, not always in an easily understandable format.

Some relevant law in respect of strike out and summary judgment

35. As was outlined in *Chow Tai Fook Nominees Limited v Diamond City Limited & Anor* [2021] HKCFI 3019 at [39], if, on a careful reading of the statement of claim, however complicated, it can be seen that there is no cause of action or the claim will obviously not succeed, then it will be struck out despite the apparent complexity.

36. Closer to home, Parker J helpfully summarised the position in *Folkvang Limited v Valorte Capital* (FSD unreported judgment delivered 29 February 2024) at [90] to [98], in respect of applications to strike out and for summary judgment. Parker J at [93] stated:

> "Applications to strike out and for summary judgment are not lightly granted and are discretionary remedies. The pleaded case must be untenable and the jurisdiction is to be exercised sparingly and only in clear cases."

37. Adding at [95], "The fact that the Court takes the view that the case is weak and not likely to succeed is not sufficient."

38. At [96] Parker J usefully set out certain general propositions derived from Cayman Islands authority which apply to an application to strike out, and I outline them as follows:

(1) the jurisdiction to strike out must be sparingly used, as its exercise deprives the party of the normal procedure for establishing rights by way of trial with the discovery and oral evidence tested by cross-examination;

(2) the court's function is to decide whether the case is so plainly unarguable that there is no point in having a trial;

(3) where the defendant relies on several grounds of strike out, the court must take a broad-brush approach and simply ask whether the case was a plain and obvious one for striking out, rather than considering each ground in detail;

(4) the fact that a case is weak on the documents does not mean that it is unarguable and it must be plainly and obviously unarguable for a strike-out to succeed. The defendant has to show that the claim is bound to fail;

(5) the court should not perform a mini-trial without the benefit of discovery and the cross-examination of witnesses, to decide the case on written material alone. Applications should not be granted if there is any serious conflict as to the material facts or any real difficulty as to the law; and

(6) the facts as pleaded must generally be assumed to be true unless there are good reasons against the assumption.

39. Parker J placed reliance on the judgment of Levers J in *Southdown Regency Development Ltd v Cayman National Bank Ltd* (unreported judgment of the Grand Court delivered promptly on 12 March 2007 after hearings on 28 February and 5 March 2007). Levers J, in that judgment at page 10 onwards, dealt with the relevant law and at page 11 stated:

> "It is well established that the jurisdiction to strike out must be sparingly used, as its exercise deprives the party of the normal procedure for establishing rights by way of trial with the discovery and oral evidence tested by cross-examination. On an application, the court's function is to decide whether the case is so plainly unarguable that there is no point in having a trial."

40. Levers J at page 14 added:

> "Where several of the grounds stated in the rules in striking out were urged as in this case, the court must take a broad brush approach and simply ask whether the case was a plain and obvious one for striking out rather than considering each ground in detail."

41. At [33(10)] of my judgment in *Baosheng Media Group Holdings Limited* (FSD unreported judgment delivered on 30 October 2024), I stated that the reason for the relevant legal practice was clear. Although a court may, at a preliminary stage, regard a claim as tenuous and having a negligible chance of success, the plaintiff is nonetheless entitled to the court's adjudication on it on the merits unless it is a claim which the court is satisfied cannot succeed.

42. Arnold LJ at [24] in *Sofer v Swissindependent Trustees SA* [2020] EWCA Civ 699, in the context of an appeal in respect of a strike out and reverse summary judgment application, added the following general point about particulars:

(1) the purpose of giving particulars is to allow the defendant to know the case he has to meet;

(2) when giving particulars, no more than a concise statement of the facts relied upon is required; and

(3) unless there is some obvious purpose to be served by fighting over the precise terms of a pleading, contests over their terms are to be discouraged.

43. Parker J in *Folkvang* also helpfully outlined the relevant law in respect of summary judgment applications. At [97] he stated that (footnotes omitted):

> "… the Court must be satisfied that the Plaintiff's claim has no prospect of success. The Defendant has to prove that there is no real prospect of success. Although the test is somewhat lighter than in an application to strike out, the burden is still on the Defendant to show that the Plaintiff's case is "worse than improbable", and even then the court has a discretion as to whether summary judgment should be entered."

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44. At [98] Parker J referred to the oft-quoted [15] of Lewison J's summary of the approach to an application for summary judgment in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) including, for present purposes:

(1) the court must consider whether the claimant has a realistic as opposed to a fanciful prospect of success;

(2) a realistic claim is one that carries some degree of conviction. This means a claim that is more than merely arguable;

(3) in reaching its conclusion the court must not conduct a mini-trial;

(4) this does not mean that the court must take at face value, and without analysis, everything that a claimant says in his statement before the court. In some cases, it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents; and

(5) however, in reaching its conclusions the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.

45. *Vanquis Bank Ltd v TMS Legal Ltd* [2025] EWHC 1599 (KB); [2025] P.N.L.R 30 is a modern English example of a court at first instance robustly dealing with strike out and summary judgment applications in the context of a claim for causing loss by unlawful means. At [110] Jay J dismissed both applications as they had fallen well short of persuading the court that the amended pleading should be struck out and/or that the defendant should have summary judgment. The judge at [111] was at pains to state that he was not to be understood to be expressing any view as to whether the claimant's case was right.

46. In dealing with allegations that a pleading is scandalous, the bar a defendant has to jump is a very high one. See for example the judgment of Deputy High Court Judge Jonathan Wong in *Sam Woo Bore Pile Foundation Limited v New Edex Construction Limited* [2026] HKCFI 239 at [3.2(5)].

47. As is plain from the caselaw, the "frivolous or vexatious" ground is concerned with stopping cases which ought not to be proceeded with. Deputy High Court Judge Wong, relying on earlier authority, put it neatly at [3.2 (6)] when he stated:

> "A proceeding is frivolous when it is not capable of reasoned argument or without foundation or cannot possibly succeed. A proceeding is vexatious when it is oppressive or lacks *bona fides*."

48. The learned judge stated:

> "In so far as "abuse of process of the court" is concerned, this is designed to ensure that the machinery of the courts is used for *bona fide* purpose and is not abused."

49. The learned judge at [3.3] added:

> "As noted at Hong Kong Civil Procedure 2026 Note 18/19/8, the mere fact that a pleading contains some unnecessary matter is not a sufficient ground for striking out so long as it is otherwise harmless. Similarly, a pleading will not be struck out unless it is clear on the face of the allegations that they are irrelevant. It is no part of the defendant's duty to reform the plaintiff's pleading; but if wholly immaterial matters be set out in such a way that the applicant must plead to it, and so raise irrelevant issues which may involve expense, trouble, and delay, then the irrelevant matter will be struck out, as it will prejudice the fair trial of the action. Also, where averments are made in the pleading which are plainly incompatible with the nature of the claim, the offending parts will be struck out."

50. Under Practice Direction 2 of 2024 at paragraph 10, "parties and practitioners before the Grand Court are encouraged to consider the editorial notes in the Hong Kong Civil Procedure". Paragraph 11 adds that the notes in the current edition of Hong Kong Civil Procedure may be used as an aid to interpretation and application of same or similar rules in the Cayman Islands.

The amended Statement of Case

51. There is in my judgment sufficient in the ASoC to permit this case to go to trial.

52. In its amended pleading, the Plaintiff now solely relies on the modern and developing tort labelled by some (including *Clerk & Lindsell on Torts* 24th Ed ("*Clerk & Lindsell*")) as the economic tort of causing loss by unlawful means.

53. The Defendant says that generally, the cause of action of causing loss by unlawful means tends to be run as an alternative to unlawful means conspiracy and adds that there are very few cases in which it has succeeded or is likely to succeed on a freestanding basis. That may be true but it is for the court to consider whether the case presently before it should, in effect, be allowed to go to trial. The Defendant also recognises that in *Vanquis Bank Ltd v TMS Legal Ltd* [2025] PNLR 30 Jay J, sitting in the King's Bench Division in England and Wales, declined to strike out a freestanding causing loss by unlawful means claim.

54. At paragraph 6 of the ASoC it is pleaded that, having received the Plaintiff's capital contribution of US$95 million, the Defendant wrongfully interfered with Guolian's freedom to deal with the Plaintiff by:

(1) unreasonably withholding its consent for the Plaintiff to resume as a limited partner of the Skyline Fund;

(2) withholding from the Plaintiff information about the new rounds of equity investment in the Skyline Fund; and

(3) procuring the Skyline Fund and/or Advanced Technology (Cayman) Limited ("Advanced Tech") to dilute the Plaintiff's indirect interests in what are described as "the Target Companies" (namely Hollysys and Advanced Tech) through equity financing from new investors and an extensive employee stock ownership plan.

55. At paragraph 7 of the ASoC the Plaintiff pleads:

> "These acts were carried out wrongfully, unlawfully, in breach of contractual provisions, and with intent to injure Supcon thereby causing Supcon financial and economic loss."

56. Section H of the ASoC is headed "Causing loss by unlawful means". At paragraph 64 it is pleaded that the Defendant intended to and has caused loss to the Plaintiff by the unlawful means of breaching the terms of (1) the Guolian – ACP Side Letter, and/or (2) the Supcon – Guolian – ACP Side Letter, and/or (3) the Amended and Restated Limited Partnership Agreement ("ARLPA"), and thereby interfering with Guolian's freedom to deal with the Plaintiff.

57. It is worthwhile setting out paragraph 64A and paragraph 65 of the ASoC (footnotes omitted):

> "64A. ACP intended to cause loss to Supcon. Supcon will rely on the following matters which either evidence intention or from which ACP's intention falls to be inferred:
>
> > 64A.1. ACP's breaches and conduct in (i) withholding consent to the Proposed Transfer and (ii) withholding material information was calculated to prevent Supcon from gaining direct access to the Skyline Fund so as to facilitate the dilution of Supcon's indirect interests in the Target Companies, thus calculated to cause loss to Supcon's economic interests.
> >
> > 64A.2. Further or alternatively, ACP deliberately and with the knowledge of its consequences withheld consent to the Proposed Transfer with the aim of obstructing Supcon from having ownership over Hollysys, which was now under the control of ACP and a competitor of Supcon.
> >
> > 64A.3. Yet further or alternatively, ACP intentionally inflicted damage on Supcon's economic interests as a means to promote ACP's own economic interests to: (i) maintain control and ownership over Hollysys: (ii) benefit from New Equity Financing: (iii) prevent having to disclose, as it is obligated to under the Target Fund Documents, information about Hollysys, which is a competitor to Supcon; and (iv) maintain complete autonomy over the direction of Hollysys for future IPO.
> >
> > 64A.4. Yet further or alternatively, ACP knew or must have known that its gain in solidifying control over the Target Companies (whether by itself or with other new investors introduced to the Target Companies) is the obverse to

and is inseparably linked to Supcon's loss (dilution of Supcon's indirect interests in the Target Companies).

64B. The loss was caused by unlawful means viz breach of contract between ACP and Guolian as pleaded in paragraphs 42A, 51A, 51B and 56A above.

65. By these unlawful means, ACP wrongfully interfered with Guolian Sub-Fund's actions in which Supcon has an economic interest, and thereby interfered with Guolian's freedom to deal with Supcon:

65.1 By wrongfully refusing to give consent to the Proposed Transfer, ACP restricted:

65.1.1 Guolian's ability to consent to the transfer of its shares of the Guolian Sub-Fund to Supcon (which is subject to the Target Fund Documents' restrictions on Transfer at the Skyline Fund level) under clauses 2(1) of the Supcon-Guolian Side Letter; and

65.1.2 For the Guolian Sub-Fund to thereby transfer the LP Interest in the Skyline Fund to Supcon.

65.1A. By failing or refusing to consult the Investment Committee regarding the New Equity Financing and ESOP, ACP interfered with Guolian's duty to keep Supcon informed of matters relating to the Investment Committee pursuant to clauses 1(2) and 1(3) of the Supcon-Guolian Side Letter.

65.2 By failing to provide information prescribed under the ARLPA and/or Guolian-ACP Side Letter, ACP prevented Guolian Sub-Fund from forwarding information to Supcon as required under clauses 1(3) and 1(4) of the Supcon-Guolian Side Letter.

65.3 ACP's wrongful interference of Guolian Sub-Fund's freedom to deal with Supcon was achieved by unlawful means, namely breaches of contract between ACP and the Guolian Parties."

58. The Plaintiff claims against the Defendant "Damages for causing loss by unlawful means". Categories of particulars of loss are specified at paragraphs 66A and 66B.

Relevant law: causing loss by unlawful means

59. Having considered the pleading, it is useful to briefly refer to the relevant law in respect of causing loss by unlawful means. Both sides addressed the court in detail on the relevant law.

60. *OBG* was stated to have been referred to in *Origami Partners v Pursuit Capital Partners (Cayman) Limited* 2012 (2) CILR 191. At [33] Cresswell J stated that, since *OBG*, an "interference with business" tort has been distinguished from the tort of procuring a breach of contract. Cresswell J says that it requires that a person, using unlawful means, causes damage to another intending to inflict the harm of which complaint is made. Cresswell J added that "Damage to economic expectations is sufficient … The scope of the unlawful means required has not been definitively circumscribed. In the complaint, Pursuit assert a deliberate course of conduct, bad faith and collusion that, if made out, would be sufficient."

61. *OBG* was stated to have been followed in *Torchlight GP Limited v Millinium Asset Services Pty Limited* 2018 (1) CILR 244. At [43] Kawaley J referred to *OBG* in the context of unlawful means conspiracy and, at [44], he rejected the submission that it was legally unsustainable on the face of the amended pleading.

62. *OBG* was stated to have been referred to in *Williams v Cayman National Bank Limited* 2021 (1) CILR 538. In that case Segal J, in the context of an application for leave to amend a pleading, noted a submission from counsel at [18(d)(i)] that *OBG* was one of "the leading cases".

63. Amongst the authorities, I have focused on *OBG* and *Secretary of State for Health v Servier Laboratories Ltd* [2021] UKSC 24; [2022] AC 959, together with the objective commentary in section 4 of *Clerk & Lindsell*, helpfully included in the Supplemental Authorities Bundle.

64. *Clerk & Lindsell* at paragraph 23-80 suggest that (footnotes omitted):

> "The key conditions of liability for causing loss by unlawful means, at least in situations where three parties are involved, are (i) an intention to cause loss to the claimant; (ii) use of "unlawful means" against a third party; and (iii) interference with that third party's freedom to deal with the claimant …"

65. At paragraph 23-81 it is stressed that in the unlawful means tort there must be an "intention to cause loss".

66. In *OBG* Lord Hoffmann dealt with the tort of causing loss by unlawful means. Lord Hoffmann (who still sits in the Hong Kong Court of Final Appeal) traced its history referring to cases like *Garret v Taylor* (1620) Cro Jac 567, where the defendant drove away customers of a quarry by threatening them with mayhem and vexation suits, and *Tarleton v McGawley* (1794) Peake 270, where the defendant sought to deprive a rival British ship of trade by using cannon to drive away a canoe which was approaching from the shore. The defendant's liability was for intentionally causing the plaintiff loss by unlawfully interfering with the liberty of others. Lord Hoffmann also referred to the examination of these old cases by the House of Lords in *Allen v Flood* [1898] AC1, and its approval of the general principles.

67. At [45] of *OBG* Lord Hoffmann stated that the most important question concerning this tort is what should count as unlawful means. Lord Hoffmann referred to the rationale of the tort as being described by Lord Lindley in *Quinn v Leathem* [1901] AC 495 at 534-535:

> "a person's liberty or right to deal with others is nugatory, unless they are at liberty to deal with him if they choose to do so. Any interference with their liberty to deal with him affects him. If such interference is justifiable in point of law, he has no redress. Again, if such interference is wrongful, the only person who can sue in respect of it is, as a rule, the person immediately affected by it; another who suffers by it has usually no redress; the damage to him is too remote, and it would be obviously practically impossible and highly inconvenient to give legal redress to all who suffer from such wrongs. But if the interference is wrongful and it is intended to damage a third person, and he is damaged in fact – in other words, if he is wrongfully and intentionally struck at through others, and is

thereby damnified – the whole aspect of the case is changed: the wrong done to others reaches him, his rights are infringed although indirectly, and damage to him is not remote or unforeseen, but is the direct consequence of what has been done."

68. In the case presently before the court, the Plaintiff says that Guolian falls within the definition of "person immediately affected by it" and "others" and that it, the Plaintiff, falls within the definition of "third person" and "him" in the above rationale.

69. At [47] Lord Hoffmann states:

> "The essence of the tort therefore appears to be (a) a wrongful interference with the actions of a third party in which the claimant has an economic interest and (b) an intention to cause loss to the claimant."

70. In that analysis Guolian is the "third party".

71. At [49] Lord Hoffmann added:

> "In my opinion, and subject to one qualification, acts against a third party count as unlawful means only if they are actionable by that third party. The qualification is that they will also be unlawful means if the only reason why they are not actionable is because the third party has suffered no loss."

72. At [51] Lord Hoffmann provided further clarification:

> "Unlawful means therefore consists of acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful as against the third party and which is intended to cause loss to the claimant. It does not in my opinion include acts which may be unlawful against a third party but do not affect his freedom to deal with the claimant."

73. At [56] Lord Hoffmann stated that he did not think that the tort of causing loss by unlawful means should be extended beyond the description given by Lord Watson in *Allen v Flood* [1898] AC 1, 96 and Lord Lindley in *Quinn v Leathem* [1901] AC 495, 535. Lord Hoffmann felt that the tort "was

designed only to enforce basic standards of civilised behaviour in economic competition, between traders or between employers and labour."

74. At [62] Lord Hoffmann addressed the question of intention:

> "In the unlawful means tort, there must be an intention to cause loss. The ends which must have been intended are different … it is necessary to distinguish between ends, means and consequences. One intends to cause loss even though it is the means by which one achieved the end of enriching oneself. On the other hand, one is not liable for loss which is neither a desired end nor a means of attaining it but merely a foreseeable consequence of one's actions."

75. Lord Nicholls at [166] stressed that:

> "The defendant must *intend* to injure *the claimant*."

76. At [167] he added one explanatory gloss:

> "Take a case where a defendant seeks to advance his own business by pursuing a course of conduct which he knows will, in the very nature of things, necessarily be injurious to the claimant. In other words, a case where loss to the claimant is the obverse side of the coin from gain to the defendant. The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain 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."

77. Mr Fenwick also spent a lot of time taking the court through various passages in *Secretary of State for Health v Servier Laboratories Ltd* [2021] UKSC 24; [2022] AC 959, emphasising the need for there to be an affect on the third party's freedom to deal with the claimant. Mr Lowenstein stated that the law on this point was not in dispute and the Plaintiff's approach to its pleading had been on the basis of the relevant law.

78. *OBG* was applied in *Servier*. Lord Hamblen (with whom Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Briggs and Lord Kitchen agreed) at [2] outlined the essential issue in the appeal in *Servier* as "whether a necessary element of the unlawful means tort is that the unlawful means should have affected the third party's freedom to deal with the claimant. As a convenient shorthand, this has been referred to by the parties as "the dealing requirement"."

79. Lord Hamblen at [63] agreed that the dealing requirement is part of the ratio of *OBG* for eight reasons. At [69] Lord Hamblen, in giving his sixth reason, stated "the dealing requirement is consistent with and reflects Lord Hoffmann's concern that the tort be kept within reasonable bounds and that a narrow meaning be given to unlawful means."

80. In *Servier* the appellants' case was that the dealing requirement was an undesirable and unnecessary addition to the essential elements of the unlawful means tort. Lord Hamblen at [100] reached the firm conclusion that the appeal must be dismissed. In summary, it was held that the dealing requirement is part of *OBG* and no good or sufficient reason had been shown as to why the court should depart from the then relatively recent decision of the House of Lords in *OBG*.

Dismissal of the strike out and summary judgment

81. I have considered the numerous arguments put forward by the Defendant in support of its strike out and summary judgment application but I am not persuaded by any of them.

82. I do not shut out the Defendant's strike out and summary judgment application solely on the ground that, as it did not oppose the Plaintiff's application for leave to amend, it must be considered to have accepted that the ASoC has at least a real prospect of success.

Various points raised by the Defendant

83. The Defendant relied on several grounds for its strike out application and raised many detailed arguments in respect of such. As Parker J stated at [96(c)] in *Folkvang*, where a defendant relies on several grounds in support of a strike out application, the court must take a broad-brush approach and simply ask whether the case was a plain and obvious one for striking out, rather than considering each ground in detail. I do not deal with every argument raised by the Defendant but

I have considered them all in arriving at my conclusion. Standing back, and taking the required broad-brush approach, I have concluded that this case is not a plain and obvious case for a strike out.

Strike out

84. On the strike out front, in addition to the points concerning the lack of identification of the natural person or persons who are said to have the relevant intention and attribution, the causation issue, the dilution issue, and the no proof of actual pecuniary loss issue, the Defendant raised a whole host of other detailed issues which frankly are best left for determination at trial. Now is not the time and place for a mini-trial.

85. As an overarching point, the Defendant in effect submits that the Plaintiff is attempting to push out the boundaries of the tort of causing loss by unlawful means. The Defendant says that none of the reported cases involve the situation presently before the court where the Defendant says (a) the supposed "third party" (Guolian and/or Guolian Sub-Fund) is beneficially owned, and can be directed, by the Plaintiff to sue directly for breach of contract; or (b) there are contractual rights as between the Plaintiff and the Defendant (or other causes of action) on which the Plaintiff could "directly" sue (for example, the tripartite Supcon – Guolian – ACP Side Letter). The Defendant's allegation in respect of the Plaintiff's position over Guolian is hotly disputed and cannot be resolved at this interlocutory stage. Moreover, simply because a plaintiff potentially has other possible causes of action, that does not automatically mean that if it elects to pursue a claim on the basis of the tort of causing loss by unlawful means, such a claim should be struck out as other causes of action are available to it. Furthermore, in areas where the law may be developing, it may be inappropriate to strike out.

86. I also note the debate at paragraph 23-90 of *Clerk & Lindsell* in respect of breach of contract as unlawful means and the author's view that (footnotes omitted):

> "On balance, it is suggested that a breach of contract ought to be held to constitute "unlawful means" for the purposes of the tort of causing loss by the use of unlawful means. Until it is clear how breaches of contract will be treated in this context, it will be difficult to address the further question whether an equitable wrong can constitute unlawful means

for the purposes of this tort; many equitable obligations exist as a result of a particular type of contractual relationship between the parties, and such obligations tend to share the characteristic of being a product of past dealings between specific parties rather than part of the general law."

87. It is not appropriate to summarily determine arguments in respect of the breadth of a developing tort at an interlocutory stage dealing with over-ambitious applications for strike out and summary judgment.

88. I do not lose sight of *Royal Bank of Scotland International Ltd v JP SPC 4* [2022] UKPC 18 where the Judicial Committee of the Privy Council dealt with an appeal from the Isle of Man as to whether a bank owes a duty of care in the tort of negligence to a person who is known to be the beneficial owner of moneys held in the account of a customer of the bank and who has been defrauded by the customer. The Bank had applied to strike out or summarily dismiss the claim on the basis that there was no arguable pleaded basis upon which the Cayman Fund could establish that the Bank owed it the alleged duty of care. Deemster Wild at first instance dismissed the application but the Bank's appeal was allowed by the Appeal Division (Judge of Appeal Storey and Deemster Collas). The principles on strike out and summary judgment were stated at [27]. At [29] is a submission on behalf of the Cayman Fund, to the effect that when the strike out and summary judgment application turns on a complex and developing area of the law, it is best left to be determined after a trial on the basis of actual rather than hypothetical facts. The Privy Council at [30] felt that this must depend on the extent to which the issue of law is fact dependent. The Board at [58] rejected the Fund's case that the Bank arguably owed a duty of care to it and held that, as a matter of law, such claim had no real prospects of success and there was no reasonable ground for bringing it.

89. At [68] the Board concluded that the Fund had pleaded no factual basis (and there was nothing in the assumed facts) upon which a duty of care based on assumption of responsibility could be established. The Fund was also unable to identify any sufficient actual or prospective evidence which could establish such a duty. At [91] the Board rejected the Fund's case that there was an alleged duty of care based on existing authorities or an incremental extension of them. At [97] the Board concluded that the Appeal Division was correct to conclude that there was no reason for the Fund's claim to proceed to trial because on the basis of the Amended Particulars of Claim, and the assumed facts, it was bound to fail.

90. Mr Fenwick in his densely packed skeleton argument raised many arguments in support of the strike out claim. He said that none of the matters alleged at paragraph 64A of the ASoC (breaches and conduct in respect of withholding consent to the transfer and withholding material information, issues in respect of Hollysys, issues in respect of gain and loss) provided a viable case for the necessary intention. In my judgment, these are plainly issues for trial.

91. Furthermore, I disagree that there is no reasonable prospect of persuading a court that any of the unlawful means pleaded (see paragraphs 42A, 51A, 51B, 56A and 64B of the ASoC) amount to unlawful means capable of triggering a cause of action by the Plaintiff. These issues should await determination at trial.

Summary judgment

92. I have considered all of Mr Fenwick's many detailed arguments in respect of the application for summary judgment. He invited the court to "grapple" with a number of issues (see paragraphs 63-89 of the Defendant's skeleton argument) which he said, if decided in the Defendant's favour, would dispose of the entire claim. He submitted that they were issues capable of resolution on a summary basis. Although I have considered them all, I decline to "grapple" with them. I step away from conducting a "mini-trial". I have concluded that they are not issues capable of fair, just or proper determination on a summary basis.

The intention, knowledge and attribution issue

93. The Plaintiff says that the Defendant's arguments in respect of intention, knowledge and attribution are wrong as a matter of law. The Plaintiff refers to *Sofer v Swissindependent Trustees SA* [2020] EWCA Civ 699, another judgment of the Court of Appeal of England and Wales, and submits that there is no rule of law that the individuals involved in a fraud must be identified in the pleadings from the outset. The Plaintiff says that the same must be true of an allegation of corporate intention in a claim for causing loss by unlawful means. The Plaintiff relies in particular on [32] of the judgment of Arnold LJ:

> "… I do not doubt that, where an allegation of dishonesty is made against a body corporate, it is necessary to plead the relevant state of knowledge of that body at the relevant time. I do not accept, however, that a mere failure to identify at the outset the directors, officers or employees who had that knowledge means that such an allegation is liable to be struck out without further ado. Clearly such particulars should be given as soon as is feasible, and there may be situations in which the claimant's unwillingness or inability to give such particulars when requested to do so justifies striking out; but that is another matter."

94. At [30] Arnold LJ recorded, and appeared to agree with, a submission from counsel for the claimant that:

> "the Judge was wrong to hold that it was mandatory for particulars of claim to identify at the outset the individuals whom the claimant alleged to have had the relevant knowledge at the relevant time, and that it was permissible for a claimant to provide such particulars subsequently, in an appropriate case following disclosure …"

95. I am not persuaded that it would be appropriate at this stage to strike out or give reverse summary judgment in favour of the Defendant. The position may become clearer after discovery. The Defendant may, in due course, request further and better particulars of the pleading. It is not proportionate to strike out the Plaintiff's pleading in view of difficulties with presently pleading this issue.

The causation issue and the dilution issue

96. On the causation issue, the Plaintiff says that if, on the withholding of information and the failure to agree the transfer of shares, it needs to provide further particulars as to how it suffered loss, it will do so. It would be helpful if the Plaintiff could plead such particulars by way of amendment within 14 days from the delivery of this judgment and the Defendant should have 21 days thereafter to file and serve any amended defence.

97. Furthermore, the Plaintiff adds on the dilution issue that if it needs to provide further particulars that it would have been prepared and able to take up its rights by making further payments to avoid dilution, it will do so. Again, it would be helpful if the Plaintiff could plead such particulars by

way of amendment within 14 days from the delivery of this judgment and again the Defendant should have 21 days thereafter to file and serve any amended defence. None of the points raised by the Plaintiff on the causation issue and the dilution issue lead me to conclude that it would be just and proportionate to strike out the Plaintiff's claim.

The pecuniary loss issue

98. I am not persuaded that the Defendant's submission in respect of pecuniary loss would justify the court in striking out the claim or granting summary judgment in favour of the Defendant.

99. The Plaintiff at paragraph 66 of the ASoC expressly pleads that the Defendant intended to cause, and has caused, loss to the Plaintiff by unlawful means and various categories of particulars of loss (in amounts to be assessed) are provided; namely:

> "66A Loss of profit caused by the dilution of Supcon's indirect interest in the Skyline Fund and/or Target Companies;
> 66B Costs of management time expended investigating ACP's refusal to consent to the Proposed Transfer, withholding of information, and dilution of Supcon's interests."

100. Whether the Plaintiff will be able to establish these heads of loss will be a matter for trial. The Defendant's arguments in respect of pecuniary loss do not lead me to conclude that this is a clear and obvious case where a strike out order should be made, or a case where summary judgment, without a trial on the merits, would be justifiable. The Plaintiff's points raise triable issues.

101. The allegations (including the allegations as to breach) raise triable issues and there is a reasonable cause of action relied upon which is adequately pleaded. I must resist the temptation of going through all the numerous issues raised by the Defendant in the manner of a mini-trial. Suffice to say I am not satisfied that there is in effect nothing in law and fact in the allegations contained in the amended pleading. This is not a clear and obvious case. The Defendant may view it as a very weak case but that does not justify a strike out. It may be after trial that the Defendant's position will be vindicated but this case must be allowed to go to trial and must be determined on its merits. It is not so clear and obvious as to justify a strike out. I keep an open mind as to the merits.

Conclusion on strike out application

102. I have considered the Defendant's criticisms against the Plaintiff's amended pleading on their merits but I am not persuaded that it would be appropriate to strike out the claim as disclosing no reasonable cause of action. It does disclose a reasonable cause of action; namely, the tort of causing loss by unlawful means. The requisite elements of intention and loss are adequately pleaded and the claim is accordingly not liable to be struck out at this stage. The pleading may not be perfect but it is adequate, and may be supplemented after discovery.

103. The claim may not on its face be strong (and I stress that I keep an open mind open to persuasion in that respect). The interposition of Guolian may ultimately prove problematic for the Plaintiff but the claim is not so weak that it should be struck out. Nothing I say in this judgment should be taken as pre-judging the claim. I keep a mind open to persuasion. The claim will be determined, after discovery, on its merits and on the basis of the relevant law, evidence and arguments put before the court at the substantive hearing.

Conclusion on the summary judgment application

104. Furthermore, I am not persuaded that it would be appropriate to grant summary judgment at this early interlocutory stage. I am not satisfied that the Plaintiff's claim has no prospect of success. The Defendant has failed to prove that there is no real prospects of success. There is enough to permit the Plaintiff's claim to proceed to trial.

Conclusion on abuse of process ground

105. The fact that proceedings have been brought in the Grand Court rather than by way of arbitration proceedings in Hong Kong does not persuade me that the claim in the Cayman Islands is an abuse of process. Moreover, I am not in a position, on the basis of the evidence and arguments presented, to conclude that the Plaintiff has an ulterior motive in bringing the legal proceedings in the Cayman Islands. The fact that another claim has been brought in the People's Republic of China does not

lead me to conclude that the Cayman legal proceedings are an abuse of process. Furthermore, I am not persuaded that the allegations set out in paragraphs 39-42A, 52-56B and 64-65 are scandalous.

Conclusion on scandalous, frivolous and vexatious grounds

106. The Defendant says that a pleading is scandalous where (in particular) it maintains allegations or imputations of misconduct or bad faith which are immaterial to the relief sought.

107. The Defendant says that cases which are frivolous or vexatious are those which are obviously unsustainable and there is a significant overlap with the abuse of process ground because the pursuit of a frivolous or vexatious claim may constitute an abuse.

108. In short, having considered the pleading, evidence and arguments, I am not persuaded that the Defendant's arguments on these additional grounds (scandalous and/or frivolous and vexatious and/or an abuse of process) would justify striking out the Plaintiff's claim or parts of it.

<u>Overall conclusion</u>

109. Having considered the Defendant's skeleton argument in detail, and having listened carefully to Mr Fenwick's oral submissions on behalf of the Defendant, and having reflected upon the arguments at the end of that process, I was very far from concluding that this was a plain and obvious case where the court must strike out the claim, or that this was a clear case where there is no triable issue and the court must grant summary judgment.

110. This is not a plain and obvious case for a strike out. Moreover, the Defendant has not proved that there is no real prospect of success or that reverse summary judgment should otherwise be granted.

111. The Plaintiff's claim should be permitted to proceed to trial.

<u>Costs</u>

112. There are a number of issues in respect of costs outstanding.

113. I have already dealt with the costs thrown away as a result of the adjournment and the quantum and timing of an interim payment in that respect.

114. Under paragraph 5 of the order made on 30 April 2026, the following matters were reserved for determination after the hearing on 21 and 22 May 2026:

(1) the costs of and occasioned by the Defendant's summons dated 2 April 2026 for strike out/summary judgment not otherwise awarded pursuant to paragraph 3 of the order (the costs thrown away as a result of the adjournment);

(2) the costs of and occasioned by the Plaintiff's summons dated 29 April 2026 seeking to amend the claim, including so as to strike through and remove the unlawful means conspiracy and lawful means conspiracy claims against the Defendants contained in Section G (paragraphs 57-63) of the claim (the "Conspiracy Claims") (including but not limited to the costs in the claim thrown away as a result of the abandonment of the Conspiracy Claims); and

(3) the Defendant's application for an order that any costs award in its favour (including the costs award at paragraph 3 of the order) be taxed forthwith.

115. I reserve all outstanding costs issues, including the costs of the unsuccessful strike out and summary judgment application, until after the substantive hearing.

<u>Order</u>

116. The attorneys should email to my PA, within 7 days of the delivery of the judgment, a draft order (agreed as to form and content) reflecting the determinations contained in this judgment.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT