Neutral Citation Number: **[2026] EWHC 1814 (Ch)**

BL 2024-LDS-000020

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
BUSINESS LIST (Ch D)

17 July 2026

Before:

MR JUSTICE LEECH

- -

B E T W E E N:

TANGENT PROPERTIES (NORTH) LIMITED	**Claimant**
- and –	
EVANS HOMES (SKELTON) NO 2 LIMITED (formerly Templegate Developments Limited)	**Defendant**

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MR GARY BLAKER KC and **MR MARCUS KELLY** (instructed by **Freeths LLP**) appeared on behalf of the Claimant

MR GREGORY BANNER KC and **EMILY GAILEY** (instructed by **Walker Morris LLP**) appeared on behalf of the Defendant

Hearing dates: 7 May 2026

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APPROVED JUDGMENT

(Limitation)

- -

Mr Justice Leech:

I. Introduction

1. In December 2025 I heard the trial of the claim in this action in the Business and Property Courts in Leeds and on 13 February 2026 I handed down a reserved judgment: see [2026] EWHC 298 (Ch). In this second judgment I adopt the defined terms and abbreviations which I used in that judgment (as supplemented below). Further, where I refer to paragraph numbers below, I intend to refer to that judgment unless I indicate otherwise by citing the relevant decision to which I intend to refer. Where it is necessary to refer to the decision itself, I will also use the term the "**Judgment**".

2. Tangent's primary claim against the Defendant was for a declaration that it was entitled to a 10% share of the profits derived from the Skelton Site. But it also brought an alternative claim for a reasonable fee for the work which Mr Chambers carried out in relation to the Skelton Site. I dismissed Tangent's claim that there was a binding contract for a 10% profit share or that the Defendant was estopped from denying that there was a binding contract and I have extended time for Tangent to apply for permission to appeal until the final determination of the claims at first instance.

3. However, I also held that, subject to the question of limitation, Tangent's claim for restitution of unjust enrichment (the "**Unjust Enrichment Claim**") succeeded and that it was entitled to a reasonable fee for the work performed by Mr Chambers calculated by reference to his time costs: see [326]. However, I expressed the preliminary view that the cause of action accrued on 8 April 2016 and, therefore, that the claim was barred by section 5 of the Limitation Act 1980. But I also gave the parties permission to present further argument on that issue (subject to the fairness of taking such course and also making it clear that I was not prepared to hear any further evidence): see [330].

4. On 7 May 2026 a hearing took place to determine the outstanding matters and issues arising out of the Judgment. I had originally intended to deal with all outstanding matters. But in the event it was only possible to hear argument on the issue of limitation and on the issue of the basis of remuneration in the Unjust Enrichment Claim. In their Skeleton Argument dated 4 May 2026 Mr Gary Blaker KC and Mr Marcus Kelly, who had appeared for Tangent at the trial and appeared at the subsequent hearing, argued that I should not permit the Defendant to rely upon a defence of limitation which was completely different from that which it had originally pleaded but that, in any event, the Unjust Enrichment Claim was not barred by limitation.

5. In their Skeleton Argument dated 5 May 2026 Mr Gregory Banner KC and Ms Emily Gailey, who had also appeared at the trial for the Defendant and appeared at the subsequent hearing, argued that I should simply make my provisional view final because Tangent had had every opportunity to argue the limitation point at trial and had failed to do so. They argued that it would be procedurally unfair to permit Tangent to have a second bite at the cherry. But they also argued that if the Court was prepared to hear further argument, then my provisional view was the correct one and I should hold that the Unjust Enrichment Claim was barred by limitation.

6. There was also a dispute about the fairness of the finding which I made in relation to the basis of remuneration. Tangent had pleaded that Mr Chambers (and now Tangent) was entitled to be remunerated on a profit share basis because he was a "land promoter". He

relied on the decision of Andrew Sutcliffe KC (sitting as a Deputy Judge of the High Court) in *Mate v Mate* [2023] EWHC 238 (Ch). I rejected that argument and one of the reasons which I gave for distinguishing *Mate* was that Julie Mate, the claimant in that case, had called evidence to establish what a land promoter did and that she fulfilled that role whereas Tangent had not called expert evidence in the present case: see [326](2).

7. Mr Blaker and Mr Kelly argued that it was procedurally unfair to reach such a conclusion when the parties had expressly agreed that issues relating to quantum would be determined at a subsequent hearing (depending on the outcome of the trial) and that the parties would have the opportunity to call expert evidence at that stage ("**Stage 2**") if they wanted to do so. Mr Banner and Ms Gailey argued that my decision was not unfair because Tangent had relied on *Mate* from the outset of litigation and, indeed, had pleaded the decision; that the basis of remuneration was one of the Agreed List of Issues; and that Tangent ran the risk that I would decide that issue against it if it failed to call expert evidence at the first stage of the proceedings ("**Stage 1**").

8. At the hearing, I heard argument on both parties' procedural objections and then on the substantive issue of limitation *de bene esse*. For reasons which I set out below, I have rejected both parties' procedural objections and gone on to decide the issue of limitation on the merits. I have also considered whether it was unfair to decide the basis of assessment at the trial and whether it would have been appropriate to permit Tangent to reopen that issue at Stage 2 (the quantum phase). Since the procedural objections involved a consideration of each party's statement of case and the case which each chose to advance at trial, I begin with the materials which they put before the Court on that occasion.

II. <u>The Trial</u>

A. <u>The Statements of Case</u>

(1) The Particulars of Claim

9. On 13 February 2024 the Claim Form in this action was issued. In the Amended Particulars of Claim dated 14 October 2024 (the "**Particulars of Claim**") Tangent pleaded its case in contract in reliance upon the 6 December Fax at paragraphs 12 to 17. Tangent then set out particulars of the work which Mr Chambers was alleged to have carried out at paragraph 18 to 22. Tangent then pleaded that from 2005 onwards Mr Chambers was given a more enhanced role by Mr Bell: see paragraphs 23 to 25. The Particulars of Claim then continued as follows:

> "25. At about this time Nigel Chambers carried out the following:
>
> (i) Between 2004 and 2007 he helped to resolve issues regarding public rights of way access across the Skelton site;
>
> (ii) He met with Leeds City Council and other stakeholders regarding the transfer of the lake at the Skelton site to Leeds City Council;
>
> (iii) Between April and July 2005, he represented the joint venture companies in negotiations with Innogy pic concerning a boundary dispute and a dispute about the rights over a disused pipeline;
>
> (iv) Between February and May 2006, he worked with the joint venture

> companies concerning the East Leeds Link Road;
>
> (v) Between July and September 2006, he attended a number of different presentations on behalf of SBPL regarding public transport access to the Skelton site;
>
> (vi) Between June 2005 and October 2007 he represented the joint venture companies at the Aire Valley Investor Forum and Aire Valley Regeneration Initiative. In this period, he worked closely with lain Robertson a director of SBPL/the Defendant in promoting a housing development at the Skelton site and in the initial stages of the Leeds City Council Local Development Framework Plan to support housing uses at the Skelton site.
>
> 26. During 2008 there was continued activity with the Leeds Local Development Framework Plan but by early 2009 James Pitt took over day to day responsibility for the Skelton site.
>
> 27. Since that time Nigel Chambers has remained in contact with James Pitt and has offered to assist the Defendant. He has attended the Leeds City Council Plans Panel meetings where the new community and motorway services applications were discussed. He monitored applications including key outline planning applications made by the Defendant in January 2016 and July 2018."

10. Tangent set out its case in relation to the meeting on 18 August 2005 and the subsequent conduct of the parties at paragraphs 28 to 55. There then follows a section under the heading "Problems occur" and Tangent expressly pleaded that on 22 March 2016 and 8 April 2016 Mr Pitt and Mr Hill, the company secretary of Templegate, denied the existence of a contract:

> "65. On 22 March 2016, James Pitt wrote on behalf of the Evans Property Group to Nigel Chambers and denied the existence of a contractual relationship between the Defendant and Nigel Chambers. This was followed by a similar letter dated 8 April 2016 from Christopher Hill, the Defendant's company secretary.
>
> 66. Notwithstanding, Nigel Chambers and the Claimant having provided the Defendant with significant amounts of documentation over the past 7 years, the Defendant continues to deny the existence of a contract. Further, the Defendant continues to deny that the Claimant is entitled to receive payment whether under a contract or whether by reason of an estoppel or restitutionary remedy."

11. Tangent also alleged that in 2022 the Skelton Site started to realise profits and that it became entitled to a 10% profit share: see paragraph 71. After setting out its claim in contract, Tangent then pleaded the Unjust Enrichment Claim in the alternative:

> "80. In the further, alternative, the Claimant claims a restitutionary remedy in that the Defendant should not be unjustly enriched at the expense of the Claimant/Nigel Chambers.
>
> 81 Nigel Chambers was the introducer of the Skelton site.

> 82 Further, Nigel Chambers spent thousands of hours working on the potential development both before SBPL had an interest in the Skelton site and since it acquired that interest in 2001.
>
> 83 In the 2005-08 period alone Nigel Chambers worked on the project for in excess of 520 hours. Full details concerning the hours spent working on the project will be provided in advance of trial.
>
> 84 The Claimant claims a reasonable fee for Nigel Chambers' work as a land promoter. The case of *Mate v Mate* [2023] EWHC 238 (Ch) is noted. The court awarded a sum of 7.5% of the uplifted value of the land as a result of obtaining planning permission where work had been carried out over an 8-year period in order to obtain planning permission. In the present case Nigel Chambers worked on the Skelton site project without any remuneration since 1996 and thus the sum awarded should be higher than 7.5% and an appropriate figure would be the 10% of net pre-tax profit."

12. In the prayer, Tangent claimed relief for breach of contract in paragraphs (1) to (4) and in the alternative at (5) "a restitutionary claim in respect of a reasonable fee for the work carried out by Nigel Chambers on the Skelton Site project". Beyond the paragraphs which I have quoted immediately above, Tangent did not set out the "unjust" factor upon which it was relying. In particular, there was no reference in the Particulars of Claim to a "failure of basis".

(2) The Defence

13. In the Amended Defence dated 25 October 2024 (the "**Defence**") the Defendant set out its positive case in answer to Tangent's case in paragraphs 1 to 28. It pleaded the following case in relation to the Unjust Enrichment Claim and the following reservation:

> "27. As to the third limb of the Claimant's case, an alternative claim for a restitutionary remedy in quantum meruit, on a proper analysis a reasonable fee payable to Mr Chambers for the work he undertook on behalf of the Defendant would be minimal, or in any event much less than the £5.8m now claimed by the Claimant. Further, the limitation period for such a claim runs from the date the cause of action accrues, which is the date the Defendant received the benefit from Mr Chambers. The last instance pleaded in the Particulars of Claim where Mr Chambers provided a service to the Defendant at the Defendant's request was in early 2009 (see paragraph 26 of the Particulars). It follows that this element of the Claimant's cause of action is time-barred in any event, and therefore that the final limb of the Claimant's case must also fail.
>
> 28. Finally, by way of an overarching comment, the Particulars in this matter are confusing, and often do not provide proper particulars of the causes of action advanced. The Defendant consequently reserves the right to seek further particulars from the Claimant in the event it becomes necessary to do so, and to amend its case accordingly in response."

14. In the remainder of the Defence, the Defendant pleaded to the specific allegations in the Particulars of Claim. In paragraph 42 the Defendant stated that it was unable to plead to the allegations about the work done by Mr Chambers and put Tangent to proof. Its

pleaded case in answer to the allegations set out in paragraphs 80 to 84 (above) was as follows:

> "87. Paragraph 80 is denied. The Defendant was not unjustly enriched at the expense of Mr Chambers. If Mr Chambers had raised a reasonable invoice for the services he provided to the Defendant it would have been discharged. He elected, at his own risk, not to do so. Further, as pleaded above, this will be the subject of expert evidence in due course but on a proper analysis a reasonable fee payable to Mr Chambers for the work he undertook on behalf of the Defendant would be minimal, or in any event much less than the £5.8m now claimed by the Claimant. Yet further, the limitation period for such a claim runs from the date the cause of action accrues, which is the date the Defendant received the benefit from Mr Chambers. The last instance pleaded in the Particulars of Claim where Mr Chambers provided a service to the Defendant at the Defendant's request was in early 2009 (see paragraph 26 of the Particulars). It follows that this element of the Claimant's cause of action is time-barred in any event. The Claimant is consequently not entitled to any restitutionary remedy.
>
> 88. Paragraph 81 is admitted, but its relevance is denied. Mr Chambers provided this service to White Rose Development not the Defendant and was in any event paid for his services at that time.
>
> 89. Paragraph 82 is denied. So far as the Defendant is aware, the work provided by Mr Chambers to White Rose Development and the Defendant was standard for a self-employed property and planning consultant, and was unlikely to involve "thousands of hours". Further, to the extent such hours were incurred before the 2001 Transfer they were a service provided to White Rose Development, not the Defendant.
>
> 90. As to paragraph 83, the first sentence is not admitted and the Claimant is required to prove the same. As for the second sentence, the Claimant will be required to give proper disclosure on this issue in the usual way.
>
> 91. Paragraph 84 is denied. Mr Chambers was not acting as "*land promoter*" in relation to the Skelton Site, he was acting as one of several self-employed property and planning consultants whose services were engaged by the true land promoter, being first White Rose Development and latterly the Defendant. As such the relevance of *Mate v Mate* [2023] EWHC 238 (Ch) is denied. Any reasonable fee payable to Mr Chambers would be on the normal basis for a property and planning consultant, being a reasonable hourly rate (not exceeding £100 per hour) for the work actually undertaken."

15. It is clear from paragraph 87 that the pleaders of the Defence (Mr James Aldridge KC and Ms Gailey) pleaded the defence on the basis of the general rule that time usually starts to run when the recipient has been enriched (which I myself set out in the Judgment at [186]). However, no request for further information was served to elicit further information about the unjust factor upon which Tangent relied.

(3) The Reply

16. On 3 May 2024 Tangent served its Reply to the Defence. It was principally directed to replying to the Defendant's positive case as set out in paragraphs 1 to 28. In paragraph 32 Tangent pleaded that at no time since December 1996 had either of the parties suggested that Mr Chambers should submit an invoice for the work which he had performed. Tangent replied to paragraph 27 in the following terms:

> "47 As to paragraph 27 it is denied that a reasonable fee for the work carried out by Nigel Chambers would be minimal. Further, it is denied that the cause of action would accrue when the Defendant received the benefit from Nigel Chambers. In the present case the limitation would not run from when the services were provided but from when the unjust element occurred. This is when the Defendant first realised profit and refused to pay 10% of the net pre-tax profit to Nigel Chambers. It is expected that this was in 2022 but the precise date will only be ascertainable upon disclosure."

17. In paragraph 55 Tangent stated that the work done by Mr Chambers was a matter for disclosure and witness evidence but averred that he had spent in excess of 1100 hours working for SBPL or the Defendant between 2001 and 2009. In relation to the claim for restitution, it pleaded to paragraphs 87 to 91 (above) as follows:

> "80 As to paragraph 87, the Claimant repeats paragraphs 32 and 47 above. Further, the Claimant notes that the appropriate level of remuneration for the Claimant in respect of work carried out by Nigel Chambers will be a matter of both lay and expert evidence at trial.
>
> 81 As to paragraph 89, the Claimant repeats paragraph 55 above in relation to the hours worked by Nigel Chambers.
>
> 82 Paragraph 91 is noted. It is the Claimant's case that Nigel Chambers personally identified and introduced the site to WRDE on a sole negotiating basis. Further, he took a lead role in the promotion of the Skelton Site from 1994 and continued to play a leading role until 2009."

(4) The List of Issues

18. The parties produced an agreed list of issues for the trial in tabular form which was cross-referenced to the statements of case. Immediately above the table of issues, they had stated: "The parties have agreed to this claim proceeding by way of a split trial broadly as to: 1. Liability; and 2. Quantum." They then stated: "This agreed list of issues sets out the issues that the Court will be asked to determine at Stage 1." The heading of the table also confirmed that all of the issues in the table were to be determined at "Stage One (Liability)". Issues 18 to 20 were framed as follows:

> "18. Was the Defendant unjustly enriched by Mr Chambers' services?
>
> 19. If the Defendant was unjustly enriched, on what basis should a reasonable fee for the services rendered by Mr Chambers be calculated, i.e. by reference to an hourly rate or to an increase in value of the underlying property?
>
> 20. If the Defendant was unjustly enriched by the provision of such

> services, is any claim in respect of such enrichment in any event time barred?"

B. Opening Submissions

(1) Tangent

19. In their written opening submissions, Mr Blaker and Mr Kelly submitted that the benefit of Mr Chambers' efforts was not in the services which he provided but in the end product which he generated, namely, the increase in land value. They argued that the case was on all fours with *Mate v Mate* and referred specifically to the expert evidence in that case. However, they did not reserve Tangent's right to serve expert evidence or invite the Court to adjourn that issue on the basis of remuneration until the quantum hearing. On the contrary, they invited the Court to decide it. They also described the present case as a "failure of basis" case for the first time:

> "72 If the court should find that a contract did not exist then there has been a failure of basis. This is a total failure of basis. The court is referred to Goff & Jones at 12-16 and also to *Barton v Morris* [2023] AC 684 where Lady Rose relied on Lord Toulson in *Barnes v Eastenders Cash & Carry plc* [2015] AC 1 at [106] namely, that the failure of basis "*may consist of the failure of a state of affairs on which the agreement was premised*".
>
> 73 The court would then need to analyse the enrichment in the same way as the court did in *Mate v Mate* [2023] EWHC 238 (Ch) at [239]. The stages would be:
>
> (i) Has D been enriched?
>
> (ii) Was the enrichment at NC's expense?
>
> (iii) Was the enrichment unjust?
>
> (iv) If the answers above are all yes then what is the appropriate remedy?
>
> 74 D has very obviously been enriched as it is now the beneficiary of owning land which has risen significantly in value as a result of NC's efforts. The level of profits which D could achieve has steadily increased throughout the past 20 years as can be seen from D's internal calculations. These profits would have now increased further as a result of the housing based development.
>
> 75 NC was the introducer of the land and the promoter of the land who sought to facilitate its development potential. As he was expecting to be compensated for this and having given up short term financial benefit for a hope of a longer term share of profit, it is evident that D's enrichment was and continues to be at his expense. NC's further detriment is in the thousands of hours committed to this project over a period of almost 20 years.
>
> 76 The enrichment was unjust. In *Mate* at [249] the judge said "*They were enriched by Julie's services in circumstances which were unjust because they knew she was not providing those services gratuitously and they made no attempt to reward her for them*." Similarly, D knew that NC was not providing his services free of charge and that he was expecting to be

compensated for his work in the event that a profit was made by D. Both the external correspondence with NC and also the internal correspondence of D point to this knowledge and the acceptance of this position.

77 In assessing the value of NC's services the approach adopted by the judge in *Mate* at [278]–[300] should be followed. In that case the claimant was paid on the basis as if she were a land promoter and this amounted to 7.5% of the uplift of the value of the land which was achieved on the grant of planning permission. In Mate at [284] the agreed expert evidence was that a typical land promoter could expect a fee of between 15%-30% of the value of the uplift in the value of the land plus costs incurred. Julie was awarded 7.5% [297] because she did not have a formal arrangement and she shared the work with Persimmon. In this case, NC is in an even stronger position because he was being used in a formal capacity as a land promoter and there was a mutual expectation that NC would receive 10% of the net profit and there was a written document setting out the basis of his likely remuneration."

20. In relation to the issue of limitation, Mr Blaker and Mr Kelly accepted again that this was a failure of basis case and accepted that the claim accrued when that basis failed. However, they argued that the basis only failed once the Defendant had started to make profits on the development:

> "80 In relation to unjust enrichment, the claim accrues when the Defendant is enriched – see Chitty 32-060. Where the claim is made on the failure of basis, the unjust enrichment occurs when the basis fails. This approach was adopted in *Anron Bunkering DMCC v Glencore Energy UK Ltd* [2023] EWHC 295 (Comm). At [45] the deputy judge held that the cause of action accrues when "the state of affairs contemplated as the basis or reason for that payment [had] failed to materialise". In the present case, the basis only fails in 2022 once profits are made that could be shared with NC."

(2) The Defendant

21. In their written opening submissions, Mr Banner and Ms Gailey argued that Tangent's claim based on breach of contract or estoppel was premature because the Skelton Site had yet to generate any profits:

> "46. Finally, even if the Court was to be satisfied that the terms of the December 1996 Fax amounted to a binding agreement which required the Defendant to pay Mr Chambers 10% of its profit at any point when it realised such profit from the Skelton site, this claim is, in those circumstances, premature (at least in terms of monetary relief). As set out in paragraphs 83-84 of the Amended Defence ([1/B/8/78-9]), the Defendant says that it will be several years before any final profit from the Skelton site can be identified. It follows that, any payment obligation is therefore yet to accrue, and that the Defendant accordingly cannot be in breach for non-payment."

22. In relation to the Unjust Enrichment Claim, they accepted that prima facie, the Defendant

had been enriched by the services which Mr Chambers had provided and that those services were provided at his expense. However, they dealt with the "unjust factor" in the following way (footnotes omitted):

> "60. The question of whether or not such enrichment is unjust is not an open-ended inquiry into the justice of a particular case, but rather it requires a claimant to plead and prove an 'unjust factor'. As observed by Mann J in *Uren v First National Home Finance Ltd* [2005] EWHC 2529 (Ch) 36, it is not the case that "*there is a freestanding claim of unjust enrichment in the sense that a claimant can get away with pleading facts which he says leads to an enrichment which he says is unjust … A claimant still has to establish that his facts bring him within one of the hitherto established categories of unjust enrichment, or some justifiable extension thereof*" (at [16]). Established categories of unjust factors include, for example, mistake, duress, undue influence, failure of basis, necessity and legal compulsion. There is also seemingly a category of 'free acceptance' (see *Jones v Griffiths* [2025] EWHC 797 (KB) at [23]-[25])."

23. Mr Banner and Ms Gailey argued that the claim was barred by limitation whatever unjust factor Tangent chose to rely on. In relation to failure of basis they submitted that the claim accrued when the failure of basis occurred and distinguished between two types of case:

> "61.d. Similarly, an unjust enrichment claim on the ground of failure of basis accrues when the basis has failed. Where the basis fails immediately, the claim in unjust enrichment will accrue upon the receipt of the benefit. Where the basis fails subsequently, the claim will accrue at the point in time when the basis subsequently fails (*Anron Bunkering DMCC v Glencore Energy UK Ltd* [2023] 1 WLR 1912 at [39])."

24. They then stated that the Defendant's case on unjust enrichment was straightforward. Tangent had failed to plead an unjust factor, *Mate* was a very unusual case but on any analysis the claim was out of time. Their submissions on the first and third of these points were as follows:

> "63.a. Fundamentally, the Claimant has failed to plead an 'unjust factor' which would allow it to satisfy one of the necessary requirements of a claim in unjust enrichment, and it is not clear from the pleading even approximately what such a factor might be said to be. There is a reference at paragraph 47 of the Reply [1/B/9/89-90] to the "unjust element" occurring "when the Defendant first realised profit and refused to pay 10% of the net pre-tax profit to Nigel Chambers" but it is not clear how this pleading could fall within one of the established categories of unjust factors described above. The Defendant says that the Claimant is therefore seeking, as deplored by the Board of the Privy Council in *Samsoondar* at [19]-[20], to rely on a broad appeal to generic principles of justice to satisfy this limb of the test, which is inadequate for these purposes. If there was any enrichment, therefore, it is not unjust in the necessary legal sense."
>
> "c. Thirdly, the Defendant says that on any analysis, this claim is out of

time. As the Claimant has not identified a specific unjust factor that it relies upon the analysis as to when the cause of action has allegedly accrued is necessarily somewhat theoretical but in any event:

i. These proceedings were issued on 13 February 2024. The Claimant does not allege that Mr Chambers provided any services to the Defendant later than early 2009 (see paragraphs 26-27 of the Amended Particulars of Claim [1/B/7/45], and paragraph 55 of the Reply [1/B/9/91]). It follows that latest time the Defendant could have received any benefit was in early 2009, some fifteen years before this claim was issued. Under normal principles of limitation, therefore, this claim is significantly out of time.

ii. Even if, for the sake of argument, the Claimant were to have advanced a claim which fell within one of the established categories of unjust factors – such as a failure of basis, or free acceptance – this also cannot assist the Claimant, because Mr Chambers was aware that the Defendant was not intending to pay him any profit share from at least 2013. As set out above, on 25 February 2013, almost exactly 11 years before this claim was issued, James Pitt wrote to Mr Chambers to say: "we do not recognise the document you attached and it does not appear to form the basis of a binding agreement. As you know the matter dates back to before my time but nevertheless I am not aware of any other documentation we hold in this regard…Sorry I can't be of more help" [3/G/292/1373]. Moreover, if there was any possibly ambiguity from that response (which is denied by the Defendant), that was removed in 2016 when Mr Pitt formally wrote to Mr Chambers on 22 March 2016 on behalf of the Evans Group to state that he could find no evidence of such a contractual relationship or obligation to pay the profit share, and in the absence of such evidence then the request for a profit share could not be honoured (see [3/G/302/1394]). A concurring letter was then sent to Mr Chambers from the Defendant's board on 8 April 2016 (see [3/G/303/1396]).

iii. It follows from this that from at the very latest April 2016 – just under eight years before this claim was issued – Mr Chambers could have been in no doubt that his position, and that of the Defendant, were opposed on this issue. Consequently, even if the Claimant were able to remedy the deficiency in its pleading to rely on an appropriate unjust factor, this claim is nevertheless significantly out of time."

25. Mr Banner and Ms Gailey also made very detailed submissions on the basis of remuneration to which Mr Chambers (and now Tangent) was entitled. They pointed out that in *Jones v Griffiths* [2025] EWHC 797 (KB) (above) Sir Peter Lane had considered *Mate* an unusual case and that the claim for unjust enrichment had been pursued on a different conceptual basis from the contractual and estoppel claims: see paragraph 63(b). They also analysed Mr Chambers' services in detail and submitted that the appropriate basis of remuneration was a reasonable fee calculated by reference to a reasonable hourly rate: see paragraph 63(d).

(3) Oral Submissions

26. Mr Blaker dealt with the Unjust Enrichment Claim only briefly in his opening oral submissions. He took me to Tangent's pleaded case and also referred to *Mate v Mate*. He

did not submit that I should reserve the question of how to assess Mr Chambers' remuneration until the quantum hearing or suggest that the reason for doing so was that Tangent intended to rely on expert evidence:

> "MR BLAKER: Yes. And then there's the unjust enrichment. MR JUSTICE LEECH: And then there's the unjust enrichment. MR BLAKER: That's the third element. MR JUSTICE LEECH: And that's the —— MR BLAKER: And we see that at 80, paragraph 80, page 54. It's 80 through to 84. Again, what is said there is that he spent thousands of hours working on the project, that if you found that there was a failure of basis and there was no contract in place —— MR JUSTICE LEECH: No, it's the anticipated contract case, isn't it? MR BLAKER: Exactly. MR JUSTICE LEECH: Although I haven't read *Mate v Mate* yet. There's a disagreement about it. MR BLAKER: What we say in Mate is in that case, which was a family dispute about development of agricultural —— I think it was agricultural land, the court there awarded 7.5%. They didn't award it on a pure quantum meruit basis, as, for example, like in *Cobbe*. It's awarded on an uplift because the experts there were all in agreement that a land developer, land promoter, I should say, would ordinarily get an uplift of between and 30%, and what Andrew Sutcliffe KC, sitting as a deputy, found that Julie Mate had only an informal arrangement there, and she shared the work with Persimmon Homes. And so he halved the uplift in terms of the percentage and gave ——instead of 15, she got 7.5. There are other ——I mean, I've simplified the reasons, but we will look at that again on Friday. MR JUSTICE LEECH: Sure. MR BLAKER: What we say there is that there's a very clear benefit. They get the benefit ——the defendant gets the benefit of services over a very long period of time, in excess of 15 years, in the various different identities, and unlocking the potential, the development potential of the land. Again, the failure of basis ——because the limitation point is taken. I should just say on the limitation, there's never been any application before now in relation to limitation. This is the ——whilst it was flagged up in the defence, not pleaded by ——well, Ms Gailey, but not Mr Banner. But it is flagged up, but it never led to any actual applications in that regard. But in terms of the unjust enrichment, again, what we say is that the failure of basis only occurs when the profit is made in 2022, and they turn round and say, "We are not prepared to give you your 10% share". I should note actually on the limitation point, just to cover that off, there is something in the skeleton submissions of the defendant where they say that actually, if the court does find in my client's favour, actually it's premature because in fact overall profits can only be ——will only come in the next few years, and that one shouldn't assess this in terms of an ongoing obligation as the various lands sold. One has to look at the whole project, and that actually we've kind of in a way gone too soon. So I say you certainly can't have it both ways."

27. Mr Banner dealt with the Unjust Enrichment Claim equally briefly in his oral opening. He repeated the admission that the Defendant benefitted from Mr Chambers' services but pointed out that he never asked to be remunerated on a time basis. He distinguished *Mate* on the basis that Mr Chambers' services were not responsible for unlocking the development potential of the Skelton Site. Finally, he submitted that now it was clear that

this was a failure of basis case, the cause of action accrued by 2016 at the latest when Mr Chambers was told that he would not receive a profit share:

> "MR BANNER: Finally then, unjust enrichment. This is obviously an either no contract or an anticipated contract case, however you want to put it as between those two silos. Broadly, we accept we did enjoy some enrichment at Mr Chambers' expense, in that we were ––we benefited from the value of his time services for his work on the business park. And he hasn't asked to be paid for those services on a time basis, and that's where we are with that. But the enrichment we now enjoy is as a result of buying land ourselves, developing it for residential purposes using our money, and therefore sitting on a development of some land which Mr Chambers frankly never had anything to do with. By which I mean the development is something he never had anything to do with. The events that have generated value took place a long time after he parted ways with the project. And that's where we say there is a causal break between the work he did and the enrichment we enjoy. And that means it's not ––that breaks the unjustness. And that's where it's different to *Mate*, where Julie did work on precisely the application that generated value in the land."
>
> "MR JUSTICE LEECH: So you say that in relation to the housing development, he's not entitled to quantum meruit at all. You say it's just you've not been enriched by the services he's provided. MR BANNER: Correct. It's a temporally distinct episode for the housing development. MR JUSTICE LEECH: If he was entitled to, let's say, payment on a time basis for the earlier work he did in assisting you to get planning permission for the business park, which had value in itself , although not ultimately, that's what ––that's now long –– MR BANNER: That's now time–barred. If one ––it's now –– my learned friend puts this as a failure of basis case. If the basis was, "I won't charge on a time basis for my work on the business park because I expect to get a profit share," he was disabused of that notion in, I think, either 2013 or, at the latest, 2016. That's when the basis fails. MR JUSTICE LEECH: Right. MR BANNER: And that therefore is when the clock starts ticking. He could have at that point issued proceedings for a declaration as to his rights and entitlements, and he didn't. MR JUSTICE LEECH: And to claim quantum meruit. MR BANNER: Yes. MR JUSTICE LEECH: What is the actual limitation here? What is the rule so far as this kind of unjust enrichment claim? MR BANNER: It's treated ––it's a six–year period, and the trick is pinning down when it starts. MR JUSTICE LEECH: When do you say it starts? MR BANNER: We say it's when the basis fails. MR JUSTICE LEECH: And you say that the basis failed? MR BANNER: Once he is aware that the profit share is not going to be something –– MR JUSTICE LEECH: So you're not going to enter into a contract and you're not going to pay? MR BANNER: Yes. Which is, at the latest, 2016. MR JUSTICE LEECH: So if you say, "Well, I'm taking a risk that I will ––you know, that they will be so pleased with my services that they will give me a very lucrative contract." The basis there is having no contract, isn't it ? It's being told, "Well, actually , we are never going to give you a contract, and we are not" ––and do you go further than saying, I suppose, "We are never going to renew it." So the basis fails at that point; is that what you're saying? MR

> BANNER: One of the difficulties with failure of basis is it can be a bit like constructing a duty of care. A claimant could construct the basis to suit its particular circumstances. But we say, on any footing here, the basis must have failed more than six years before proceedings were issued. MR JUSTICE LEECH: The alternative is: well, time hasn't even begun to run yet, it's only when the profits are earned and you refuse to pay me that time begins to run. MR BANNER: Well, that's not how a failure of basis claim works, we say."

B. The Evidence

(1) Mr Chambers' Services

28. Mr Chambers gave evidence in his witness statement that when Mr Pitt took charge of the Skelton Site project, he was sidelined and unable to make a significant contribution thereafter. However, he also gave evidence that he continued to monitor the progress of planning applications and attended meetings until July 2018. Mr Banner put it to him in cross-examination that in 2009 his involvement with the Skelton Site came to an end. He did not accept this although he accepted that he was only given one task associated with the Skelton Site after 2009 and that this was limited to providing details of his earlier work to British Coal. I set out the relevant passage from his cross-examination at [157].

(2) The Correspondence

29. I summarised the effect of Mr Pitt's letter to Mr Chambers dated 22 March 2016 and then set out Mr Hill's letter to Mr Chambers dated 8 April 2016 at [153]. I also set out Mr Banner's cross-examination of Mr Chambers on those items of correspondence at [154]. I did not deal with any subsequent correspondence although Mr Banner also asked Mr Chambers about an email dated 27 October 2016 which Mr Robertson had written to Mr Bell stating that Mr Chambers had been in touch with him and had told him that "the Skelton JV are trying to disassociate themselves from the profit share agreement". Mr Banner put this email to him in the following passage from his cross-examination:

> "Q. Then if you go to 1398 ––sorry, 1399. We see Iain Robertson ––this is the tail–end of an email from Iain Robertson to John Bell. Iain Robertson writes in October 2016 to John Bell, at the top of 1399: "The reason for writing ... is that out of the blue Nigel Chambers contacted me. He got my details from LinkedIn ... Skelton ... are trying to disassociate themselves from the profit share agreement. Obviously, my memory ... is vague ... he has been asking for my help. I recall ... I was not involved directly with Skelton for long and lan Gray took over. I don't want to get involved ... so would appreciate your guidance ... I understand that he may have roped in Geoff Goodwill. I am not taking sides on this but obviously I still have loyalty to you and EPG." So by this stage, we are now at the end of 2016, you have been told pretty unequivocally by Templegate they don't recognise you have a contract. You've been invited to provide documentation. You haven't thought to provide the August 2005 note. You've been in contact with Iain Robertson for some help; presumably that was a dead end. Why didn't you resort to legal proceedings at that stage? A. Yes. This is the point at which I engaged Irwin Mitchell after the letter

> of 8 April, which requests me in the final paragraph, "happy to consider your written evidence of a contractual arrangement". So I engaged Irwin Mitchell –– Q. Sorry, which letter are you reading from? MR JUSTICE LEECH: 1396. A. The letter of 8 April 2016, page 1396. MR BANNER: In the middle of the second paragraph –– A. The second paragraph. Q. So you engaged Irwin Mitchell in 2016? A. Yes, after this letter. Yes. Q. Right. But you didn't issue proceedings until 2024? A. Yes, because we were trying to resolve our position via Irwin Mitchell, and ultimately Walker Morris, without the necessity of court proceedings."

30. As Mr Chambers confirmed in this passage, he instructed Irwin Mitchell LLP ("**Irwin Mitchell**") to act for him after his conversation with Mr Robertson in 2016. However, Irwin Mitchell did not reply to Mr Hill's letter dated 8 April 2016 until almost two years later. By letter dated 8 March 2018 they wrote to Mr Hill (with a copy to Mr Pitt). They began the letter as follows:

> "We are instructed to write in response to your letter dated 8 April 2016 regarding the profit-sharing agreement between you and our client concerning the development of a site at Skelton, near Leeds.
>
> In your letter, a copy of which we enclose, you referred to the fact that the profit-sharing agreement was entered into prior to your current management team's involvement and, as a result, you were unable to confirm the existence of the same. Your letter invited our client to produce "written evidence of a contractual arrangement" for your consideration which is the context in which we have been instructed.
>
> In accordance with your request our client has now procured documentary evidence which proves the existence of the profit-sharing agreement as well as independent witness evidence which corroborates his position and attests to the existence of a profit-sharing agreement to which you and our client are parties. Our client now seeks to agree a process to implement the terms of that agreement."

31. Irwin Mitchell then set out a summary of Mr Chambers' case and enclosed a number of documents. But in the very first numbered paragraph they stated that: 'This letter is not intended to serve as a precursor to litigation. As such we are not instructed at this stage to write to you in the terms of a Protocol-compliant Letter of Claim." After itemising the documents which they enclosed (which included both the 6 December Fax and Mr Chambers' typed note of the meeting on 18 August 2005) they continued as follows:

> "4 You are invited, upon having reviewed this letter and the documentation enclosed herewith, to revert to us to confirm that you acknowledge that you are bound by the terms agreed between you and our client pursuant to which our client dedicated fifteen years of his professional career supporting you with the project to develop the site at Skelton, near Leeds.
>
> 5 In order to progress matters thereafter, our client also seeks by this letter to agree with you a procedure by which you will report to our client details of progress on the development such that our client will be apprised of the point at which his entitlement to remuneration will crystallise under the

terms of the profit-sharing agreement.

6 We trust this matter can be capable of an early resolution."

32. By letter dated 27 March 2018 Walker Morris replied on behalf of Templegate rejecting Mr Chambers' claim that there was a binding contract. They stated that: "it cannot be said that your Client has fulfilled our Client's original requirement contained in its letter dated 8 April 2016 for the production of written documentation to substantiate the position that our Client owes any contractual duties." They also refused to agree to Mr Chambers' request that Templegate agree to a reporting procedure. By letter dated 14 December 2018 Irwin Mitchell replied to this letter stating that: "we do not consider that TDL has any realistic prospect of defending Mr Chambers' claim." By letter dated 19 December 2018 Walker Morris replied promptly stating that they had taken instructions and had nothing to add. No further correspondence passed between solicitors until 20 March 2023.

(3) The Skelton Site

33. I set out the Defendant's pleaded case in relation to the development of the Skelton Site at [19]. In particular, I recorded that 14.55 acres of Phase 1 were sold to Evans Homes for £8 million, which fell due for payment in October 2022 and October 2023, and also that 17.18 acres were sold to Avant Homes for £5.3 million, which fell due for payment in April 2022 and April 2024. Mr Chambers confirmed in cross-examination that Phase 1 had been sold and he asserted that the Defendant must have made a profit although he accepted that he had not been provided with any financial information by the Defendant. There was no other evidence before the Court at trial about the profits (if any) which the Defendant has made from the Skelton Site and when it either booked or received them.

C. Closing Submissions

(1) Tangent

34. I asked the parties to focus their written closing submissions on the oral evidence given by the witnesses and, in particular, to identify those passages on which they relied and to set out what findings of fact they invited the Court to make. For this reason, Mr Blaker and Mr Kelly concentrated on the factual evidence. They stated that they only intended to address the legal issues in passing and that their oral closing submissions would amplify the points made in the relevant case law. They did not reserve Tangent's position in relation to Issue 19 or ask the Court to defer consideration of that issue until Stage 2 or suggest that they might want to call expert evidence on that issue.

(2) The Defendant

35. Mr Banner and Ms Gailey took a different approach. They combined their earlier written opening submissions with their observations on the evidence and their closing submissions. They repeated their earlier submissions that Tangent had failed to plead the unjust factor adequately and submitted that this had not been properly addressed in their opponents opening submissions. But they also submitted that the basis must have failed when the understanding between the parties broke down:

"74. In paragraph 72 of the Claimant's skeleton argument the Claimant suggests – without explanation - that the failure of basis in this case is a "failure of the state of affairs on which the agreement was premised". Beyond that assertion (which the Defendant says is inapt to describe the circumstances in which the enrichment was provided, which – if the Claimant's case is accepted – was seemingly always on the expectation of counter-performance, not an independent 'state of affairs') there is no articulation of what the basis in this case allegedly is, or how it is said to have failed."

"77. In this case (and notwithstanding that the Claimant has yet to articulate the alleged basis it relies on) the fundamental character of any such basis must have been that Mr Chambers was providing his services on the joint understanding that he would be entitled to get something in return (i.e. a counter-performance scenario). There is simply no other articulation of the basis that makes sense on these facts. This is also underlined by the reasoning of Rimer LJ in *Spaul v Spaul* [2014] EWCA Civ 679 at [46], where he recognised that a failure of basis could apply where there was a failure of an informal arrangement which fell short of a binding contract, but he emphasised that, in such circumstances, the claim had to be "*occasioned by the failure of some joint endeavour of the parties*"."

36. Mr Banner and Ms Gailey cited *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55, [2008] 1 WLR 1752 and *Barnes v Eastenders Cash and Carry plc* [2015] UKSC 26, [2015] AC 1 for the proposition that the failure of basis must have taken place when the Defendant had made it clear that it was not going to honour its promise to give Mr Chambers a profit share. But they also submitted that the Unjust Enrichment Claim was barred by limitation in any event. They repeated their earlier submission that Mr Chambers had ceased work in 2009 and submitted that his evidence that he had continued to provide services after that date was unconvincing. They then continued:

"79…b. Even if the Claimant relies on a failure of basis at a later date, however, this cannot assist it, because Mr Chambers was aware that the Defendant was not intending to pay him any profit share from at least 2013. As set out above, on 25 February 2013, almost exactly 11 years before this claim was issued, James Pitt wrote to Mr Chambers to say: "we do not recognise the document you attached and it does not appear to form the basis of a binding agreement. As you know the matter dates back to before my time but nevertheless I am not aware of any other documentation we hold in this regard…Sorry I can't be of more help" [3/G/292/1373]. Moreover, if there was any possibly ambiguity from that response (which is denied by the Defendant), that was removed in 2016 when Mr Pitt formally wrote to Mr Chambers on 22 March 2016 on behalf of the Evans Group to state that he could find no evidence of such a contractual relationship or obligation to pay the profit share, and in the absence of such evidence then the request for a profit share could not be honoured (see [3/G/302/1394]). A concurring letter was then sent to Mr Chambers from the Defendant's board on 8 April 2016 (see [3/G/303/1396]).

c. It follows from this that from at the very latest April 2016 – just under eight years before this claim was issued – Mr Chambers could have been in no doubt that his position, and that of the Defendant, were opposed on this issue. That he was in fact aware of this is also apparent (i) from the fact that he instructed solicitors after receipt of the April 2016 letter and (ii) from the fact that he approached Iain Robertson on LinkedIn in October 2016 to say that the "Skelton JV are trying to disassociate themselves from the profit share agreement" (see [3/G/304/1399]).

d. In paragraph 80 of the Claimant's skeleton argument it was argued (without any explanation) that the "basis only fails in 2022 once profits are made that could be shared with NC". The Defendant says that such an argument is entirely artificial, and is being advanced solely to try and avoid an inescapable limitation defence. Firstly, it assumes that the reward the Claimant would be entitled to would indeed be a profit share (which, for the reasons set out below, the Defendant says would not be the case) but secondly, and fundamentally, because it ignores the underlying concept of a failure of basis which is (to quote the editors of Goff at 12-01) that "a benefit has been conferred on the joint understanding that the recipient's right to retain it is conditional". It follows that there can be no 'basis' which can endure beyond the 'joint understanding', and on any analysis the joint understanding between the Defendant and Mr Chambers – if it ever existed - had failed significantly more than six years before the issue of these proceedings. In the premises, the claim in unjust enrichment is time-barred."

37. Finally, Mr Banner and Ms Gailey dealt with the value of Mr Chambers' services. They submitted that he was providing services as a planning and development consultant and not as a land promoter (as in *Mate*); that there was no connection between his services up to 2009 and the profits which might be generated by the development of the Skelton Site; that the present case was on all fours with *Cobbe*; that the appropriate basis for remuneration was by reference to a reasonable hourly rate for the time which he spent; and that SBPL had been willing at all times to remunerate him on that basis.

(3) The Oral Submissions

38. Mr Blaker dealt with the Unjust Enrichment Claim at the end of his closing oral submissions. He rejected the criticism that Tangent had failed to plead the unjust factor adequately but he confirmed without any qualification that the present case was a failure of basis case and referred to the authorities upon which he relied:

> "Now, what is said against me is that ––again, it's sort of pleading point ––that I haven't expressed with clarity that it's a failure of basis . In my submission, the facts are set out in terms of the narrative with great clarity in that particular claim. We have set it out as to what happened, and that the failure of basis comes, and there is a failure of basis here because when they start making a profit and he pops up and says, "Can I have my 10% share", they say, "No, you can't, you've done all this work and you have brought the land to us and you have worked for all those years and you are not entitled to anything". So I rely in my paragraph 72 to Goff & Jones at 16 12−16 and Barton v Morris, where Lady Rose relies on Lord Toulson in Barnes, that the failure of basis will consist of the failure of a state of affairs on which the agreement was premised. What I say there is that if

> there has been this failure, then we would be in that territory. Now, again, it's said against me very briefly that Mate isn't relevant and that we're in a very different case to Mate. In my submission, that is not the correct position . Mate ––would you be helped by me taking you to Mate? I'm just conscious of the time. MR JUSTICE LEECH: What do you think? Can I read it to myself? I mean, Mr Banner says that it's a very different case. MR BLAKER: He says it's very different. I say actually this situation is well beyond the territory of Mate because of the length of time, the bringing the land, the sole agent in terms of in Mate – to Mate."

39. Mr Blaker then identified the key passages in *Mate* and drew an analogy between the findings made by the judge in that case and the facts of the present case. He took me, in particular, to [278] to [284] and the judge's reasons for awarding a profit share at [295] to [297]. Although it is not apparent from the transcript itself, the judge referred to the expert evidence of Mr Creighton a number of times in those paragraphs and relied on that evidence in finding that Julie performed the role of a land promoter and awarding her a profit share of 7.5%. Indeed, I quoted [297] in the Judgment at [183]. Mr Blaker did not suggest that I should defer my decision on Issue 19 to enable him to call expert evidence on that issue. On the contrary, he urged me to decide that issue in Tangent's favour without doing so.

40. When he came to make his oral submissions, Mr Banner submitted that *Mate* turned on two factors which were absent from the present case: first, the judge found that Julie was instrumental in releasing the relevant land for allocation and, secondly, he found that she was a land promoter on the basis of expert evidence. He also dealt with Mr Chambers' evidence that there was a causal link between his services and planning permission for residential development and, finally, the limitation point:

> "MR BANNER: So Mate v Mate turned on two very distinct factors that are absent from this case. One is the judge found as a matter of fact that Julie had ––was causal in releasing the land for allocation. MR JUSTICE LEECH: Yes. MR BANNER: So that was a fact; and therefore that was the benefit that the defendants were on the hook for. He also found that Julie , on the basis of expert evidence, that Julie had fulfilled the role of a land promoter. MR JUSTICE LEECH: Yes. MR BANNER: Now, that, I have to say, I find a questionable finding, but there's not much I can do about it now. A promoter, as I understand it, is someone who takes the financial risk of applying for permission in respect of a piece of land, and if it comes good, they take a cut of the uplift. MR JUSTICE LEECH: Is that actually in the report? MR BANNER: No, no, that's my understanding of what a promoter is. Mr Sutcliffe QC deals with it on the basis of the experts' reports that were before him. MR JUSTICE LEECH: So he says there's a direct analogy with the land promoter? Because I'll have to look at what he says about the expert evidence in that case, but he did have expert, one, that it would have been 15–20%, I think –– MR BANNER: Yes, I do urge you to look at ––it's from about paragraph 275 onwards. Go through Mate, because the longer one spends studying it, the more one realises it's just removed from where we are in this case. MR JUSTICE LEECH: There's no allegation, is there, of the causal connection between ––it's more important maybe for this point, that the ––the pleading point.

> There's no suggestion that the work Mr Chambers did after the original allocation under the UDP was —— MR BANNER: Causal of the residential development, no.”
>
> “Mr Chambers gave evidence that he had ——I think he initially claimed that the land had been allocated as residential in October 2007. That unravelled pretty quickly. That was just, as he ended up conceding, the commencement of a process. And as you know, it wasn't actually allocated until November 2017. So the causal link is just broken. And then, finally, on unjust enrichment, my learned friend puts it as failure of basis. One does have to identify what the basis is though that is said to have been failed, that are said to have failed. We're still a bit in the dark about that. It’s now coming up to 3.50 on the last day. It's just not a – it’s not a coherent or complete claim. It's contract or bust.”

41. Mr Blaker dealt with the Unjust Enrichment Claim at the beginning of his oral submissions in reply. He submitted again that this was a failure of basis case but he also appeared to accept that the basis failed when he was told that he was not going to receive a 10% profit share:

> “MR BLAKER: As I say, the failure of basis is quite evident from what Mr Chambers was expecting was for all that work that he carries out, and it leads to a development actually being carried out at the site to be paid for that when he says that he was told that he would be. This wasn't a loose or informal arrangement, but he would be paid his 10% share of the profits If I can turn to my Lord's —— MR JUSTICE LEECH: So the failure of basis is what, being told that, "No, we are not going to pay you 10%"? MR BLAKER: Yes, exactly.”

42. Mr Blaker then went onto deal with *Mate* and he submitted that the work which Mr Chambers had performed and which was pleaded in the Particulars of Claim, paragraph 25 (above) was akin to that of a land promoter. Although Mr Banner had pointed out the reliance which the judge had placed on expert evidence in *Mate*, Mr Blaker did not submit, it, even at this very late stage, that he wanted to call expert evidence or that the Court should defer or adjourn Issue 19 to Stage 2 to enable him to do so:

> “MR BLAKER: I have set out there in six bullet points, in six roman numerals, work that was particularly carried out. That work leads and has a direct link to then at paragraphs 81, 82 and 83. Again, it's put quite simply. He's the introducer. He spends thousands of hours developing ——working on the potential development. Then in 83, a little bit more specific as to what he's doing, and that his work was akin to that of a land promoter. So Mate is an authority in my submission that actually is particularly helpful because he does unlock the land. Here he not only gives them that opportunity, but the work that he carries out ——now, the fact that Mr Bell couldn't see it, he had very little day−to−day ——he was busy doing so many other things. He wasn't sort of looking at what Mr ——it was well below his pay grade to be looking at what Mr Chambers was up to. So this is absolutely on all fours with that type of situation as Mate, where Mr Chambers has gone off, worked with others, with others at the

defendant, to promote ––to promote this."

III. The Judgment

43. I briefly stated the law on limitation at [184] to [186]. In particular, I accepted Mr Blaker's submission that the test for the failure of basis was as set out in *Anron Bunkering DMCC v Glencore Energy UK Ltd* [2023] EWHC 295 (Comm), [2023] 1 WLR 1912 (Simon Colton KC sitting as a Deputy Judge of the High Court) at [45]. In that passage the judge stated that the test was whether "the state of affairs contemplated as the basis or reason for that payment [had] failed to materialise". Neither counsel challenged this test at the subsequent hearing and I proceed on the basis that it is correct.

44. I set out my detailed findings in relation to the work which Mr Chambers performed at [190] to [213] and I summarised my conclusions at [326](6). Mr Chambers failed to satisfy me that he played a very significant role in persuading the Council to allocate the Skelton Site for housing development in the AV Action Plan or obtaining planning permission for any of the individual phases. I also found that he had exaggerated his contribution to the development of the Skelton Site for housing. Mr Blaker and Mr Kelly did not submit that Tangent was no longer bound by these findings even if I permitted them to reopen Issue 19 or deferred its determination to Stage 2 and granted permission to Tangent to call expert evidence.

45. I did not decide when Mr Chambers ceased to provide services to SBPL or Templegate (either at its express request or which it freely accepted). However, I recorded that he had accepted in cross-examination that after 2009 he was given no further tasks by Templegate although he made multiple offers of assistance to Mr Pitt and carried out one task for Yorkshire Water in 2012: see [157]. Nor did I finally decide when SBPL or Templegate or the Defendant denied that Mr Chambers had a contractual entitlement to a 10% profit share or when objectively the basis of any understanding between the parties that he would receive a 10% profit share failed. However, I held that the correspondence between 2005 and 2016 provided no evidence that the parties agreed to be bound by the 6 December Fax and that SBPL did not encourage Mr Chambers to believe that its terms were binding after 18 August 2005: see [307].

IV. Procedural Issues

D. Pleading Points

(1) The Unjust Factor

46. Mr Banner submitted that Tangent had failed to plead the unjust element or factor upon which it relied. He took me through the materials which I have set out above and demonstrated that the Defendant had trailed this point in the Defence and at the trial in both opening and closing submissions. He and Ms Gailey relied on the decision of the Privy Council in *Samsoondar v Capital Insurance Co Ltd* [2020] UKPC 33 (an appeal from the Court of Appeal of the Republic of Trinidad and Tobago) in both their opening and closing submissions.

47. In that case the Privy Council held that an insurance policy did not cover the owner of a truck and that he was not entitled to a contractual or statutory indemnity because the driver of the vehicle, an employee, was uninsured. However, the Court of Appeal held

that the insured was entitled to recover on the basis of unjust enrichment. The Court of Appeal permitted the Appellant to advance this claim because he had pleaded that the insurer had settled a third party's claim "due to compulsion by law": see [21]. The Privy Council held that this claim was bad in law: see [21] and [22]. The board also dismissed an alternative argument that the unjust factor was a mistake because it had not been pleaded: see [23] to [25]. In the course of his judgment, Lord Burrows JSC set out the following guidance for pleading unjust enrichment (my emphasis):

> "18. It has now become conventional to recognise (see, eg, *Benedetti v Sawiris* [2013] UKSC 50; [2014] AC 938 , para 10 and *Investment Trust Companies v Revenue and Customs Comr*s [2017] UKSC 29; [2018] AC 275 , paras 24, 39-42) that a claim in the law of unjust enrichment has three central elements which the claimant must prove: that the defendant has been enriched, that the enrichment was at the claimant's expense, and that the enrichment at the claimant's expense was unjust. If those three elements are established by the claimant, it is then for the defendant to prove that there is a defence. The ideal pleading of a statement of case by the claimant should indicate that the claim is for restitution of unjust enrichment and should identify facts that satisfy each of those three elements. <u>While it may be desirable, it is not essential, that the words "unjust enrichment" are used but the claimant must identify sufficient facts to show how those three elements are satisfied</u>: see Goff and Jones, The Law of Unjust Enrichment (eds Mitchell, Mitchell and Watterson, 9th ed (2016), para 1-38). The important purpose of a statement of case is to ensure, as a matter of fairness, that the defendant knows the case it has to meet.
>
> 19. Moreover, as regards the third of those elements, the claimant must identify what was referred to by counsel for the claimant - using the term coined by Peter Birks (see, eg, "Unjust Enrichment - a Reply to Mr Hedley" (1985) 5 Legal Studies 67, 71; Restitution - the Future (1992), p 41) - as the "unjust factor" and is sometimes alternatively referred to as the ground for restitution. See *Goff and Jones, The Law of Unjust Enrichment* (eds Mitchell, Mitchell and Watterson, 9th ed (2016), para 1-21). Examples of unjust factors are mistake, duress, undue influence, failure of consideration, necessity and legal compulsion. For judicial acceptance of the need for, and terminology of, an unjust factor, see, eg, *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 AC 349 , 408-409 per Lord Hope; *Chief Constable of the Greater Manchester Police v Wigan Athletic AFC Ltd* [2008] EWCA Civ 1449; [2009] 1 WLR 1580 , paras 50, 62 and 67; *Test Claimants in the FII Group Litigation v Revenue and Customs Comrs* [2012] UKSC 19; [2012] 2 AC 337 , para 81, per Lord Walker. In the Court of Appeal of Trinidad and Tobago in *Jaipersad v Shiraze Ahamad*, in a judgment delivered on 24 February 2015, Mendonca JA (with whom Bereaux JA and Narine JA agreed) said the following at para 23:
>
> > "English law, which the parties agree is the law applicable in this context to this jurisdiction … identifies specific grounds for restitution sometimes referred to as unjust factors. These factors are the trigger for the restitutionary remedy on the ground that it is unjust to retain the

> benefit."
>
> 20. The need to identify an established unjust factor, or some incremental development from it, also lies behind the obiter dicta of Mann J discussing pleading in unjust enrichment cases in *Uren v First National Home Finance Ltd* [2005] EWHC 2529 (Ch) at para 16:
>
> > "[I]t seems to me that it has not been established that the authorities have yet moved to a position in which it can be said that there is a freestanding claim of unjust enrichment in the sense that a claimant can get away with pleading facts which he says leads to an enrichment which he says is unjust … A claimant still has to establish that his facts bring him within one of the hitherto established categories of unjust enrichment, or some justifiable extension thereof."”

48. This is salutary guidance and it might have been better if Tangent had followed it more closely. However, as Lord Burrows recognised in the passage which I have highlighted, Tangent was only required by the rules of pleading to identify sufficient facts to show how the three elements of the Unjust Enrichment Claim were satisfied. Moreover, it is instructive to note that in *Samsoondar* the Privy Council did not allow the appeal on the basis that the unjust factor in that case, namely, compulsion had not been adequately pleaded. They allowed the appeal because the unjust enrichment claim was bad in law. The board refused to allow the alternative argument based on mistake because this had not been pleaded at all.

49. I am not satisfied that Tangent pleaded sufficient facts to identify the unjust factor in the Particulars of Claim. Mr Blaker pleaded that the Defendant had been enriched at Mr Chambers expense in paragraphs 81 to 83 and that he was entitled to a remedy in paragraph 84. But he did not identify the unjust factor let alone plead the established category of unjust enrichment into which the claim fell: see the dicta of Mann J in *Uren* (above). However, I am satisfied that Mr Blaker has sufficient facts to identify the unjust factor in the Reply: see paragraph 47. In that paragraph he pleaded that the unjust factor occurred when “the Defendant first realised profit and refused to pay 10% of the net pre-tax profit to Nigel Chambers”.

50. It is clear from *Samsoondar* (above) that Tangent ought to have pleaded this allegation in the Particulars of Claim in order to perfect its cause of action and not just in reply to the Defendant’s limitation defence. However, this is an irregularity which the Court may waive under its case management powers and I recently took this course in *Musst Holdings Ltd v Astra Management UK Ltd* [2026] EWHC (Ch): see [342] and [343]. If Mr Blaker had applied for permission to amend the Particulars of Claim to plead the relevant facts or even to incorporate paragraph 47 by reference either at the trial or at the subsequent hearing, I would have given him permission to do so. Further, if it is necessary for me to do so now, I waive the failure to plead the request in the Amended Particulars of Claim. However, I am only prepared to do so on terms (as I now explain).

(2) The Defendant’s Limitation Defence

51. Mr Blaker and Mr Kelly argued that the Defendant ought not to be entitled to run its limitation defence because it had changed materially between the date of service of the Defence and trial. They submitted that the Defendant’s pleaded case was based on the

normal rule that time began to run when the recipient was enriched but the Defendant was now running a case of failure of basis and arguing that the cause of action accrued when Mr Chambers became aware that the Defendant was not prepared to pay him a profit share. They submitted that this was an impermissible departure from their pleaded case and that they should not now be allowed to rely on a defence of limitation at all.

52. I have no hesitation in rejecting this submission. The Defendant's written opening submissions were entirely consistent with the pleadings of both parties. Mr Banner and Ms Gailey took the point (as they were entitled to do) that no unjust factor was properly pleaded in the Particulars of Claim and that under normal principles the Unjust Enrichment Claim was now barred by limitation. They also addressed the position if Tangent now sought to identify an unjust factor such as failure of basis: see paragraphs 63(c)(i) and (ii) (above). In their written opening submissions, Mr Blaker and Mr Kelly stated for the first time that the unjust factor was failure of basis (see paragraph 72) and in their written closing submissions, Mr Banner and Ms Gailey addressed this point directly (see paragraphs 77 and 79).

53. But in any event, I am not satisfied that it was incumbent upon the Defendant to do any more than plead that the cause of action had accrued more than six years before the Claim Form was issued in order to take a limitation defence at trial. Once the Defendant pleaded a defence of limitation, the burden of proof was (and is) on Tangent to prove that the Unjust Enrichment Claim was brought within time: see Clerk & Lindsell on Torts 24th ed (2023) at 30—03 (citing, among other authorities, *Fiona Trust & Holding Ltd v Privalov* [2010] EWHC 3199 (Comm) at [135] (Andrew Smith J)). In my judgment, therefore, the Defendant was not required to nail its colours to the mast and either to plead or prove the date on which the cause of action accrued. Furthermore, even if it chose to plead a positive case (as the Defendant did here), I am not satisfied that it could be deprived of a limitation defence if the Court found that the cause of action accrued on a different date but was otherwise barred by limitation.

54. Mr Blaker and Mr Kelly relied on the well-known decision in *Ketteman v Hansel Properties Ltd* [1987] 1 AC 189 relating to latent damage in support of their submission. In that case, the defendant applied for permission to amend to plead limitation when the House of Lords handed down its decision in *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1. By a majority the House of Lords refused permission on the basis that they had elected to defend the claim on the merits. Lord Griffiths (with whom Lords Templeman and Goff agreed) stated as follows at 219D-F:

> "I will pause here to consider what would have been the fate of this application if the *Pirelli* decision had not been published during the course of the hearing. I have never in my experience at the Bar or on the Bench heard of an application to amend to plead a limitation defence during the course of the final speeches. Such an application would, in my view, inevitably have been rejected as far too late. A defence of limitation permits a defendant to raise a procedural bar which prevents the plaintiff from pursuing the action against him. It has nothing to do with the merits of the claim which may all lie with the plaintiff; but as a matter of public policy Parliament has provided that a defendant should have the opportunity to avoid meeting a stale claim. The choice lies with the defendant and if he wishes to avail himself of the statutory defence it must be pleaded. A defendant does not invariably wish to rely on a defence of

> limitation and may prefer to contest the issue on the merits. If, therefore, no plea of limitation is raised in the defence the plaintiff is entitled to assume that the defendant does not wish to rely upon a time bar but prefers the court to adjudicate on the issues raised in the dispute between the parties. If both parties on this assumption prepare their cases to contest the factual and legal issues arising in the dispute and they are litigated to the point of judgment, the issues will by this time have been fully investigated and a plea of limitation no longer serves its purpose as a procedural bar.
>
> If a defendant decides not to plead a limitation defence and to fight the case on the merits he should not be permitted to fall back upon a plea of limitation as a second line of defence at the end of the trial when it is apparent that he is likely to lose on the merits. Equally, in my view, if a defence of limitation is not pleaded because the defendant's lawyers have overlooked the defence the defendant should ordinarily expect to bear the consequences of that carelessness and look to his lawyers for compensation if he is so minded."

55. With respect, I agree entirely with the passage. If the Defendant had not pleaded a limitation defence until the trial itself, I would have refused permission to amend to enable it to do so. But the Defendant had pleaded a limitation defence and, what is more, in answer to a defective pleading. It is wholly unmeritorious to suggest that the Defendant should be denied the right to rely on its limitation defence when it was Tangent itself which failed to plead failure of basis as the unjust factor in the Particulars of Claim. In my judgment, *Ketteman v Hansel Properties Ltd* is clearly distinguishable from the present case and provides no authority for the proposition that the Court should not now permit the Defendant to run its limitation defence.

56. Furthermore, Mr Blaker did not take this point at trial and it is worth considering what would have happened if he had done so. I have no doubt that Mr Banner would have applied to strike out the Unjust Enrichment Claim on the basis that no unjust factor had been pleaded. I have no doubt either that I would have resolved both applications by giving Mr Blaker permission to amend but only on terms that Mr Banner had permission to amend to plead any consequential amendments and, in particular, that any failure of basis took place more than six years before the issue of the Claim Form. Both amendments could have been prepared overnight and before closing submissions.

57. The fact that neither side pressed either of these pleading issues at trial is a testament to the good sense of counsel. It was clear from Tangent's written opening submissions that the unjust factor upon which it was relying was failure of basis and that it was arguing that the basis only failed (or failed completely) when the Defendant earned profits from the development but denied Mr Chambers his share of them. Mr Banner and Ms Gailey had to some extent anticipated this case although they continued to run the pleading point. But neither counsel asked me to rule on these issues in their oral submissions and before the evidence began, presumably, because they had anticipated the course which I would take.

58. Finally, even if I am wrong and the Defendant requires permission to amend to run a limitation defence that the failure of basis occurred, and Tangent's cause of action accrued, more than six years before the issue of the Claim Form, I waive the defect in the Particulars of Claim but only on terms that the Defendant is not prejudiced and is entitled

to advance any limitation defence to the Unjust Enrichment Claim (as properly formulated). For these reasons, therefore, I dismiss both pleading points.

E. Procedural Fairness

(1) Tangent

59. Mr Blaker and Mr Kelly also submitted that to take advantage of a limitation defence, the Defendant could and should have applied to strike out the Unjust Enrichment Claim at a much earlier stage. Although this was very much a fall-back position in their Skeleton Argument, Mr Blaker placed much more reliance upon the Defendant's failure to make such an application in his oral submissions. Again, I have no hesitation in rejecting this submission. There is no rule of practice or procedure which requires a Defendant to "use or lose" a limitation defence in this way rather than to wait for trial and Mr Blaker and Mr Kelly did not rely on any authority for this proposition beyond the passage in *Ketteman* which I have quoted above. I am not aware of any such authority and McGhee Limitation Periods 9th ed (2022) clearly contemplates that parties may reserve consideration of a limitation defence until a full trial: see 21.013. Moreover, this must be right because there will be limitation defences which are impossible to resolve before trial.

(2) The Defendant

60. By contrast, Mr Banner and Ms Gailey argued that it was unfair on the Defendant to hear further argument on the limitation issue because Tangent had every opportunity to present its case at trial and they had addressed the issue in detail in both their opening and closing submissions. Mr Banner took me carefully through the written and oral submissions and I accept that the Defendant was fully prepared to meet the point. But I am not satisfied that it was unfair to hear further argument on limitation at the subsequent hearing or that I should have refused to hear Mr Blaker on that issue.

61. I say this because it was my decision to invite further submissions from the parties in the exercise of my case management powers: see CPR Part 3.1(2)(l) and (p). Mr Banner did not submit that it was not within those powers to exclude final consideration of the limitation issue and invite further submissions and, in my judgment, he was right not to do so. Furthermore, I am satisfied that it was not unfair to decide the issue for the following reasons:

    (1) Following the Judgment, the limitation issue had assumed much greater importance than it had at trial because it would determine whether Tangent was entitled to recover anything at all.

    (2) I had encouraged both parties to focus on the oral evidence in closing submissions and Mr Blaker and Mr Kelly had taken me at my word and followed that direction. It would have been unfair to Tangent if I had not given it the opportunity, at least, to make further submissions on this important issue.

    (3) In any event, I was not satisfied that either party had addressed me fully on the facts and, in particular, what the precise "basis" of the understanding between the parties was and when it had "failed". It would have been prejudicial for both parties and forced one or other of them to appeal if I had decided the point without any

further consideration of the facts or relevant authorities. I, therefore, go on to consider Issue 20 on the merits and to reach a final decision.

V. Limitation

F. The Law

62. It was common ground that the test for failure of basis was set out by the judge in *Anron* (above) at [45] and I adopted that test at [185]. As I have already stated, neither party suggested that I was wrong to do so at the subsequent hearing or added any further gloss to the test. I, therefore, apply it. The remaining issues for the Court are, therefore, as follows. What was the relevant state of affairs contemplated by the parties as the basis or reason for payment of a 10% profit share to Mr Chambers? And when did it fail?

63. There is clear authority that the basis for the payment of money or the provision of services must be determined on an objective basis. In *H&P Advisory Ltd v Barrick Gold (Holdings) Ltd* [2025] EWHC 562 (Ch), [2025] 1 WLR 4919 an investment bank provided services to a potential client in the hope that it would be appointed as its financial adviser. It claimed that the potential client had been unjustly enriched and that the unjust factor was the failure of basis. The decision is instructive because (as in the present case) it was concerned with the failure of the basis or reason for providing professional services. Mr Simon Gleeson (sitting as a Deputy Judge of the High Court) explained the law as follows at [246] to [249] and [253] to [254]:

> "246. The basic definition of failure of basis was set out by Professor Birks in *An Introduction to the Law of Restitution* (1989), p 223 and has since been cited with approval by Toulson LJ, with whom Black and Laws LJJ agreed, in *Sharma v Simposh Ltd* [2013] Ch 23 at para 24 and by Lord Burrows JSC in *Barton v Morris* at para 232. That definition is that: "failure of consideration or basis means that the state of affairs contemplated as the basis or reason for the payment has failed to materialise or, if it did exist, has failed to sustain itself."
>
> 247. This is amplified in *Virgo* as follows, at p 340: "Failure of basis occurs where the counter-performance, event or state of affairs which constitutes the basis for which the transferor of the enrichment had bargained has failed to materialize or to sustain itself … The basis must be shared between the parties and cannot be established from the mere failure of the claimant's expectations, nor the imposition of secret conditions. The basis is to be determined objectively by reference to whether a reasonable person in the position of the defendant would have understood that receipt of the enrichment was conditional, rather than by reference to the subjective motives of the claimant. Any particular purpose or motive of the claimant in transferring the enrichment can, however, be taken into account in identifying the basis, but only if such a purpose or motive had been communicated to the defendant before the enrichment was transferred or any contract was made so that the defendant had an opportunity to object to it and so that the basis can be considered to be shared."
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> 248. *Goff & Jones* at para 16-03 put the point as follows: "In accordance with the general principles that govern failure of basis as a ground of recovery, the basis must be ascertained by an examination of the dealings

> between the parties. The objectively understood joint basis of the transfer must be identified. It is not necessary to show that the defendant either knew, or ought to have known, that the claimant expected to be paid for his services, nor that the defendant freely accepted those services. As with the position in failure of basis more generally, there may be several conditions to which the transfer is subject."
>
> 249. The failed basis may be that the services will be paid for."
>
> "253. Failure of basis is commonly relied upon in the context of failed or anticipated contracts, in respect of which there is no difference in principle—as Barry J said in *William Lacey (Hounslow) Ltd v Davis* [1957] 1 WLR 932, 939: "I am unable to see any valid distinction between work done which was to be paid for under the terms of a contract erroneously believed to be in existence, and work done which was to be paid for out of the proceeds of a contract which both parties erroneously believed was about to be made."
>
> 254. The question here is as to when—if at all—a joint understanding was reached between H&P and Randgold that they would be instructed as financial adviser and paid accordingly."

64. In *Amns Middle East FZE v LIQS Pte Ltd* [2025] EWHC 150 (Comm), [2025] 1 WLR 2472 Mr Sean O'Sullivan KC (who was also sitting as a Deputy High Court Judge) adopted a similar analysis, although *Amns* was concerned not with services but with the payment of money. He stated as follows at [127] and [128]:

> "127. It is common for the most difficult question to concern when enrichment is "unjust". In the present case, reliance is placed upon what is now called a "failure of basis" as generating the required injustice from the perspective of C.
>
> 128. Mr Swaroop submitted that a failure of basis occurs when the parties have a common understanding, assessed objectively, that the defendant's entitlement to retain the benefit is conditional, for example, on counter-performance which is not rendered, or on the happening of an event which does not occur; or a state of affairs that does not materialise. That seems to me a helpful summary of the principle."

65. In *Amns*, as in a number of other cases, the parties entered into a binding contract and the Court had to consider an issue which does not arise in the present case, namely, whether the unjust enrichment claim subverts the terms of the contract and the allocation of risk to which the parties had bound themselves by contract. In *Dargamo Holdings Ltd v Avonwick Holdings Ltd* [2021] EWCA Civ 1149 the Court of Appeal upheld the decision of Picken J at first instance ([2020] EWHC 1844 (Comm)) that the contract precluded the disappointed party from making an unjust enrichment claim. However, Carr LJ (as she then was) also analysed the parties' understanding as a conditional one. She stated at [79]:

> "The core concept of "failure of basis" is that a benefit has been conferred on a joint understanding that the recipient's right to retain it is conditional. If the condition is not fulfilled, the recipient must return the benefit

(see *Goff & Jones at 12-01*). Whilst failure of basis ranks alongside the unjust factors of mistake, duress and undue influence as a factor negativing consent, it differs in that it is concerned with qualification of consent, as opposed to impaired or vitiated consent (see Burrows, *The Law of Restitution*, 3rd ed, 2011)."

66. Although *Dargamo* was also a payment case and not a services case, I find this analysis and the analysis of Professor Virgo cited by the judge in *Amns* particularly helpful in the present case. I do so because it focusses the Court's attention on the counter-performance, event or state of affairs upon which the provision by Mr Chambers' of his services was conditional and, in particular, it focusses the attention on whether that counter-performance was the entry into a binding contract or the realisation of a profit.

67. There is also clear authority that the question whether the basis has failed is to be judged objectively. In their Skeleton Argument Mr Blaker and Mr Kelly cited the decision at first instance in *Dargamo*.[1] Having rejected the claim for unjust enrichment, Picken J also went on to consider whether the claim was barred by limitation. The judge had earlier cited the decision of the Court of Appeal of New South Wales in *Nu Line Construction Group Pty Ltd v Fowler* [2014] NSWCA 51 and he did so again in the following passage when dealing with limitation:

> "829. Had the unjust enrichment claims succeeded in this case, it would have been on the basis that what was expected to happen (in terms of entering into subsequent binding agreements) did not happen. At the time that the payment was made, on 30 December 2009, there had yet to be the failure of consideration which gave rise to the entitlement to claim in restitution. It follows that the cause of action cannot by that stage have accrued.
>
> 830. Support for Mr Foxton QC's alternative position is also to be found in *Nu Line*, in which Young AJA observed at [193] that it "is very difficult to put a time on when something doesn't happen" , before going on to say this at [194]: "… one must be looking to the time when both parties would be reasonably considered to have taken the position that the arrangement between them was finally and definitely not going to proceed. Only at that time did it, to use the modern jargon, become unjust, or, to use the ancient jargon, become inequitable for the person who received the money to retain it."
>
> 831. Barrett JA in the same case stated as follows at [108]: "… a shared intention to enter into a contract should be taken to have ended if a contract has not been concluded by the time impliedly envisaged by the shared intention and there is, in an objective sense, no sufficient evidentiary basis for a finding that the mutual commitment continued beyond that time. Unless the parties' conduct shows some contrary consensus, the envisaged time for the making of the contract will be the time that is reasonable in the circumstances of the case."
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> 832. These are observations which I find persuasive. They strengthen my

[1] The decision is reported under the title *Avonwick Holdings Ltd v Azitio Holdings Ltd* [2020] EWHC 1844 (Comm).

> view that, as a matter of principle, Mr Foxton QC's submissions must be right, and so that time for limitation purposes starts to run in a case such as the present not when the payment is received but when it became inequitable (or unjust) for the recipient to retain the money received.
>
> 833. In this case, it was Mr Foxton QC's submission that a period of between 18 months and 3 years was equally a reasonable time for the parties to conclude contracts for the transfer of the interests in NET and Agro Holding. I agree with Mr Foxton QC about this. It is a timescale within which the Gaiduk Parties, in fact, made transfers to the Mkrtchan Parties, which, as Mr Foxton QC submitted, no doubt reflected the complexity of the arrangements which had to be put in place for each of the relevant transfers."

68. Again, I find this analysis helpful. If Mr Chambers' services were conditional upon the Defendant (or any of its predecessors) entering into a contract to pay him a 10% profit share rather than the realisation of that share, then, in my judgment, the question when the basis failed is to be answered by looking to the time "when both parties would be reasonably considered to have taken the position that the arrangement between them was finally and definitely not going to proceed".

G. Application

(1) What was the Basis?

69. Tangent's case as pleaded in the Reply was that the cause of action was completed and the unjust factor occurred when "the Defendant first realised profit and refused to pay 10% of the net pre-tax profit to Nigel Chambers": see paragraph 47. Although no express reference was made to the failure by the Defendant to enter into contract, it was implicit in paragraph 47 that the basis for the provision by Mr Chambers of his services was both (a) the entry by the Defendant (or one of its predecessors) into a contract and (b) the realisation of profit. Unless the parties had contemplated both of these steps as the basis for Mr Chambers' services, it would never have been unjust for the Defendant to refuse to pay Mr Chambers anything however great a profit it derived from the Skelton Site. I, therefore, approach Tangent's pleaded case on that basis.

70. I have found that on 29 November 1996 Mr Bell and Mr Goodwin agreed with Mr Chambers that he would receive 10% of the net profit earned by WRDE on the sale of (i) serviced land, (ii) unserviced land and (iii) the site value of land and that this agreement would be the subject matter of a legal contract to be drawn up and executed by the parties: see [265]. In my judgment, this represented the common understanding or basis upon which the parties contemplated that Mr Chambers would provide his services. The counter-performance for which he bargained was the entry by WRDE into a binding contract under which it (or its successor as developer of the Skelton Site) assumed the obligation to pay him 10% of the profits which it realised from the site.

71. I am also satisfied that the provision of his services by Mr Chambers was not conditional upon WRDE (or its successor) realising a profit from the development. This can be tested very simply. If WRDE or any of its successors had made no profit from the Skelton Site, Mr Chambers would not have been entitled to be remunerated at all. Mr Bell gave him a choice between the existing arrangements or to be paid on a traditional consultancy basis

and he agreed that they would live with the existing terms as set out in 6 December Fax however ambiguous and uncertain: see [296] to [299]. He, therefore, took the risk that the Skelton Site would not be developed profitably and that he would receive no payment at all. The condition upon which Mr Chambers provided his services was the entry into a binding contract to pay him a 10% profit share from the development of the Skelton Site. This is what I mean by the "basis" for the provision of Mr Chambers' services in the remainder of this judgment.

(2) When did the basis fail?

72. It is arguable that the basis failed on 18 August 2005 when Mr Bell made it clear that SBPL was not prepared to enter into a binding contract and told Mr Chambers that if he was not prepared to agree to a traditional consultancy basis, the existing arrangements would involve "dispute and quantum meruit": see [296]. It might have been argued that after that meeting "there [was] no sufficient evidentiary basis for a finding that the mutual commitment continued beyond that time": see Barrett JA in *Nu Line* (above) at [831] (cited by Picken J in *Dargamo* at first instance). But Mr Banner and Ms Gailey did not put their case this way and I do not consider it any further.

73. Mr Banner did, however, take Mr Chambers through Mr Pitt's email dated 25 February 2013, his letter dated 22 March 2016, Mr Hill's letter dated 8 April 2016 and Mr Robertson's email dated 27 October 2016 and, after doing so, he put it to Mr Chambers that he had "been told pretty unequivocally by Templegate they don't recognise you have a contract". By contrast, Mr Blaker and Mr Kelly submitted that neither of the two letters sent by Mr Pitt and Mr Hill were an unequivocal rejection of Mr Chambers' claim and that both letters were no more than an invitation to produce further documents. They also relied on Irwin Mitchell's letter dated 8 March 2018 as evidence that Mr Chambers still expected his entitlement to a profit share to be honoured.

74. After some hesitation, I am satisfied that by 8 April 2016 both parties can be reasonably considered to have taken the position that the arrangement between them was finally and definitely not going to proceed. I have reached this conclusion for the following reasons:

    (1) As Irwin Mitchell acknowledged in their letter dated 8 March 2018 there were no further discussions about an agreement between the parties after the meeting on 18 August 2005 until 2012. Although Mr Chambers made a number of offers of assistance, Mr Pitt did not accept them and in his email dated 25 February 2013 he stated in terms that the 6 December Fax did not form the basis for a binding agreement.

    (2) For almost three years thereafter Mr Chambers took no action. By his email dated 21 January 2016 he asked to meet the board of Templegate. By email dated 10 February 2016 Mr Pitt declined that request on the basis that Mr Chambers had produced no evidence of a formal agreement. In his email dated 11 February 2016 Mr Chambers repeated that request.

    (3) Mr Pitt's letter dated 22 March 2016 and Mr Hill's letter dated 8 April 2016 must be seen in the context of no attempt by Mr Chambers to enforce the putative agreement for seven years, Mr Pitt's rejection of the 6 December Fax as evidence of a binding agreement and Mr Chambers request to meet the board of Templegate. Neither was prepared to agree to such a meeting because Mr Chambers could not

produce any further evidence which would satisfy the board that there was a binding agreement.

(4) I accept that both letters left the door ajar in case Mr Chambers was able to produce further evidence to persuade the board of directors to change their minds. But Mr Chambers made no attempt to do so for over two years. When he was asked by Mr Banner why he did not send Mr Hill a copy of his typed note of the meeting with Mr Bell on 18 August 2005, his answer was that he did not think to do so because his request to them “was a last request to ask the board if they would honour the agreement”. This last request did not result in any admission by Templegate and after this letter Mr Chambers instructed Irwin Mitchell.

(5) In his email dated 27 October 2016 to Mr Bell, Mr Robertson recorded that Mr Chambers had told him that “the Skelton JV are trying to disassociate themselves from the profit share agreement”. When Mr Banner put this statement to him, Mr Chambers did not challenge it or suggest that Mr Robertson had misunderstood his position. I accept this email, therefore, as an accurate record of Mr Chambers’ appreciation of the position at the time.

(6) When Mr Banner put it to him that he had “been told pretty unequivocally by Templegate they don't recognise you have a contract” Mr Chambers did not disagree or give evidence that he did not understand the letter dated 8 April 2016 in this way. Indeed, his answer was equivocal: “Yes. This is the point at which I engaged Irwin Mitchell after the letter of 8 April which requests me in the final paragraph, "happy to consider your written evidence of a contractual arrangement".”

(7) I find that Mr Chambers understood the letters dated 22 March 2016 and 8 April 2016 as unequivocal statements by Mr Pitt and Mr Hill that the board of directors of Templegate did not recognise that he had a contract. In making this finding I place particular reliance upon the Particulars of Claim in which Tangent pleaded without qualification that in both letters Templegate had denied the existence of a contractual relationship: see paragraph 65. Mr Chambers signed the statement of truth personally and the purpose of this plea was to provide a justification for Tangent to bring a claim not only in contract but also in unjust enrichment: see paragraph 66.

(8) Mr Blaker and Mr Kelly did not refer to paragraphs 65 and 66 in any of their submissions and Mr Chambers did not explain them in his witness statement. In my judgment, those paragraphs contain a clear acceptance by him that from 22 March 2016 onwards Templegate had taken the position that the arrangement for the payment of a 10% profit share was finally and definitely not going to proceed. Viewed objectively, I am also satisfied that a reasonable bystander, who was aware of the failure of the parties to agree a formal contract between 1996 and 2002, Mr Chambers’ inconclusive meeting with Mr Bell on 18 August 2005 and the subsequent inactivity of the parties before this correspondence, would have taken the same view.

75. For these detailed reasons, therefore, I am satisfied that the provisional view which I expressed in the Judgment at [328] to [330] was correct and I find that the basis upon which Mr Chambers provided his services to WRDE had failed by 8 April 2016 and also

that Tangent's cause of action for unjust enrichment accrued on that date. I, therefore, hold that the Unjust Enrichment Claim is barred by section 5 of the Limitation Act 1980.

VI. Remedy

H. Expert Evidence

76. Following the trial, I decided that a reasonable person in the position of the Defendant would not have agreed to pay Mr Chambers a profit share but would have agreed to pay him a reasonable fee on a conventional time basis: see [326]. I set out my detailed reasons at [326](1) to (6). I stated that I was not satisfied that Mr Chambers acted as a "land promoter" or that he was entitled to a greater fee than he was paid for introducing British Coal and, as I have stated, one of the reasons which I gave for distinguishing *Mate v Mate* was that Julie had called expert evidence in support of her case.

77. Mr Blaker and Mr Kelly submitted that it was procedurally unfair for the Court to decide this issue because the parties agreed that they would not call expert evidence at Stage 1 but only at Stage 2. They placed particular reliance upon a witness statement dated 11 September 2024 which was made by Mr Nicholas Lees, the Defendant's solicitor, in support of an application for security for costs. In that statement Mr Lees gave evidence that expert evidence would be required at Stage 2 to determine a reasonable fee for Mr Chambers' services. It is also clear from this statement that Mr Lees anticipated that the Court would decide not only the quantum of the fee but also the appropriate methodology, namely, whether Mr Chambers should be remunerated on a profit share basis or on a time basis.

78. I am prepared to accept that when Mr Lees made his witness statement both parties contemplated that the basis on which Mr Chambers should be remunerated would be dealt with at Stage 2 and that the parties would have the opportunity to adduce expert evidence on that issue. However, I am not satisfied that it was procedurally unfair for me to decide that issue at Stage 1 or that I would have permitted Tangent to reopen this issue if I had found in its favour on limitation. I have reached this conclusion for the following reasons:

    (1) Whatever evidence Mr Lees had given in support of the application for security for costs, things had moved on by the CCMC. The parties agreed that Issue 19 would be determined by the Court at Stage 1 and not Stage 2 and District Judge Bond made an Order dated 15 October 2024 in which she ordered a split trial on liability and quantum and approved the List of Issues. She also directed the parties to review the List of Issues not less than four weeks before the trial and, if they wished to vary it, they should apply to Court for further directions. She also ordered that no permission was given for expert evidence.

    (2) Tangent made no application to vary the List of Issues either before or at the trial on the basis that expert evidence was necessary to determine Issue 19 and that it should be deferred to Stage 2. Tangent's legal team could and should have made such an application if they had wanted the Court to defer Issue 19 and to permit the parties to adduce expert evidence on that issue.

    (3) At no stage during their written or oral submissions did Mr Blaker and Mr Kelly submit that I should not decide Issue 19 even though they referred me to the

passages in *Mate v Mate* in which the judge had discussed the expert evidence. Indeed, even when Mr Banner referred to the judge's reliance upon expert evidence, they did not suggest that I should defer the issue but invited me to decide it.

(4) Mr Blaker had pleaded that Mr Chambers performed the role of a "land promoter". But unlike in *Mate*, there was no evidence before me to establish what a land promoter did (or does) and how they are remunerated. Mr Chambers did not give evidence about these matters in his witness statement or suggest that he had first-hand experience. This was, therefore, an obvious reason to distinguish *Mate v Mate*.

(5) There was no reason why Tangent's legal team could not have applied either to adduce expert evidence on Issue 19 and to defer it until Stage 2 either at the CCMC before District Judge Bond on 15 October 2024 or at any time thereafter. Moreover, I was given no explanation for their failure to do so. I can only assume, therefore, that this was a considered position and that they thought it was unnecessary.

(6) But in any event, I am not satisfied that expert evidence about the role and remuneration of a "land promoter" would have made any difference to my decision. Even now, Tangent has put no evidence before the Court to explain what a "land promoter" does to justify a share of the profits. Mr Banner offered the only description of a "land promoter" to the Court when he explained the role as "someone who takes the financial risk of applying for permission in respect of a piece of land, and if it comes good, they take a cut of the uplift".

(7) I am not satisfied that Mr Chambers performed such a role or that an agent or consultant who introduces a potential purchaser and developer to a landowner can properly be described as a "land promoter" or not without more. Many agents introduce potential parties to each other for a flat finder's fee rather than a share of profits and in all other respects Mr Chambers acted as a conventional planning consultant.

(8) But even if it is accurate to describe Mr Chambers as a "land promoter", I would not have held that Tangent was entitled to a profit share for the reasons which I set out at [326](2) to (6). In particular, I would have found that it was unjust to compel the Defendant to pay Tangent a 10% share of the profits realised from the development of the Skelton Site when Mr Chambers had been unable to persuade either British Coal or WRDE (or, later, SBPL or Templegate) to enter into a binding contract to remunerate him in this way.

I. Time Period

79. I held that the Defendant was liable to pay Mr Chambers (or Tangent) a reasonable fee for the services which he provided from 2001 until 2009: see [327]. Mr Blaker and Mr Kelly submitted that it was procedurally unfair to limit the time period of the fee in this way and that the quantum enquiry should extend to the whole of the period from 1996 until 2015. I am not satisfied that the Defendant would have been liable to pay Mr Chambers a reasonable fee for the period before its incorporation or that Mr Chambers provided any meaningful services to Templegate after 2009 (or did so at its request). However, I would have given permission to Tangent to claim a reasonable fee on a time

basis for all of the work which Mr Chambers carried out from 1996 onwards on the basis that these are properly regarded as quantum issues and I did not intend to limit recovery at this stage beyond deciding the basis of remuneration. However, in the event this issue does not arise.

VII. Disposal

80. For the reasons which I have given I dismiss both parties' procedural objections and I dismiss the Unjust Enrichment Claim on the merits because it is barred by limitation. If I had not done so, I would not have permitted Tangent to reopen my finding that Tangent was entitled to a reasonable fee for Mr Chambers' services calculated by reference to a conventional time basis but I would have permitted Tangent to argue that it was entitled to remuneration for the entire period from 1996 to 2015. I will direct a further consequentials hearing to decide any issues of costs and any application for permission to appeal. I invite the parties to agree a short holding Order in the meantime extending time for applying for permission to appeal until that hearing has taken place.