Neutral Citation Number: [2025] EWHC 3201(KB)

Case No: KB-2022-004580

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/12/2025

Before :

DHCJ GUY VASSALL-ADAMS KC

- -

Between :

TAMIM RASHED — **Claimant**

- and –

PETER DEANE — **Defendant**

- -
- -

Kate Wilson (instructed by **Taylor Hampton Solicitors Limited**) for the **Claimant**
Marc Brittain (direct access instruction) for the **Defendant**

Hearing date: 20 November 2025

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Approved Judgment

This judgment was handed down in Court 11 at the Royal Courts of Justice at 10.30am on 5th December 2025.

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DHCJ Guy Vassall-Adams KC :

1. This judgment concerns the procedure by which a party to proceedings may seek to set aside a judgment against him on the ground that it was allegedly procured by fraud.

Procedural history

2. The Claimant and Defendant both work in the international private security industry. They previously worked together in a company called Expertise Consultancy Libya, which provided private security services in Libya.

3. After they fell out, the Defendant published several posts on his *LinkedIn* account relating to their former business dealings together.

4. On 25 November 2022, the Claimant commenced proceedings in libel in respect of 5 of those *LinkedIn* posts.

5. The Defendant's Defence was struck out by Master Eastman by Order dated 18 July 2023 (the "First Eastman Order"). The Defendant was given the opportunity to amend his Defence, and he filed two drafts of a Defence before the next hearing.

6. Master Eastman refused the Defendant permission to amend his Defence and judgment was entered for the Claimant, by Order dated 12 October 2023 (the "Second Eastman Order"), with directions for a remedies trial.

7. The remedies trial took place before Tipples J on 27 November 2023 and 1 December 2023. Tipples J ordered the Defendant to pay damages to the Claimant in the sum of £85,000 and granted the Claimant an injunction preventing repetition of the allegations sued upon. Tipples J ordered the Defendant to pay the Claimant's costs of the action, to be assessed if not agreed, with an interim payment on account of those costs of £30,000 (the "Tipples Order").

8. The Defendant did not satisfy the judgment or costs order (having made only a payment of £100, on or around 3 January 2024). The Claimant therefore sought to enforce the Tipples Order.

9. On 6 February 2024 the Claimant obtained an Interim Charging Order on a property owned by the Defendant and his partner (the "Property") and a Final Charging Order on the Property on 9 April 2024.

10. On 3 December 2024, the Claimant commenced Part 8 proceedings for an order for the sale of the Property (the "Part 8 Claim"). The order was granted by Deputy Master Valentine on 14 March 2025.

11. On 24 April 2025, the Defendant filed an application in the Part 8 Claim seeking an extension of time for compliance with the order for sale. It was dismissed (as totally without merit) by Order of Deputy Master Nurse of 14 May 2025. The Defendant and his partner gave vacant possession of the Property, the Sheriff having executed a Writ of Possession.

12. On 4 July 2025, the Defendant filed the instant application seeking to set aside the Tipples Order and staying enforcement of the judgment pending determination of that application.

13. On 8 July 2025, in the Part 8 Claim, the Defendant filed an application to stay enforcement of the order for sale of the Property pending the outcome of this application. On 11 August 2025, (also in the Part 8 Claim), the Claimant filed an application for a Civil Restraint Order ("CRO") against the Defendant.

14. On 23 July 2025, a hearing took place before Deputy High Court Judge Aidan Eardley KC, in which he ordered that there should be a trial of four preliminary issues:

    (1) Whether this Court has jurisdiction, upon an application in these proceedings, to set aside the Order of Tipples J dated 1 December 2023;

    (2) If so, directions for the hearing of the set aside application;

    (3) Whether this Court has jurisdiction, upon an application in these proceedings, to stay the enforcement provisions in the Order of Tipples J dated 1 December 2023;

    (4) If so, whether the Court should stay the enforcement provisions pending determination of the set aside application or, as the case may be, pending an appeal against the Order or determination of a fresh claim to have the Order rescinded.

15. Following comments by Deputy High Court Judge Aidan Eardley KC noting that there was no challenge to the Second Eastman Order granting judgment in favour of the Claimant, the Defendant filed an amended application dated 25 July 2025 seeking to also set aside this Order. The Claimant did not oppose this amended application and I granted it at the start of the hearing.

16. On 15 August 2025 in the Part 8 Claim, Deputy Master Rhys adjourned the Defendant's application seeking a stay of the sale of the property and the Claimant's application for a CRO and varied the order for sale of 14 March 2025 to permit the Claimant to take all steps to sell the Property up to, but not including, exchange of contracts, and requiring the Claimant to obtain permission of the court to proceed to exchange of contracts. A hearing in the Part 8 claim is listed for 15 December 2025 to determine the Defendant's application for a stay of the sale and the Claimant's application for a CRO.

17. The first issue I have to decide, therefore, is whether this Court has jurisdiction, upon an application in these proceedings, to set aside the Second Eastman Order dated 12 October 2023, by which Master Eastman entered judgment against the Defendant, and the Order of Tipples J dated 1 December 2023 by which she ordered the Defendant to pay damages and pursuant to which the Claimant commenced enforcement proceedings against him.

18. I wish to record my gratitude to both counsel for their very helpful submissions and to Mr Brittain for taking on this case at the last minute, on a direct access basis, thereby ensuring that the Defendant could be properly represented at this hearing. Given that

this hearing concerned complex issues of law, I had been concerned that the Defendant would be significantly disadvantaged by representing himself.

The applications

19. The Defendant's two applications assert that new evidence has become available that was not available at the time of trial and that the Claimant obtained his judgment by fraud, including "the submission of forged bank documents, forged signatures and false testimony". Both applications also rely on a short witness statement from Dr Amr Mansour Zenaty dated 26 June 2025, which supports the Defendant's case. I will refer to these two applications compendiously as "the Set Aside Application".

20. The merits of the Set Aside Application are not a matter for this Court at the present time. My task is to decide the legal issue of principle, which is whether this Court has jurisdiction to hear the Set Aside Application within these proceedings at all.

21. For the same reason, the Claimant has not put in evidence dealing with the merits of the Set Aside Application. I should record, however, that the Claimant disputes the allegations made by the Defendant and strongly contests that the Defendant's application relies on new evidence. The Claimant relies on a witness statement from Robert Bailey, the Claimant's solicitor, which analyses all of the documents relied upon by the Defendant in the application. His evidence, which exhibits a detailed schedule examining all of the documents in question, is that none of these documents are new and that they were all before this Court in this libel action, with the exception of the recent witness statement of Dr Zenaty.

The principle of finality

26. The Set Aside application seeks to impugn the judgment on liability and the judgment on damages in favour of the Claimant. The starting point for any application which seeks to deprive one party of the fruits of a final judgment in their favour is the principle of finality in litigation.

27. As Elias LJ put it in *Noble v Owens* [2010] EWCA Civ 224; [2010] 1 W.L.R. 2491 (a case on which both parties rely):

> "In general, it would undermine the whole system of justice and respect for the law if it were open to a party to be able to rerun a trial simply because potentially persuasive or relevant evidence had not been put before the court. An obligation rests on the parties to adduce any material evidence before the court, and if they fail to do so they cannot require a second hearing to put the matter right."

28. In *The Ampthill Peerage* [1977] AC 547, 569, Lord Wilberforce made the following statement of principle concerning the interests of peace, certainty and security which underpin the principle of finality, as well as explaining the narrow exceptions to the principle (cited in *Takhar v Gracefield Developments Ltd* [2019] UKSC 13; [2020] AC 450 at [44]).

> "Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution…. And having reached that solution it closes the book… in the interests of peace, certainty and security it prevents further inquiry …. there are cases where the certainty of justice prevails over the possibility of truth … and these are cases where the law insists on finality. For a policy of closure to be compatible with justice, it must be attended with safeguards: so the law allows appeals; so the law, exceptionally, allows appeals out of time; so the law still more exceptionally allows judgments to be attacked on the ground of fraud…."

29. In *AIC Limited v Federal Airports Authority of Nigeria* [2022] UKSC 16, [2022] 1 WLR 3223, the Supreme Court gave general guidance as to how the proportionality principle should be approached in respect of final orders. At paragraph 35 the Court observed as follows:

> "The weight to be given to the finality principle will inevitably vary, depending in particular upon the nature of the order already made, the type of hearing at the end of which it was made and the type of proceedings in which it was made. Leaving aside orders made on appeal, which lie outside the scope of this appeal and have already attracted their own jurisprudence (see, in particular, *Taylor v Lawrence [2003] QB 528* and what is now CPR r 52.30), finality is likely to be at its highest importance in relation to orders made at the end of a full trial. But other kinds of final order, which end the proceedings at first instance, will attract the finality principle to almost as great a degree. Case management and interim orders lie towards the other end of the scale, and indeed many reserve liberty to the parties to apply to vary or discharge the order, even after it has been sealed. But the finality principle cuts in, as Coulson LJ said, when the order is made, not merely when it is sealed. After the order is sealed, the finality principle applies in a more absolute way, to put it beyond challenge in the court which made it, subject to any liberty to apply in the order, the application of the power in CPR r 3.1(7) to vary or revoke it and the slip rule."

The parties' positions

30. This application engages the second exception to the finality principle, where a party seeks to assert that a previous judgment was procured by fraud. It has long been recognised that where a judgment can be shown to have been tainted by fraud, the courts will set it aside.

31. In *HIH Casualty and General Insurance Ltd v Chase Manhattan Ban*k [2003] 1 All ER (Comm) 349 , para 15, Lord Bingham of Cornhill said that:

> "fraud is a thing apart. This is not a mere slogan. It also reflects an old legal rule that fraud unravels all … Once fraud is proved, 'it vitiates judgments, contracts and all transactions whatsoever': *Lazarus Estates Ltd v Beasley [1956] 1 QB 702* , 712 per Denning LJ. Parties entering into a commercial contract will no doubt recognise and accept the risk of errors and omissions in the preceding negotiations, even negligent errors and omissions. But each party will assume the honesty and good faith of the other; absent such an assumption they would not deal."

32. The question for me is how the Set Aside application should be litigated in procedural terms. The Claimant's case is that fraud is a cause of action and, procedurally, it must be brought by commencing a new claim. The Defendant's case is that bringing a new claim for fraud is neither necessary nor desirable and that this Court has the power to vary or revoke its earlier order pursuant to its general powers of case management under CPR 3.1(7), or failing that under its inherent jurisdiction. These are the issues I have to decide.

Judgments obtained by fraud

33. The Claimant relies on a long line of authority culminating in the recent judgment of Lord Sumption JSC in *Takhar v Gracefield Developments Ltd* [2019] UKSC 13, [2020] AC 450 stating that a judgment allegedly obtained by fraud can only be set aside by bringing a fresh claim for fraud.

34. In *Takhar*, the claimant had brought a claim alleging that various properties of which she was the owner had been transferred to the first defendant's company as a result of undue influence or other unconscionable conduct on the part of the second and third defendants. She lost at trial. Later she brought a further claim seeking to set aside that judgment on the basis that the second and third defendants had forged her signature on a document. The Supreme Court, overturning the Court of Appeal, held that the Claimant could challenge the judgment against her and was not required to show that the fraud could not with reasonable diligence have been uncovered in advance of the obtaining of the judgment.

35. In *Takhar*, Lord Sumption (with whom Lord Hodge, Lord Lloyd-Jones and Lord Kitchen JJSC agreed) explained the procedure for challenging a judgment on the ground that it was obtained by fraud as follows at [60]-[61].

> "An action to set aside an earlier judgment for fraud is not a procedural application but a cause of action. As applied to judgments obtained by fraud, the historical background was explained by Sir George Jessel MR in *Flower v Lloyd (1877) 6 Ch D 297, 299–300*. Equity has always exercised a special jurisdiction to reverse transactions procured by fraud. A party to earlier litigation was entitled to bring an original bill in equity to set aside the judgment given in that litigation on the ground that it was obtained by fraud. Such a bill could be brought without leave, because it was brought in support of a substantive right. If the fact and materiality of the fraud were established, the party bringing the bill was absolutely entitled to have the earlier judgment set aside.
>
> …
>
> The cause of action to set aside a judgment in earlier proceedings for fraud is independent of the cause of action asserted in the earlier proceedings. It relates to the conduct of the earlier proceedings, and not to the underlying dispute. …"

36. There are two previous judgments of the Judicial Committee of the House of Lords to the same effect. In *Jonesco v Beard* [1930] AC 298 at 300 (cited with approval by

Lord Kerr in *Takhar* at [47] and Lady Arden at [99]), the House considered the procedure for setting a judgment aside on the grounds of fraud, holding that:

> "It has long been the settled practice that the proper method of impeaching a completed judgment on the ground of fraud is by action in which as in any other action based on fraud, the particulars of the fraud must be exactly given and the allegations established by the strict proof such a charge requires."

37. In *Kuwait Airways Corpn v Iraqi Airways Co (No 2)* [2001] 1 WLR 429 the Judicial Committee of the House of Lords was petitioned to reopen its earlier judgment in that case on the basis that new evidence had emerged that the House's original order had been based on false and perjured evidence given with the intention of deceiving the court. The House of Lords dismissed the petition on the basis that, as Lord Slynn put it at [24]:

> "In the first place there is well established authority that where a final decision has been made by a court a challenge to the decision on the basis that it has been obtained by fraud must be made by a fresh action alleging and proving the fraud."

38. The same position has been adopted by the Judicial Committee of the Privy Council in *de Lasala v de Lasala* [1980] AC 546, in which Lord Diplock held (at p561) that:

> "Where a party to an action seeks to challenge, on the ground that it was obtained by fraud or mistake, a judgment or order that finally disposes of the issues raised between the parties, the only ways of doing it that are open to him are by appeal from the judgment or order to a higher court or by bringing a fresh action to set it aside."

39. That these are the only two routes to challenging a judgment on the ground it was obtained by fraud was recently reaffirmed by the Court of Appeal in *Dale v Banga* [2021] EWCA Civ 240 at paragraphs [39]-[41]:

> "39. It is clear, therefore, that where an allegation of fraud is involved, there are two courses which may be adopted. The dissatisfied party may bring a new action to set aside the judgment already obtained on the basis that it was obtained by fraud: *Flower v Lloyd [1877] 6 Ch D 297* ; *Hip Foong Hong v H Neotia & Company [1918] QC 888* ; and *Jonesco v Beard [1930] AC 298* . Such a route was adopted in the *Royal Bank of Scotland* case and in the *Takhar* case. In such circumstances, the successful party retains the benefit of the judgment unless it is set aside and can seek to strike out the claim to set it aside as an abuse of the court's process.
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> 40.In *Salekipour v Parmar [2017] EWCA Civ 2141* , *[2018] QB 833*, the Court of Appeal expressed a preference for this approach but did not decide the issue. The same preference was expressed by the Court of Appeal in *Daniel Terry v BCS Corporate Acceptances Limited, BCS Offshore Funding Limited, John Taylo*r [2018] EWCA Civ 2442 at [38], although, once again, it was unnecessary to decide the point.

> 41.The second and alternative route, which is the one adopted here, is to appeal the original order, alleging that the judgment upon which it is based was obtained by fraud. A retrial will be ordered where the fraud is admitted or incontrovertible. Where, as in this case, it is neither admitted nor incontrovertible, a "*Noble v Owens* order" is sought by which the issue of fraud is remitted to the court below and decided within the same proceedings."

The power to vary or revoke an order

40. CPR 3.1(7) provides:

> "A power of the court under these Rules to make an order includes the power to vary or revoke the order."

41. CPR 3.1(7) is part of the court's general powers of case management. The White Book 2025 Vol 1 notes at 3.1.17.1 observe that this rule refers only to "order" and not to "judgment", unlike a number of specific rules under the CPR which do expressly refer to a power to set aside judgments, for example the power to set aside a default judgment (CPR 13.2 and 13.3) and the power to set aside a judgment where the applicant did not attend the trial (CPR 39.3).

42. In *Salekipour v Parmar* [2017] EWCA Civ 2141, [2018] QB 833, Sir Terence Etherton MR (with whom Flaux and Moylan LJJ agreed) observed at [60] that:

> "The only provision in the CPR which is in the nature of a general power to set aside an order is that in CPR r 3.1(7)…"

43. *Salekipour* was a challenge based on fraud, but the Court of Appeal did not need to engage with the point at issue in this application because the claimants *had* brought a claim for rescission of an earlier County Court judgment on the basis of fraud. The focus for that appeal was whether the County Court had jurisdiction to hear the claim based on fraud, with the Court of Appeal holding that it did. The Court considers a number of authorities on the power under CPR 3.1(7) (at [63]-[69]) but did not need to determine the scope of the rule because CPR 3.1(7) was not relied upon.

44. The power under CPR 3.1(7) is the focus of the Court of Appeal's judgment in *Vodafone Group Plc v IPCom GmbH & Co KG* [2023] EWCA Civ 113; [2023] R.P.C. 10.

45. Vodafone was a patent infringement case. Vodafone had been unsuccessful in their attempt to invalidate the patent in the Court of Appeal. Following judgment, the patent was declared invalid by the European Patent Office. Following the EPO's decision, Vodafone sought to vary the costs order which had been made against it in the final determination of the appeal, in reliance on CPR 3.1(7).

46. Lewison LJ (with whom Asplin and Arnold LJJ agreed) considered CPR 3.1(7) at [35]-[56]. He started by observing that "One would not expect a rule intended to deal with case management to apply to final orders. Nevertheless, there is no authority which absolutely precludes the invocation of *CPR r 3.1(7)* in relation to final orders."

He concluded that CPR 3.1(7) did not give the Court jurisdiction to re-open a sealed final order made following an appeal. Vodafone either had to rely upon CPR 52.30 (Re-opening final appeals) or appeal to the Supreme Court.

47. Having reviewed the authorities, Lewison LJ observed at [54]:

> "The overwhelming thrust of the authorities is that the court's power under CPR r3.1(7) to vary or revoke orders either cannot or should not be used to discharge a sealed final order. The only limited exception thus far even contemplated in civil proceedings is the case of a continuing order (such as a final injunction)."

48. One of the authorities referred to in *Vodafone* is *Roult v North West Strategic Health Authority* [2009] EWCA Civ 44; [2010] 1 WLR 487. That case did not concern an allegation of fraud or an attempt to impugn an earlier judgment; the claimant sought to reopen a settlement following a change of circumstances. Hughes LJ accepted that the wording of Rule 3.1(7) was wide enough to cover that situation and noted that the rule was not expressly confined to procedural orders. However, he rejected the Claimant's submission, stating:

> "I am however in no doubt that CPR 3.1(7) cannot bear the weight which Mr Grime's argument seeks to place upon it. If it could, it would come close to permitting any party to ask any judge to review his own decision, and in effect, to hear an appeal from himself, on the basis of some subsequent event."

49. Both parties rely on the *Vodafone* case. Mr Brittain for the Defendant highlights the passage in paragraph 46 above to the effect that there is no authority precluding the invocation of CPR 3.1(7) in respect of final orders. Ms Wilson draws an analogy between the reasoning in *Vodafone* and this case. In *Vodafone*, there was a route available to re-open an appeal (CPR 52.30) and if Vodafone wished to challenge a final sealed order it had to meet the (more stringent) test in that rule. While there is not an alternative rule within the CPR governing applications to set aside for fraud, Ms Wilson submits that here there is a well-established alternative (see *Thakar a*bove).

50. CPR 3.1(7) was considered in *BCS Corporate Acceptances Ltd v Terry* [2018] EWCA Civ 2422, where the defendant alleged that the claimant's judgment had been obtained by fraud. The judgment in that case was a judgment in default. The defendant applied for an order striking out the claimant's claims under CPR 3.4 on the ground of abuse of process and to set aside the default judgment under CPR 3.1(7).

51. Hamblen LJ giving the judgment of the Court, starts by observing that there are two established ways of challenging a judgment alleged to have been obtained by fraud, namely (1) by bringing a fresh action to set aside the judgment citing *Jonesco,* which he describes as "the primary means" of challenging judgments allegedly obtained by fraud, at [26], and (2) in an appropriate case, bringing an appeal seeking to rely on fresh evidence and seeking an order for a retrial, on the basis of *Noble v Owens*.

52. Having considered *Noble v Owens*, Hamblen LJ summarised the position at [34]:

> "In summary, unless the fraud is admitted or the evidence of it is incontrovertible, the issue of fraud must be both properly particularised and proved. This will usually require a fresh action, although in *Noble v Evans* the Court adopted what they regarded as being a more proportionate procedure of referring the trial of the fraud issue to a High Court judge pursuant to CPR 52.20(2)(b)."

53. At [40], Hamblen LJ made the following observation:

> "It is accordingly apparent both that there are established procedures for setting aside a judgment obtained by fraud and that there are strict requirements which have to be met in order to do so. This is highly relevant to the argument that there are parallel but wider powers conferred under the CPR or under the court's inherent jurisdiction. In particular, the existence of these established procedures undermines the Defendant's general argument that it is consistent with the overriding objective and the need to deal with cases justly for there to be such powers."

54. After reviewing a number of authorities dealing with the setting aside of both interim and final orders, at [70] Hamlen LJ observed that the circumstances in which CPR 3.1(7) can be relied upon to vary an interim order are limited and will normally require a change of circumstances since the order was made, or the facts on which the original decision was made were misstated. He then goes on:

> "General considerations such as these will not, however, justify varying or revoking a final order. The circumstances in which that will be done are likely to be very rare given the importance of finality."

55. The Court of Appeal rejected the appellant's attempt to rely upon CPR 3.1(7) in *Terry*. However, one important factor was that *Terry* was a case where judgment had been entered for the claimant in default and CPR Part 13 provided a procedure to challenge the judgment: see [78]-[81]. In those circumstances the Court ruled that the appellant could not bypass a specific procedural rule for challenging default judgments by reference to the general power provided by CPR 3.1(7).

56. Accordingly, this appears to be the first case where CPR 3.1(7) has been relied upon to challenge a judgment allegedly procured by fraud in which there is no other more specific power under the CPR that provides a bespoke alternative for challenging a judgment.

57. There have been a number of examples of courts using powers similar to 3.1(7) or 3.1(7) itself to set aside a final order. *Sharland v Sharland* [2015] UKSC 60, [2016] AC 871 is an example of the family courts revisiting a consent order in matrimonial proceedings where it became apparent that financial remedies proceedings had been settled on a false basis. In that case, the Supreme Court held that it was not necessary to bring fresh proceedings. One example where CPR 3.1(7) was expressly relied upon is the recent decision of the Court of Appeal in *UniCredit Bank GmbH v RusChemAlliance LLC* [2025] EWCA Civ 99; [2025] 1 W.L.R. 2321 at [22]) to set aside an anti-suit injunction after a change in circumstances led the party who had the

benefit of it to apply to set it aside. I can also envisage other situations where a final injunction of continuing effect might properly be set aside later because of a change of circumstances (e.g. in a breach of confidence case where confidential information has comprehensively entered the public domain other than through the actions of the defendant).

58. However, in such exceptional situations the court's decision to interfere with a final order does not offend the finality principle in a way that is comparable to depriving a winning party of a final judgment in their favour. Nor have any of these cases (apart from *Terry* where the application was refused) involved an attempt to set aside a judgment on the ground it was procured by fraud.

The parties' arguments

59. This is a high-level summary of the parties' main arguments. The Defendant's case is that CPR 3.1(7) is a rule is of general application, applying both to interim and final orders. Mr Brittain on behalf of the Defendant argues that CPR 3.1(7) empowers this Court to revoke its earlier judgment in the Claimant's favour on the ground that the Defendant now alleges fraud. Mr Brittain drew my attention to the White Book 2025 Vol 1 notes at 3.1.17.1, which states that, "The interests of justice, and of litigants generally, require that a final order remains final unless there are proper grounds for an appeal, or unless there are exceptional grounds for varying or revoking it without an appeal". This case, he submitted, demonstrated exceptional circumstances.

60. Mr Brittain submitted that the appropriate way for this Court to do this would be to refer the case back to Master Eastman and in effect ask him whether the evidence of fraud now submitted on the Defendant's behalf had changed his mind. Master Eastman, he submitted could provide what he described as a "summary determination". If Master Eastman's answer was that the evidence would not have changed his mind, that would be the end of the matter. However, if the answer was that it would have changed his mind, he could make further directions as to how this issue should be tried. Mr Brittain submitted that this would be a more cost effective and proportionate approach than requiring the Defendant to bring a fresh claim. Mr Brittain accepted, however, that if there were contested allegations of fact the fraud allegation would need to be tried in the usual way.

61. Mr Brittain submitted that if I was against him in relation to CPR 3.1(7), I should exercise the court's inherent jurisdiction to regulate its own procedure to achieve the same ends.

62. Ms Wilson for the Claimant relied on the long line of authority set out above stating that the correct procedure for challenging a judgment on the ground of fraud is bringing a claim for fraud. She emphasised that fraud is a cause of action and that, consistent with the principle of finality, a judgment should only be impugned where the fraud claim has been pleaded and proved.

63. Ms Wilson argued that there is no power under CPR 3.1(7) enabling this court to remit a case back to a judge of coordinate jurisdiction to reconsider an earlier judgment. To do this would be, in effect, to invite Master Eastman to hear an appeal against himself, contrary to the principle in *Roult*.

64. Ms Wilson relied upon *Vodafone* and *Terry* to argue that CPR 3.1(7) either cannot or should not be used to discharge a final sealed order. Where there was an established procedure by which to challenge a judgment on the grounds of fraud, that procedure should be followed. In relation to Mr Brittain's fallback argument based on the inherent jurisdiction, she relied on *Tombstone v Raja* [2008] EWCA Civ 1444; [2009] 1 WLR 1143.

Analysis

65. The starting point is the principle of finality. This is an important principle in respect of both interim and final orders, but it is particularly important in respect of final orders where the court has granted judgment on the claim, or where the court has awarded damages on the claim, as the two impugned orders do in this case. Ordinarily, a successful party is entitled to assume that a judgment on liability and an award of compensation is the end of matters, subject to the right of the unsuccessful party to appeal.

66. The weight to be attached to the finality principle in any given case depends on the nature of the final order in question and the context in which it was made. The Supreme Court in *AIC Limited* held that finality is at its highest importance in relation to orders made at the end of a full trial and other final orders which end the proceedings at first instance, which attract the finality principle "to almost as great a degree". The two orders impugned by the Set Aside application, which respectively granted judgment and compensation to the Claimant, are final orders which ended the proceedings at first instance and the finality principle should be accorded significant weight in this context.

67. The Claimant relies on a long line of authority going back to *Flower v Lloyd* [1877] 6 Ch D 297 and culminating in the Supreme Court's decision in *Takhar* which states that the correct procedure for a party seeking to challenge a judgment on the ground of fraud is to bring a separate claim for fraud. This reflects the fact that a claim to set aside a judgment for fraud is not a procedural application, but a cause of action: *Takhar* at [60]. The cause of action is independent of the original claim because it relates to the conduct of the original proceedings, not the underlying dispute: *Takhar* at [61].

68. The bringing of a separate claim ensures that the claim has to be pleaded and proved in the usual way. This is an important safeguard for the successful party seeking to uphold the original judgment as the pleading requirements for fraud – which is a very serious allegation to make – are high. This means that a weak and speculative allegation of fraud is likely to be struck out at an early stage. But the procedural safeguards don't only aid the resisting party, for example, the challenging party will have a right of appeal that is specific to the fraud claim.

69. I accept that CPR 3.1(7) provides a general power to revoke an earlier order of the court in appropriate circumstances. I can see that from the Defendant's perspective that referring the case back to Master Eastman seems more proportionate, as a first step, than being required to issue a fresh claim. However, in *Terry,* the Court of Appeal held that the existence of established procedures for setting aside a judgment based on fraud undermined the defendant's general argument in that case that it is

consistent with the overriding objective and the need to deal with cases justly for there to be such a power under CPR 3.1(7).

70. In my view, the fact that courts have been willing in some "rare cases" to set aside final orders by reference to CPR 3.1(7), does not affect the position where a final order is being challenged on the ground it was obtained by fraud. In such a case, there is an established, and more suitable, alternative.

71. I am also not persuaded by the Defendant's argument that I have the power to do what he asks of me. The Defendant's case is that I should refer the case back to Master Eastman for him to reconsider his earlier judgment and make a "summary determination" as to whether he would have decided the case differently in the light of the evidence of fraud presented. When I asked Mr Brittain what power I would be exercising in this context he replied that it would be the same power as in *Noble v Owens*. But that was an appeal to the Court of Appeal where the Court has a power under CPR 52.20(2)(b) to refer the case back to the first instance judge to redecide an issue. Here I would be referring a case back to a judge of coordinate jurisdiction who has already given judgment. In my view, I would be doing precisely what the Court of Appeal in *Roult* held to be untenable, which would be asking Master Eastman to hear an appeal from himself.

72. The Defendant's fallback position is that I should invoke the inherent jurisdiction. Ms Wilson points to *Raja v van Hoogstraten* [2008] EWCA Civ 1444, [2009] 1 WLR 1143, which is authority for the proposition that the Court should not invoke the inherent jurisdiction when there is an equivalent power under the CPR. Here there is an equivalent power under CPR 3.1(7), which is a general provision empowering the Court to vary or revoke a previous order. Having decided that CPR 3.1(7) should not be used and that the established common law procedure should be followed, it would be doubly wrong of me to rely on the inherent jurisdiction.

Conclusion

73. The leading authorities are unanimous that the correct procedure, consistent with the principle of finality, the nature of the claim being a cause of action and the requirement that fraud allegations must be pleaded and proved to a high standard, is that a party seeking to challenge a judgment on the grounds of fraud must bring a fresh claim. In my view, the Defendant must bring a claim for fraud if he wishes to challenge the orders of Master Eastman and Tipples J. I have no power to invoke CPR 3.1(7) in substitution for the established procedure at common law. Alternatively, if I do have such a power, it is not one that I should exercise. The Set Aside application is dismissed.

Postscript

74. The preliminary issues order originally tasked me with deciding four issues, however the remaining issues have fallen away. The second issue concerning directions to manage the Set Aside Application no longer arises. On the third issue, the Claimant concedes that there is a power to apply to stay the enforcement proceedings under CPR 83.7. On the fourth issue, Mr Brittain sensibly conceded that if I dismissed the Set Aside application then his current application for a stay of the enforcement proceedings would fall away. The position remains, however, that the Defendant may

apply to stay the enforcement proceedings at any time if the grounds of CPR 83.7 are made out.