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IL-2024-000145

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD) -----

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 17 August 2026

Before :

RECORDER DOUGLAS CAMPBELL KC
Sitting as a Judge of the High Court

BETWEEN :

EMJ PLASTICS LIMITED

Claimant

-

and -

(1) MEKINA INDUSTRIES LIMITED
(2) IAN BAGGALEY
(3) MARK JOHNSON

Defendants

Michael Hicks (instructed by **Andrew Jackson Solicitors LLP**) for the **Claimant**
James St Ville KC, Maxwell Keay, and Charlie Bassi (instructed by **Waterfront Solicitors LLP**) for the **Defendants**

Hearing dates: 22-25, 29-30 June, 1 July 2026

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 17 August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Recorder Douglas Campbell KC:

Introduction

1. This is a case brought by the Claimant (“EMJ”) against two of its former employees (“Mr Baggaley” and “Mr Johnson”) and their new company, the Third Defendant.
2. EMJ’s business includes the design and manufacture of permanent “formwork” panels for the construction industry. These are moulded panels made of glass reinforced plastic which are used in the construction of bridges. In particular, such panels provide formwork on to which structural steel-reinforced concrete is cast. It is called permanent formwork because it is left in place as part of the final concrete structure. I was shown some samples at the beginning of the trial.
3. Mr Baggaley was employed by EMJ from 22 October 2012 to 1 April 2022. He was Operations Manager in day to day charge of EMJ’s business from at least November 2016.
4. Mr Johnson was employed by EMJ from 17 September 2018 to 11 February 2022, first as Technical Manager and then as Production Manager. He was on sick leave from 1 December 2021 until his contract ended. He did not do any significant amount of work over that final period although he did attend EMJ’s premises on 6 and 7 January 2022.
5. Mr Baggaley and Mr Johnson were involved in a number of companies to which I will refer below, including Abbey Composites Limited (incorporated on 29 November 2021), Pearl Oceanic (which, confusingly, was originally incorporated under the name Mekina Industries Limited on 11 August 2022 and then had two name changes), and finally the Third Defendant, which was incorporated on 6 June 2023. The Third Defendant – which I shall hereafter simply call “Mekina” - is a joint venture between Mr Baggaley, Mr Johnson, and Dura Group Limited (“Dura”), a large company making composite products. Their respective shares in Mekina are 25%, 25%, and 50%. Dura originally invested £200 000 in Mekina and has offered it substantial business support since. Mekina now competes with the Claimant in the permanent formwork market.
6. Mr Baggaley and Mr Johnson were also subject to restrictive covenants post-employment. I was not shown these covenants but it was common ground that they prevented them from competing with EMJ for 1 year in each case. Mr Johnson’s covenant expired on 11 February 2023 and Mr Baggaley’s covenant expired on 1 April 2023.
7. Formally the Claimant relies on
 - (1) breach of contract
 - (2) breach of confidence, and/or breach of Art 4 of the Trade Secrets Directive
 - (3) infringement of copyright
 - (4) infringement of database right
 - (5) breach of fiduciary duty
 - (6) unlawful means conspiracy
 - (7) joint liability to commit such wrongs.

8. There was little, if any, dispute about any of the relevant law, but there were a number of hotly disputed areas of fact and the Claimant sensibly conceded that some causes of action did not add anything to its case. For instance it did not press its case on the Trade Secrets Directive or on the database right claim, and I shall say no more about either of these.
9. The Claimant did have a list of issues at the start of the trial but by the time of closing Claimant had narrowed its case to focus on the following three main areas.
10. First, the alleged removal and keeping of EMJ documents after Mr Baggaley and Mr Johnson left EMJ in early 2022 and the alleged use of these documents, which was said to amount to breach of contract and misuse of confidential information and (in the case of Mr Baggaley only) breach of fiduciary duty.
11. The Claimant's case is that Mr Baggaley copied over 11 000 documents on to the Toshiba drive for use in setting up a business to compete with the Claimant, and that such documents were then used by the Defendants in a number of ways which I will address below. The precise number, which was not disputed, is 11 579. The Defendants' case is that Mr Baggaley was asked to do the copying by a director of the Claimant, Mr Brendan O'Neill ("Mr O'Neill"); and there was no such use of these documents anyway.
12. Secondly, information allegedly provided by Mr Iain Baron, Regional Director of EMJ's Australian subsidiary Permadec Pty Ltd, to Mr Baggaley in a series of WhatsApp messages. This was said by the Claimant to amount to misuse of confidential information, which the Defendants denied. As it turned out, this material was mainly used to support the Claimant's position on other areas of the case.
13. Thirdly, a December 2022 Hot List of commercial prospects, which was provided by Michael Mitchell, EMJ's Business Development Manager since 2017, to Mr Johnson. The Defendants' acts in relation thereto were said to amount to misuse of confidential information, which again the Defendants denied.
14. The single biggest issue of fact relates to the Toshiba drive. It was not seriously disputed that either the Claimant's witness, Mr Brendan O'Neill ("Mr O'Neill") was lying in his evidence to me or Mr Baggaley was doing so. That was realistic on both sides, and I agree. However I bear in mind that this is only one of the factual issues in the case and I need to consider all such issues individually.

Legal context

15. Since there was little dispute as to the relevant law, and to avoid lengthening this judgment unnecessarily, I will be brief.

The breach of contract claim

16. The allegations were that Mr Baggaley and Mr Johnson (a) breached the confidentiality provisions of their respective employment contracts; and, in Mr Johnson's case, that he also breached his settlement agreement which was signed on termination of his employment), and (b) had failed to return EMJ property and documents on termination of their employment, in each case breaching express terms of the relevant contract. I

will not set out the relevant provisions here since they are in standard form and there was no dispute about them.

17. It was separately alleged that both Mr Baggaley and Mr Johnson owed the Claimant implied duties of good faith and fidelity, which they had also breached.

The breach of confidence claim

18. There was also a standalone breach of confidence claim. Both sides reminded me of *Racing Partnership Ltd v Dane Bros* [2020] EWCA Civ 1300, and Arnold LJ's observation that the basic attribute which information must possess before it can be considered confidential is inaccessibility. *Racing Partnership* also reinforces the importance of identifying the confidential information with precision, a concept familiar from older cases such as *Ocular Sciences v Aspect Vision* [1997] RPC 289 at 359-360.

The copyright claim

19. I will not set out any law. The key point was that Claimant did not identify any particular works in which copyright was claimed, nor did it give any particulars of subsistence or ownership in relation thereto.

The breach of fiduciary duty claim

20. The parties drew my attention to a number of the well-known authorities in this area, including *Helmet Integrated Systems Ltd v Tunnard* [2006] EWCA Civ 1735; [2007] F.S.R. 16; *Ranson v Customer Systems Plc* [2012] EWCA Civ 841; *Bristol and West Building Society v Mothew* [1998] Ch 1; *University of Nottingham v Fishel* [2000] ICR 1462 at 1493E-J; *Item Software v Fasihi* [2004] EWCA Civ 1244 at [41]. There was no dispute as the relevant principles to be drawn therefrom so I shall be brief.

21. In *Ranson* Lewison LJ (with whom Lloyd and Pill LJJs agreed) held at [45]-[46] as follows:

45. *In Sybron Corp v Rochem Ltd* [1984] Ch 112 Stephenson LJ said:

"...there is no general duty to report a fellow-servant's misconduct or breach of contract; whether there is such a duty depends on the contract and on the terms of employment of the particular servant. He may be so placed in the hierarchy as to have a duty to report either the misconduct of his superior, ... or the misconduct of his inferiors, as in this case." (Emphasis added)"

46. *What goes for the reporting of misconduct of fellow employees must apply with at least equal force to reporting one's own misconduct."*

22. The dispute here was whether the facts were such that Mr Baggaley was under such a duty. If so, said the Claimant, he should have reported his own breaches of contract and confidence, and also those of Mr Johnson, to the Claimant. When I asked Counsel for the Claimant what this cause of action added to such underlying breaches, he said that it might affect the remedy granted.

23. The Defendants did not dispute the law, but did dispute that Mr Baggaley was “so placed in the hierarchy” that he was subject to any fiduciary obligations.

Unlawful means conspiracy

24. In order to prove this allegation EMJ must show the following necessary elements (*Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All E.R. Comm 271 at [108]):

- (1) a combination or agreement between two or more persons to take unlawful action;
- (2) an intention to injure the claimant;
- (3) unlawful acts carried out pursuant to that combination and with that intention; and;
- (4) loss and damage to the claimant resulting therefrom.

25. As regards any intention to injure the claimant, I was referred to Calver J in *E D & F Man Capital Markets Ltd v Come Harvest Holdings Ltd* [2022] EWHC 229 (Comm) QBD at [487]-[488], and to section 23-110 of Clerk and Lindsell. I quote from the latter:

“For the purposes of the causing loss by unlawful means tort, a defendant will be held to have intended to cause loss to a claimant if this was the defendant’s goal, or the means that the defendant had selected to achieve some goal, or the necessary corollary of the defendant’s goal or means, in the sense of being simply ‘the other side of the same coin’”

Joint liability

26. The law regarding joint tortfeasors has now been definitively set out by the Supreme Court in *Lifestyle Equities CV v. Ahmed* [2024] UKSC 17; [2025] A.C. 1. Both common design and procurement were pleaded: see the AmPOC at 68, 69. The common design is said to have been shared by all Defendants whereas the procurement is said to have been of Mekina by Mr Baggaley and Mr Johnson.

- 1) To establish common design, the Claimant must show that the Defendants: (i) assisted the commissions of the tort by another person, (ii) the assistance was more than trivial, and (iii) it was given pursuant to a common design (Lord Leggatt, with whom Lord Lloyd-Jones, Lord Kitchin, Lord Stephens, and Lord Richards agreed, in *Lifestyle Equities C.V. v Ahmed* [2024] UKSC 17 at [136].
- 2) To establish procurement, the Claimant must show that the Defendants knowingly procured another person to commit an actionable wrong (see Lord Leggatt in *Lifestyle Equities C.V. v Ahmed* [2024] UKSC 17 [2025] AC 1 at [135])

The witnesses

27. I was invited to set out my assessment of the witnesses. So far as Mr O’Neill, Mr Baggaley and Mr Johnson are concerned, I will do this in the context of the main issues to which their evidence relates.

The Claimant's witnesses

28. Mr Sean Minihane gave evidence about EMJ's business, and his interactions with Mr Baggaley and Mr Johnson while they were employed by EMJ. The Defendants submitted that he was an unsatisfactory witness, who was evasive, unhelpful and inconsistent. I do not agree. The only part of his evidence which can legitimately be criticised is his view that he was "*not aware of any legitimate business reason*" for Mr Baggaley to be accessing EMJ files relating to 3 EMJ projects in his final 2 weeks at EMJ. The cross-examination demonstrated that Mr Minihane was wrong in relation to one, but only one, of the 3 projects (which related to Sydney Gateway). Nothing turns on this.
29. Mr Minihane also gave evidence about the extent to which he believed certain items of information was confidential. None of this evidence matters given Mr Baggaley's admissions about the Toshiba drive, but for what it is worth I accept that Mr Minihane was setting out his sincerely held views. Overall Mr Minihane's evidence was of limited importance to the Claimant's case.
30. Mr Michael Train, currently EMJ's Head of Sales and Technical Lead, has been employed by EMJ since 2007. He gave evidence about various commercial matters. The Defendants submitted that he was also an unsatisfactory witness. Again, I do not agree. Like Mr Minihane, he was setting out his sincerely held views as to whether certain items of information were confidential, and again none of that matters given Mr Baggaley's admissions about the Toshiba drive.
31. Mr Nigel Pugh is a self-employed Digital Forensic Analyst instructed by the Claimant's solicitors as an expert witness in about March 2024. His evidence established, among other things, the extent and timing of copying from Mr Baggaley's then laptop to the Toshiba drive, but the practical importance of that evidence was subsequently overtaken by Mr Baggaley's admissions about doing so. I agree with the Defendants that in places his evidence was difficult to follow, but nothing turns on that. I note that the Defendants did not adduce any expert evidence at all, which tends to reinforce the limited importance thereof on the facts of this case.

The Defendants' witnesses

32. Dr James Rogalski was former Head of Engineering at Dura. He gave evidence about his role of creating Dura's calculation sheet. He was a good witness.
33. Mr Tom Bowman is Commercial Technical Director of Dura. He gave evidence about his experience of the tender process in the industry.
34. Mr Stuart Burns is Managing Director of Dura. He gave evidence about Dura's capabilities and his dealings with the Defendants. He was a good witness.
35. Mrs Jane Pearce gave a witness statement on 7 April 2026 running to 19 pages, in which she purported to have a detailed recollection of, inter alia, a 2 hour conversation with Mr Baggaley some time 4 years previously. However, Mrs Pearce was unable to recall where the conversation took place ("*a generic local pub*") or when ("*I am not good*

with dates, so cannot remember exactly when this happened”). It was not possible to test her evidence in cross-examination because she did not want to attend Court due to what she described as “serious health issues” and the Defendants served a Civil Evidence Act notice instead. It was not suggested by either side that such serious health issues were anything other than genuine.

36. The Defendants submitted that Mrs Pearce’s evidence was “unchallenged”. This was on the basis that the Claimant had not applied to cross-examine her under CPR Part 33.4(2). However as the Claimant pointed out, that submission is not correct in law: see *Parsons v Atkinson* [2024] EWHC 888 (KB) at [88]. The facts in the present case are different to those in *Parsons* but the principle is the same: the Defendants’ criticism of the Claimant for not seeking the Court’s assistance in bringing Mrs Pearce to Court is, as Farbey J memorably put it, “*an exercise in passing the buck*”.
37. Put even more starkly, the Defendants are apparently criticising the Claimant for not requiring a witness with serious health issues to attend Court in circumstances where the Defendants themselves did not do so either. This criticism is maintained even though the Claimant showed me a letter sent by the Defendants’ solicitors on 19 March 2026 in which the Defendants’ solicitors asked the Claimant not to contact Mrs Pearce. Specifically the Defendants’ solicitors said that they been asked by Mrs Pearce to request that nobody from or acting on behalf of EMJ should contact her again about this case. I will return to the weight to be given to Mrs Pearce’s statement below.

Witnesses who were not called

38. The Defendants placed considerable stress on the topic of witnesses who were not called (see eg paragraph 28 of its closing submissions) but I cannot see that they asked me to draw any particular inferences therefrom. Nor did they cite cases such as *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324, or *Efobi v Royal Mail* [2021] UKSC 33.
39. For instance, the Defendants pointed out that Mr Iain Baron, whose WhatsApp exchanges with Mr Baggaley formed an important part of the case, and who had contractually agreed to provide EMJ with assistance in these proceedings, was not called, and Mr Minihane did not give any reason why not. But the Defendants did not say what conclusion, if any, I should draw as a result: see its closing at paragraph 28(4). Furthermore, as the Claimant pointed out, I have had the benefit of seeing (a) Mr Baron’s WhatsApp exchanges with Mr Baggaley, in particular Mr Baggaley’s messages to Mr Baron and (b) Mr Baggaley’s cross-examination about his own messages. It was not explained to me what additional benefit I would have gained from hearing Mr Baron’s own subjective views about Mr Baggaley’s messages.
40. The Defendants also submitted that it was surprising that Michael Mitchell, EMJ’s Business Development Manager, was not giving evidence, particularly since Mr Minihane did not give any reason as to why not and Mr Mitchell was also under a (somewhat confusingly expressed) contractual obligation to assist EMJ in legal proceedings. This is because it was Mr Mitchell who sent Mr Baggaley and Mr Johnson the “Hot List” of EMJ’s commercial leads, and Mr Mitchell was the subject of a disciplinary process at EMJ as a result.

41. However the Defendants did not say what I should do as a result beyond being surprised. In any event, as the Claimant pointed out, it was not disputed that the Hot List was sent and I did have the benefit of seeing the cross-examination of both Mr Baggaley and Mr Johnson about it.
42. I note that the Defendants did not call Mrs Baggaley, whom Mr Baggaley said in cross-examination had deliberately deleted some emails sent by Mekina to customers. This was in the context of Mr Baggaley seeking to explain why the Defendants failed to disclose the native versions of these emails. I would have been interested to hear from Mrs Baggaley about whether she really did delete these emails, and if so why she thought it right to do so, but since the Defendants chose not to call her I did not have that opportunity. I do not accept that this issue was first raised during trial, as the Defendants submitted in closing, since Mr Baggaley had already dealt with this topic in his 3rd witness statement.
43. The Defendants mentioned 6 other witnesses which the Claimant did not call and 2 whom they themselves did not call, but did not say what conclusions I should reach about any of them either. Nor did the Defendants say why they had not called any of the 8 themselves. In the circumstances it seems to me that I have more than enough evidence upon which to decide this case, without needing to embark on the exercise of deciding what, if anything, I should do about witnesses who were not called.

The facts

44. As is often the position in ex-employee cases, there was no shortage of factual disputes. I will focus on those which to me seem most important, and in approximately chronological order.

The Toshiba drive

Facts which are not disputed

45. I start with the facts which are not disputed. First, Mr Baggaley accepted that during his notice period at EMJ he took a copy of everything that he thought would be needed to run EMJ's business on to the Toshiba drive. He explained that due to the large amount of data, he might have ended up copying some files that were not very useful. Mr Baggaley did not copy everything at once, but over a period of time. The precise dates were identified via Mr Pugh's forensic examination of the laptop used by Mr Baggaley for purposes of such copying.
46. Secondly, it was not disputed that during his notice period, Mr Baggaley was in contact with Mr O'Neill. Mr O'Neill wanted Mr Baggaley to remain with the Claimant, and Mr Baggaley was sufficiently interested in the possibility to discuss it with Mr O'Neill. Most of the contact was via WhatsApp or email, but Mr O'Neill also met Mr Baggaley in person at Skelton service station on 15 February 2022. This meeting took place without Mr Minihane's knowledge. When Mr Minihane found out about it, he was angry with Mr O'Neill, who then asked Mr Baggaley to delete the relevant WhatsApp messages from Mr Baggaley's phone. Those messages were subsequently recovered, but from Mr O'Neill's phone.

My findings on the disputed areas

47. I will come straight to the point. For the following reasons, I am in no doubt that Mr O'Neill was telling the truth about the Toshiba drive and that Mr Baggaley was lying about it. In particular I find that:
- a) Mr O'Neill never asked Mr Baggaley to copy any data on to the Toshiba drive;
 - b) Mr Baggaley never gave Mr O'Neill any Toshiba drive;
 - c) Mr Baggaley did the copying because he planned to use it in a competing business;
 - d) There never was any plot to get rid of Mr Minihane, nor any plan for Mr Baggaley to take Mr Minihane's place. All Mr O'Neill wanted to do was to retain Mr Baggaley, but with Mr Baggaley being supported by Mr O'Neill rather than continuing to report to Mr Minihane.
48. Before going on I note that Mr Baggaley himself accepted in cross-examination that if I found conclusion (b) to be proved, then conclusion (c) followed. I will now give reasons for my conclusions.
49. Mr O'Neill was an excellent witness. He was cross-examined in minute detail over some 2 ½ hours, with every area being covered multiple times. The questions were often framed in a way which assumed the correctness of Mr Baggaley's version of events: for instance, assuming that there really was a plot to get rid of Mr Minihane as director (which there was not). Throughout it all Mr O'Neill calmly and consistently gave answers which were supported by the contemporaneous documentation.
50. For instance Mr O'Neill was asked why he made a payment to Mr Baggaley after Mr Baggaley's resignation. Mr O'Neill explained that this was to support Mr Baggaley for a month to ensure that Mr Baggaley was not out of pocket over this period. It was put to Mr O'Neill that this was not correct, and that Mr O'Neill was "tailoring" his oral evidence to fit the fact of such a payment. Mr O'Neill, not unnaturally, took this as an accusation of lying. However the cross-examiner did not show Mr O'Neill an email sent by Mr Baggaley to Mr O'Neill on 24 March 2022, and which demonstrated that Mr O'Neill's evidence was not "tailored" at all but factually correct.
51. Similarly the WhatsApp messages and the EMJ Board minutes confirmed the details of Mr O'Neill's evidence. There was what I accept to be an obvious error about Mr Baggaley's actual leaving date in the Board Minutes, but nothing turns on that. Other evidence showed Mr Baggaley celebrating his own last day (1 April) with a text message showing a picture of a beer.
52. I should add that the documentary evidence exchanged between Mr O'Neill and Mr Baggaley never even mentioned any Toshiba drive, or any plot to get rid of Mr Minihane, although it went into a great deal of detail about everything else. Mr O'Neill was cross-examined at some length about an organisation chart which was said to show the plot to oust Mr Minihane, but as he pointed out it showed no such thing. Indeed this organisation chart had actually been prepared for presentation to Mr Minihane himself, who was not planning his own removal. Mr O'Neill consistently emphasised that Mr Minihane, who was a statutory director, was never going to be removed as Managing Director.

53. The only area of Mr O'Neill's evidence which was the subject of any real criticism was Mr O'Neill's confusion between the Defence (signed twice by Mr Baggaley with a Statement of Truth, on behalf of Mekina and himself) and Mr Baggaley's witness statement (also signed by Mr Baggaley with a Statement of Truth). I do not think there is anything in this, even though to a lawyer the difference is obvious.
54. Separately, there was some criticism of the Claimant for the way in which Mr O'Neill's response to Mr Baggaley's allegations came to light in his witness statement rather than being pleaded in the Claimant's Reply. I do not think there is anything in this either. Mr O'Neill was, but has not since 24 July 2024 been, a director of the Claimant. The group completed a restructure on 6 February 2026 by which Mr O'Neill ceased to have any interest in or involvement with EMJ. Mr O'Neill's current relationship with Mr Minihane is clearly strained. That strain had no impact on his oral evidence. On the contrary Mr O'Neill was plainly exercised by what he rightly regarded as false accusations made by Mr Baggaley about Mr O'Neill's own conduct.
55. Mr Baggaley's evidence was confused and contradictory. I did not believe it.
- a) First, he never gave a convincing reason as to why it was necessary to copy any of EMJ's documents on to the Toshiba drive. Mr Baggaley said that Mr O'Neill was worried that Mr Minihane "*might run off with this football*" if he was overthrown, the football being all of EMJ's business information. However as the Claimant pointed out, EMJ was a subsidiary of the €100 million turnover ABM Group, and its business information was held on servers in Ireland. Quite how Mr Minihane was supposed to "run off" with this information in a way which meant it would be lost to EMJ was never explained. Mr Baggaley agreed that the idea that a director had the power to do such a thing was "*... surprising. The whole conversation was mental*". I was not even told if Mr Minihane had the computer skills he would surely have needed for such an improbable exercise.
- b) Secondly, Mr Baggaley originally claimed that the meeting at Skelton Lake service station was around the middle of January 2022. This was wrong: the WhatsApp messages recovered from Mr O'Neill show it was actually 15 February 2022. Mr Baggaley could not remember when he handed the Toshiba drive to Mr O'Neill, which is surprising given its importance: all he could say was that it was some time in late April or early May. This vagueness meant that Mr O'Neill was unable to check his diary to see what he was doing on that day. Mr Baggaley also said that the handover of the Toshiba drive took place at a further meeting at the same service station. Mr O'Neill denied both the handover and the second meeting, and there is no documentary evidence of any such second meeting.
- c) Thirdly, the dates of copying identified by Mr Pugh are impossible to reconcile with Mr Baggaley's version of events. For instance Mr Baggaley's laptop was connected to the Toshiba drive on 5 February (twice) and 8 February, but this is before he even met Mr O'Neill. On 8 April 2022, Mr Baggaley complained to Mr Baron that he had been used as a pawn and "*dropped in it*" by Mr O'Neill, yet large amounts of data were nevertheless copied to the Toshiba drive 10 days later on 18 April. Mr Baggaley did not dispute these dates.

- d) Fourthly, it was shown that Mr Baggaley emailed himself EMJ's quotation for 2 distinct projects on 13 September 2022. Mr Baggaley said that he did so for purposes of a job interview with an industrial agriculture firm. This may well be correct but as the Claimant submitted there is no explanation as to why he had these details at that time if not via the Toshiba drive. The Defendants did not dispute that submission, or offer any alternative explanation,
56. I agree with the Claimant that Mr Baggaley came up with the story about Mr O'Neill asking him to copy its contents as a way of explaining away the evidence about the Toshiba drive. I suspect that Mr Baggaley calculated that Mr O'Neill would not give evidence to help the Claimant, given Mr O'Neill's strained relationship with Mr Minihane. That calculation failed.
57. It was noticeable that in closing submissions the Defendants referred to very little of the relevant cross-examination: see their closing at paras 36-37, 57-64. However they did rely on the evidence of Mrs Pearce, which they said supported Mr Baggaley's version of events. I do not agree. I do not understand how Mrs Pearce was able to recall so much detail of a 2 hour conversation from 4 years ago without any notes, when she was unable to recall basic information like the time and place of the conversation. I therefore give it little weight. In any event, even if Mr Baggaley did tell Mrs Pearce his story about Mr O'Neill setting up a plot to "oust" Mr Minihane, and asking Mr Baggaley "*to copy EMJ data to safeguard it for the post-Sean era*", this merely means that Mr Baggaley told the same lies to Mrs Pearce as he has told to me. Mrs Pearce did not claim to have any knowledge of these events other than from Mr Baggaley.
58. The Claimant submitted that if I found in its favour as regards the copying of the 11 000 plus documents on to the Toshiba drive, it was not necessary to consider any of these documents individually; and nor was it necessary to consider any of the more specific categories of confidential information specified in the Amended Particulars of Claim. This was on the basis that even if some of the copied documents were non-confidential and/or useless for one reason or another, I could safely conclude that a substantial number of the copied documents were EMJ's confidential information. The Defendants had no answer to this submission and I accept it.
59. Instead the Defendants repeatedly complained about what they said was the lack of particularity in the Claimant's case as regards the confidential information on which it relied. I do not think there is anything in this complaint. I was shown in closing a number of examples of documents in the pleaded categories (such as drawings, specifications, manufacturing documents and so on) which were obviously confidential in nature, which had been identified with precision, and which had been copied on to the Toshiba drive. The Claimant could not be expected to analyse every single one of the 11 000 plus documents on the Toshiba drive in the same way, and organise them all neatly into the pleaded categories. It would have been disproportionate to require them to do so.
60. The Defendants also stressed that disclosure by the Defendants did not reveal anything to support this aspect of the Claimant's case: see their closing at paras 61-62. However given that Mr Baggaley and (as will be seen below) Mr Johnson lied in their evidence to me, I have no confidence that the Defendants gave proper disclosure on this point.

The production plan spreadsheet

61. This was a spreadsheet setting out EMJ's production plans. A copy of the document was found on Mr Johnson's mobile phone. The Claimant alleged that Mr Johnson had wrongfully removed this copy on his departure from EMJ.
62. In support of that allegation the Claimant submitted that Mr Johnson's explanation for precisely why it was on his phone was inconsistent. For instance the Claimant pointed out that the document was practically unusable on a phone due to its size, and that there was no reason for it to be sent to his phone anyway given that Mr Johnson could simply have used his laptop. The Claimant also pointed to contradictions in other parts of Mr Johnson's evidence, such as what it called "*unusual activity on his laptop*", including a "Deeelete Me" folder.
63. While I accept that Mr Johnson's version of events did have these oddities, I do not accept that he wrongfully removed this document. He was Production Manager at the time of his departure and he had regular access to the production plan as part of his job. There is nothing inherently surprising about the notion that he would send a copy of it to his phone, even if only a fraction of the information would have been visible at any one time on a small screen. It was not explained to me what, if any, particular benefit Mr Johnson could have derived from this document following his departure from EMJ even if he had wrongfully removed it; and absent such a benefit it is difficult to see any motive for doing so. I agree that Mr Johnson's evidence about the "Deeelete Me" folder was muddled, but I am not inclined to make anything more of that.

Abbey Composites

64. Abbey Composites was incorporated on 29 November 2021 and had its registered office at Mr Johnson's home address. The shareholders and directors were Sara Hendrick, Mr Johnson's partner, and Natalie Baggaley, Mr Baggaley's wife.
65. Mr Baggaley and Mr Johnson said that Abbey Composites was set up to produce GRP consumer products like dog baths, shower trays and roadside telecoms kiosks. Mr Baggaley explained that the idea never went anywhere, the company never traded and it did not file any accounts. Mr Johnson said that the furthest it got was Mr Baggaley and Mr Johnson trying to make a prototype dog bath in Mr Baggaley's garage.
66. However, the Claimant pointed out that Abbey Composite's Facebook entry for 3 January 2022 says "*We design and manufacture GRP products for construction, leisure and many other industries*". The Claimant submitted that this page showed a clear intention for Abbey Composites to enter the construction industry at some point, and pointed out that neither Ms Hendrick nor Mrs Baggaley had the skills for doing so. The Defendants had no real answer to this. The furthest Mr Johnson went was to say that the Facebook post was done to avoid "*pigeonholing*" Abbey Composite's business, but this seemed to be his way of accepting that Abbey Composite did have such an intention eventually, merely not an immediate one. In any event I agree with the Claimant.
67. That said, the Facebook page is also consistent with a lawful plan by the Defendants, whether acting via Abbey Composites or otherwise, to start manufacturing GRP products for the construction industry only after the expiry of their respective restrictive

covenants (ie 1 year after leaving the Claimant). The fact that the Toshiba drive had an Abbey Composites folder and documents stored on it does not alter this conclusion.

The alleged meeting with the investor in Dec 2022

68. I now come to the Baron/Baggaley WhatsApp messages, which cover the period 8 April 2022 to 8 May 2024 and run to 378 pages. These were not originally disclosed by the Defendants, although Mr Baggaley said he had not deleted them from his phone. In my view they should have been disclosed by the Defendants as falling within issue 6 of the DRD.
69. In any event they were independently obtained by the Claimant and used as the basis for an amended pleading: see paragraph 50A, and also paragraphs 65A to 65Y of the Amended Particulars of Claim. The authenticity of these messages was not disputed (see eg paragraph 43B.1 of the Re-Amended Defence).
70. I found these messages remarkable. Mr Baron was at that time an employee of EMJ's Australian subsidiary, Permadec Pty Ltd, whereas Mr Baggaley had recently left EMJ. Yet the messages show them joking and gossiping about all manner of internal EMJ affairs including personal criticism of Mr Minihane's management. Messages were often exchanged multiple times a day, almost in real time. It is common ground that Mr Baron and Mr Baggaley were friends – that is obvious - and I agree with the Defendants that many of the exchanges were of a trivial or gossipy nature, but this is not true of all of them. To give but one example, Mr Baggaley asked Mr Baron for the price of cantilevers on 6 January 2023, and Mr Baron supplied him with that information on 12 January 2023. This was not mere gossip. Other examples appear below.
71. The specific allegation made by the Claimant at paragraph 50A of the Amended Particulars of Claim focussed on various messages sent by Mr Baggaley to Mr Baron on 1 December 2022. The following example is, by my count, the 78th of the messages which they exchanged that day and is timed at 13:35:

“Jono been meeting with a chap whom wants to invest in us and our plans. He from construction sector having a few businesses here and overseas. I am meeting him also this weekend. We looking for him to support us to get going etc. We looking for him to support us to get going etc. Maybe as mentioned previously we can all help each other if can become aligned in some way.

72. In their 80th exchange of the same day (timed at 14:22), Mr Baggaley added as follows

“Quietly confident competing against the Michael's :-) they won't have experienced competition in the marketplace really as yet. Something I did allot of when joining

“Obvs if we do get to shake hands with the right backer etc. This chap seems on the face of it a really good fit for us..

*he knows of you btw apparently.
Who doesn't.. lol”*

73. It will be seen that all of the information was given by Mr Baggaley to Mr Baron, so Mr Baron was merely its recipient. Mr Baggaley explained that “Jono” was Mr Johnson and the “Michaels” were Mr Train and Mr Mitchell, both of EMJ.
74. As the Claimant pointed out, there was nothing necessarily objectionable or surprising about Mr Baggaley and Mr Johnson meeting an investor in December 2022 with a view to entering the formwork market in competition with EMJ upon expiry of their respective restrictive covenants. For instance there is no dispute that the individual Defendants met Dura in connection with their joint venture on 3 March 2023, following some calls between Mr Baggaley, Mr Burns and Mr Bowman in February 2023. I return to this below.
75. The Claimant also drew my attention to a number of earlier messages from Mr Baggaley to Mr Baron which indicated the same continuing intention on Mr Baggaley’s part: see eg:

D/85, 26 May 2022 (*“I would like to begin to build a plan as mentioned ... And also have jono banging on at me all day every day”*),

D/94, 11 June 2022 (*“.. sales [for EMJ] are easy to come by , particularly in UK ... Until April 2023 ... [smiley emoji]”*)),

D/97, 19 June 2022 (*“During all this time as you know I am making plans for something more long term. I really want your help/inclusion in some format as would like to work together somehow ... but it’s been tough been opposite side of the world and you been holed up with the enemy ... lol As you know I plan to include Jono in long term elements”*);

D213, earlier on 1 December 2022 (*“What’s the hot/warm like for UK?”*)

This is all consistent with the reference to *“Quietly confident competing against the Michael’s”*, above. I reject the Defendants’ submission that this was all just joking and banter, *“playing along”* and/or *“stringing Mr Baron along”* for no particular reason.

76. The Claimant also noted that on the same day, 1 December 2022, Mr Baggaley started work on CAD files which were later used in relation to two Mekina projects, called Shutterton Brook Bridge and Mytholmroyd Bridge. This work was consistent with meeting an investor for such projects around this time.
77. However, in the then existing version of the Defence, Mr Baggaley and Mr Johnson had flatly denied approaching investors: see paragraph 43.3. Following the introduction of this allegation by the Claimant, based on the Baron/Baggaley material, this denial was changed from *“No investors were approached by Mr Baggaley or Mr Johnson”* to *“No investors were approached by Mr Baggaley or Mr Johnson in relation to Abbey Composites”*. Thus the Defendants’ amendment effectively reversed the previous denial.
78. The Amended Defence continued at 43B.2 to claim that the chap *“from construction sector”* was actually a family member who wanted *“to speak about potential*

manufacturing of dog baths, shower trays and kiosks through Pearl Oceanic". This plea did not explain who the family member was, why someone from the construction sector would be interested in dog baths, or why this was to be done through Pearl Oceanic rather than through Abbey Composites.

79. In Mr Johnson's witness statement, the story changed again. He said that the potential investor was not in the construction industry at all. He actually had in mind his father in law, Paul Johnson, who had worked at an oil company; and *"he knows a lot of people in the village, Paul might know a guy who might invest"* in the dog bath business. In cross-examination Mr Johnson said *"we didn't actually get to speak to him"*, meaning the potential dog bath investor, and *"I didn't know the name of this person"*. Paul Johnson himself did not give evidence, and no reason was given to me as to why not.
80. The upshot is that although the original message referred to Mr Johnson meeting an investor from the construction sector, it actually meant Mr Johnson's father in law, originally from the oil sector, who might know somebody or other from some village who might be interested in investing in dog baths, but whom Mr Johnson never met and whose name Mr Johnson did not know. Mr Johnson's evidence ended up saying *"there was no meeting, no business plan, and no investment"*, despite the original message saying that Mr Johnson had been meeting the investor, that Mr Baggaley was going to meet the investor *"this weekend"*, that the investor seemed *"a really good fit for us"*, and that the investor knew Mr Baron.
81. Both Mr Baggaley and Mr Johnson maintained the father in law version of their story in cross-examination. Mr Baggaley told me that what he said to Mr Baron in the WhatsApp messages about meeting the investor that weekend *"was just fantasy"*.
82. I did not believe either Mr Johnson or Mr Baggaley's evidence as regards the investor. I find that Mr Johnson did meet with an investor from the construction industry some time before 1 December 2022 and that he lied to me about not doing so. Mr Baggaley may not have actually met the investor the next weekend, but he must have known about Mr Johnson's approach to the investor (because he reported it to Mr Baron) and hence Mr Baggaley must have lied to me about that. I agree with the Claimant that they lied because they realised that this meeting supported the proposition that they intended to compete with the Claimant all along, which in turn supported the further proposition that Mr Baggaley removed information from EMJ for that very purpose.
83. I also find that Mr Johnson must by at least the time of this meeting have known that Mr Baggaley had taken enough EMJ confidential material to run a competing business, because even if Mr Johnson did not already know about that material (which I doubt) investor meetings like this were a major part of the reason why Mr Baggaley had taken the EMJ information in the first place. Mr Baggaley must have shared the knowledge of the EMJ confidential material with Mr Johnson as part of Mr Johnson's preparation for the investor meeting, if he had not already done so. That sharing would have enabled Mr Johnson to make a much more persuasive pitch to the investor than would otherwise have been the case.

The December 2022 Hot List

The receipt of such list in December 2022

84. EMJ maintained internal “Hot Lists” and “Warm Lists” of sales prospects. They were extracted from EMJ’s Deltek-PIM system and contained information about projects such as customer name, contact details, required panel types, contract value, actions assigned, and status. The Warm List was, as the name suggests, about longer term or more prospective business opportunities.
85. Mr Minihane explained how they were used by EMJ’s management and sales teams to track business opportunities, and were only accessible to senior sales team members. This included Mr Baggaley during his employment. As Mr Minihane put it, in evidence which was not challenged:

“The Hot List is therefore one of EMJ’s most commercially sensitive and confidential sources of info, because it identifies the projects most likely to convert into orders and provides an insight into EMJ’s workflows, commercial intentions and pricing”.

The Hot List therefore contains not merely EMJ customer names, but details of the current projects and prices associated with such customers.

86. Mr Johnson gave evidence about his dealings with Michael Mitchell of EMJ in December 2022. This included an email exchange whereby on 16 December 2022 Mr Mitchell sent Mr Johnson a copy of EMJ’s Hot List, with a covering email saying “Obviously you have no idea where this came from”. Mr Johnson replied 12 minutes later saying, my emphasis:

“Yeah course it fell out the sky as always.

Thanks for that not as many we thought and not much value, have you taken some out because obviously we wouldn’t be targeting them if you don’t want to show us the customer could you show us all the values on the list. Also is there a warm list and the quote you mentioned.”

87. In his cross-examination, Mr Johnson began by saying “no, I didn’t see that [ie the Hot List] as confidential information”. Counsel for the Claimant put it to Mr Johnson that this was a ridiculous lie. Mr Johnson stuck to his original position for less than a minute before accepting that he did know the Hot List was confidential when he received it. Mr Johnson also accepted that Abbey Composites’ dog bath business did not need the EMJ Hot List.
88. As can be seen from the above, Mr Johnson was not content with the Hot List but pressed Mr Mitchell for more information including the warm list and a quote.
89. In his reply (timed at 12:13 on the same day) Mr Mitchell said “That is the current UK Hot list excluding HS2 which I am still working on so can’t give you that.” That reply prompted Mr Johnson to reply to Mr Mitchell at 12.18 as follows:

“That’s fine but could you give the value of hs2 and the Aus jobs as well as the warm list”.

90. Mr Johnson's explanation of the above was that Mr Mitchell was unhappy at EMJ, and wanted to set up a formwork business with Mr Baggaley and Mr Johnson, but that the Defendants were not interested. As Mr Johnson put it *"I was not pursuing Michael Mitchell in order to obtain EMJ confidential information. I was effectively trying to humour or pacify him and to indicate that, even on what he was sending, there was nowhere near enough there to launch any realistic business"*.
91. I reject that explanation. I find that Mr Johnson was pursuing Mr Mitchell in order to obtain EMJ confidential information, specifically the values on the Hot List, including those for HS2 and the Australian jobs, and the Warm List. I also find that Mr Johnson wanted this information to prepare a business plan with projected sales and margins based on his knowledge of EMJ's figures, as the Claimant alleged. No other reason stands up.
92. I accept that the evidence does not show whether Mr Johnson asked for the original Hot List or whether Mr Mitchell sent it unprompted. Given that the Claimant did not call Mr Mitchell, it would be unfair to the Defendants to speculate in circumstances where I could have had more evidence, and I shall not do so.
93. In this connection I note that the Claimant separately alleged that Mr Baron sent Mr Baggaley a copy of the Hot List on or around this time in response to Mr Baggaley asking for it three times. I agree with the Claimant that Mr Baggaley did ask for it three times, and that he did so for the same reason as Mr Johnson later chased Mr Mitchell, ie to prepare a business plan with projected sales and margins based on knowledge of EMJ's figures. However there is no evidence that Mr Baron actually sent the Hot List to Mr Baggaley at this time. It would be unfair to the Defendants to find that Mr Baron did so, particularly when the Claimant gave me no reason for not calling Mr Baron, and hence I make no such finding.

The subsequent use of such list in August 2023

94. Mr Johnson admitted sending the Hot List to Mr Baggaley in August 2023, but said this was *"to make sure we do not reach any of the same customers as EMJ (in that hot list)"* because *"we'd just spent £7 000 on Barbour ABI [a lead generation system]"* Put another way, Mr Johnson was thereby saying that he sent a list of customers to Mr Baggaley so that such persons would not be contacted, even though the Defendants had by then started production and positively wanted customers.
95. I agree with the Claimant that makes no sense. As the Claimant noted, if the Defendants did not want to be accused of using the Hot List they could simply have destroyed it. In addition, Mr Train gave unchallenged evidence that the Barbour ABI system mentioned by Mr Johnson in this answer did not account for all of the Defendants' sales leads.
96. I remind myself that Mr Baggaley had asked Mr Baron, again, for the Claimant's Hot List on 28 March 2023 in a WhatsApp message timed at 16.15:

"What's the order book and hot list like in UK?"

97. This appears to have been the 26th message exchanged between them on that day. It was also after the Defendants first met Dura. I do not believe Mr Baggaley's explanation that this was just asked "*out of interest in EMJ's fortunes*", as the Defendants submitted. I find that Mr Baggaley asked Mr Baron for the Hot List, again, because he still wanted to use it for the Defendants' advantage.
98. It is not as if his requests for the Hot List are the only examples of Mr Baggaley trying to find out commercially sensitive information about the Claimant from Mr Baron over this period. For instance on 22 June 2023 Mr Baggaley asked Mr Baron as follows:
- "What are the prices of panels there atm? Any ideas how much they are quoting copers at?"*
- Mr Baggaley said this was also just being asked out of interest, and/or was just his joke. I did not believe that either.
99. I agree with the Defendants that there is no evidence that Mr Baron actually supplied Mr Baggaley with the Hot List in March 2023 in response to Mr Baggaley's request (and as noted above, there is no evidence that Mr Baron did so in December 2022 either). However, all that means is that Defendants only had the December 2022 Hot List rather than the March 2023 one which they now wanted following their meetings with Dura. I also agree with the Defendants that there is no disclosure beyond the above to support the Claimant's allegations of misuse, but I have no confidence that the Defendants gave proper disclosure on this point either.
100. I find that Mr Johnson sent the Hot List to Mr Baggaley in August 2023 because the Defendants wanted to use it to target the Claimant's customers, and that the Defendants then used it for this purpose. The list would not be as "hot" as it had been the previous December, but it was still the most recent version which the Defendants had.

The meetings with Dura in around March 2023

101. Little time was spent on this directly. There were several such meetings and it was not disputed that Mr Baggaley and Mr Johnson presented Dura with a business plan at one of them. I do not believe I was shown that plan. The Claimant submitted that the Defendants must have used, or relied upon, EMJ confidential material from both the Toshiba drive and the Hot List in order to prepare this business plan and I agree. That is the obvious conclusion from the findings I have made thus far. It was not suggested that Dura (ie Mr Bowman or Mr Burns) knew this.

CAD drawings

102. The Claimant's case is that Mr Baggaley produced two Mekina drawings (one for Shutterton Brook Bridge, and the other from Mytholmroyd Footbridge) from an electronic copy of a template file of an EMJ drawing. Only the Shutterton Brook Bridge drawing was specifically pleaded, as the Defendants pointed out, but this one turned out to be the more important of the two insofar as they are any different (most of the text is very similar). The drawings in each case form part of a larger CAD file.

103. The Claimant's case was originally based on a visual comparison of the Mekina drawings and the EMJ drawings. It was necessary for the Claimant to rely on the drawings rather than the underlying CAD files, because the Defendants did not at that stage disclose the native versions thereof even though their defence was one of independent creation.
104. The Claimant relied on 8 textual similarities, common to both Mekina drawings, which the Claimant submitted was unlikely to be due to coincidence and which, said the Claimant, demonstrated that the underlying EMJ CAD file had been copied subject to a few small changes to disguise the fact of such copying. The Claimant also noted that both Mekina drawings were commenced on 1 December 2022, on or around the time of the investor meeting.
105. The native versions of the Defendants' CAD files were only disclosed on or about 17 May 2026, shortly before trial, pursuant to an order which I made at the PTR requiring the Defendants to do so.
106. It was at this stage that the differences between the drawings became important. Mr Train gave evidence explaining that the native version of Shutterton Brook Bridge drawing contained layer names which were identical to those used by EMJ, namely "STEEL_INSERT", "Panel", and "Structure". Of these, the STEEL_INSERT layer could still be toggled on and off in the Defendants' drawing, so it clearly retained a specific meaning in that context. Further detail might have been retained in the Defendants' Shutterton Brook Bridge CAD drawing had it not been partially "purged" at some point. Much less could be deduced from the native version of the Mytholmroyd Footbridge drawing, which had been fully purged of detail.
107. The Defendants' case is that the similarities relied upon by the Claimant are a mixture of general similarities (eg layout), standard requirements, and Mr Baggaley using his memory. Mr Baggaley's explanation in cross-examination for the layer names was not to deny the similarity, but to assert that "*these were all part of my toolbox, if you like, that I took to EMJ*" and that he used a CAD file "*from 2011, I think it was*" or perhaps from "*2009, 2010*". He said that this toolbox was on one or two pen drives.
108. However Mr Baggaley never showed me what he meant by his "toolbox", or these pen drives, let alone that these particular layers had been present in that toolbox since before 22 October 2012. In cross-examination he originally suggested he had not used the STEEL_INSERT layer in the Shutterton Brook Bridge drawing, but he was promptly shown to be wrong about that when the toggling was shown to him. I also bear in mind that it would have been very easy for Mr Baggaley to use the CAD files copied on the Toshiba drive, and that his reason for copying EMJ's files on to the Toshiba drive in the first place was because he planned to use that material in a competing business.
109. As I have already said, the fact that I have found Mr Baggaley lied to me about the Toshiba drive does not of itself prove that he also lied to me about the creation of the two Mekina drawings. However on balance I have come to the conclusion that he did. The nature, number, and extent of similarities are too great to be explained away as being just a series of coincidences, and I did not find his oral evidence about the toolbox convincing for the reasons given above.

110. The evidence is stronger for the Shutterton Brook Bridge drawing, but I can see no logical reason to reach a different conclusion in relation to the Mytholmroyd Footbridge drawing. I appreciate that the Mytholmroyd Footbridge drawing was not specifically pleaded, but its appearance is so similar that all my comments about visual similarity still apply (ie it is essentially “more of the same”). Furthermore the Mytholmroyd Footbridge was thoroughly explored in the evidence: indeed Mr Baggaley chose to put in evidence about both. In my view, by choosing to address the point on its merits the Defendants thereby waived their right to complain that it was unpleaded.
111. The Defendants submitted that because design drawings were circulated in the industry, they could not be confidential at all. This is very similar to an argument they raised with rather more conviction in relation to calc sheets. As will be seen below, I reject that argument in that context and I reject it here too for similar reason. In short I accept the evidence of Mr Minihane and Mr Train that where design drawings were circulated to customers, this was done under conditions of confidence. In any event the Claimant’s complaint here is about the underlying CAD drawings being copied, not the single page hard copy. The single page hard copy merely shows the result of the CAD file being copied.
112. Mr Bowman’s view was there was nothing unethical about circulating tender documents originally created for one party under conditions of confidence to third parties without the consent of the original creator. In his view, this practice only became unethical when there was a specific NDA (non disclosure agreement). Even when he was shown some clearly confidential material in cross-examination he still saw nothing wrong with using that material. I do not share his views. I do not see why confidentiality depends entirely on there being a specific NDA, regardless of the circumstances of the disclosure. Ultimately this does not matter since he was talking about his own experience and practices, and those of Dura, not those of EMJ.
113. I also reject the Defendants’ submission that because EMJ has received *Mekina* drawings from industry contractors, this proves that EMJ’s own CAD drawings cannot be confidential. This is an obvious non sequitur, but it would not even prove that *Mekina*’s own drawings are non-confidential. It would be just as consistent with those industry contractors, whoever they may be, failing to respect Mekina’s confidentiality.

Calculation sheets

114. This is an area where the relevant disclosure was given to the Claimant so late, and at a time when the Claimant was so fully engaged on other aspects of the case, that the Claimant ran out of time. That said, I have to deal with the case as it was advanced, and not on the basis of what might have been.
115. The Claimant’s case is that given the safety-critical nature of formwork, and the need to maintain accurate records, it was essential to retain detailed structural calculations relating to any given project. The calculations themselves were in the form of one or more electronic worksheets, which were used to generate project-specific summary sheets, typically 1 page long, in PDF format. The summary sheets did not reveal the formulae underlying the calculations.
116. Originally the Claimant sought to compare a Mekina 1-page summary sheet to an EMJ sheet, and rely on textual similarities in the summary sheets to show copying of the

underlying calculations: see the Amended POC at paragraph 54(b). This was similar in principle to the argument the Claimant ran in relation to the CAD drawings. For instance the Claimant drew attention to the unusual use of upper and lower case, and the unusual use of the + sign, among other points.

117. These arguments were only run for earlier versions of Mekina's calculation sheets, because the Claimant accepted that Dr Rogalski of Dura created the calculation sheets which were used by the Defendants after about August 2023. However, when Dr Rogalski was asked about the layout of the Defendants' summary sheet, he said that this came from Mr Baggaley. In addition Mr Baggaley explained that Mekina did not use any calc sheet at all for the relevant project relied upon by the Claimant, prior to manufacture and delivery (surprising though this may seem). Mr Baggaley said that the Mekina summary sheet was only produced on 5 June 2024 for handover purposes, using the Dura calc sheet.
118. There was much more detail on both sides about this topic, and some of this detail overlapped with the Claimant's case about where various items of information in the Mekina brochure (referred to as the span figures) came from. I found the Claimant's case about the span figures to be inconclusive.
119. I accept the Claimant's submission that the text on Mekina's one-page summary sheets was copied from the text on EMJ's one-page summary sheet, and that this also came from the Toshiba drive. I reach this conclusion because of the many similarities, which I agree are too numerous to be all due to either coincidence or memory, and because Dr Rogalski accepted that the layout was Mr Baggaley's suggestion. However I make no such finding about any calculation spreadsheet which was used to generate that single page summary sheet. The Claimant's evidence on that was too late to be admitted.
120. Mr Minihane agreed that EMJ shares its calculation summary sheets with customers, and Mr Train added that EMJ sometimes provides them with detailed calculations. However both Mr Minihane and Mr Train said that this was done under conditions of confidentiality. I accept that evidence. Thus I conclude that the EMJ one-page summary sheet which the Defendants copied was a confidential document, not a public one.

February 2024 customer emails

121. On 7 and 8 February 2024, Mrs Baggaley sent a marketing email to Mekina customers from her email address, sales@mekinaindutries.com. The contents of the email make it clear that this was not directed to any customer in particular and did not assume any pre-existing knowledge of Mekina. It said:

"Here at Mekina Industries Ltd we specialise in design and manufacture of GRP Permanent Formwork predominantly for bridge decks. Our Mek-Dek GRP panels offer not only durability and versatility but are unmatched in enabling cost efficiency.

"We would be grateful if you kept us in mind for any FREE technical advice and collaboration on your upcoming projects..."

122. One such email was received by Phil Keeley of MPB Structures. This particular exchange came to the Claimant's attention when Mr Keeley called Mr Train on 12 February and mentioned it. Mr Keeley told Mr Train that he and a colleague had both received a direct email from Mekina, which concerned Mr Keeley because Mekina had used email addresses which were not publicly available. Mr Keeley said to Mr Train that he thought it likely that EMJ internal contact information had been used for this mailshot. Mr Baggaley said he did not remember exactly how he found these individuals. He speculated he might have used Barbour API or Google, but the Defendants did not show me if the email addresses for Mr Keeley and his colleague had ever been available from either source.
123. More to the point the Claimant submitted, and I agree, that the same email must have been sent to a number of other customers as well. Mr Baggaley did not dispute that proposition.
124. This prompted the Claimant to seek disclosure of native copies of the outgoing emails from Mekina, which the Claimant believed likely to show the identity of any other recipients via the bcc field. However no such native copies were disclosed. Mr Baggaley's explanation as to why not was that he had asked his wife about this and she had told him that her usual practice was deliberately to destroy sent copies of customer emails. In particular he said that she had a habit "*to delete everything ... unless she thinks it's relevant and she creates a folder and puts things in folders and it's all very organised*". The Claimant did not accept that explanation, and alleged deliberate deletion to avoid revealing use of EMJ customer lists.
125. Mr Baggaley himself admitted that this was an odd thing to do, but said it was due to "*dyslexia, dyspraxia, and minor ADHD*" – ie because of no less than 3 distinct medical conditions, rather than just one of them. The Defendants did not adduce any medical evidence about Mrs Baggaley's condition to support these allegations.
126. I do not accept Mr Baggaley's evidence on this topic either. On the contrary I agree with the Claimant. In particular I do not understand why Mrs Baggaley, who did not give evidence, would send messages to customers in order to market the Defendants' products to them, and then destroy the Defendants' own record of having done so.
127. I find that the Defendants sent this email to a number of potential customers, not just to those recipients whose identity was revealed on disclosure; that the identity of the recipients was derived by Mr Baggaley and/or by Mr Johnson using a confidential list of the Claimant's customers, which was either on the Toshiba drive or on the Hot List, or both; and that the reason why the native copies of the sent emails were not disclosed is because Mr Baggaley feared that such derivation would be revealed if he did so.

Alleged close similarity of the Defendants' products to the Claimant's products

128. The Amended Particulars of Claim set out what the Claimant alleged to be a number of very close similarities of the parties' respective products: see paragraph 54. This was argued independently of the Claimant's case about CAD drawings and calculation sheets which I have considered above. For instance the Claimant relied on comparisons of panel thickness, the use of OSB3 grade boards, a soffit thickness of 8mm, etc. Much less time was spent at trial on these allegations than was spent on the CAD drawings and calculation sheets.

129. I did not find this aspect of the Claimant's case convincing. The alleged similarities may have been due to copying EMJ confidential information from the Toshiba drive, and my findings about the CAD drawings and calculation sheets support that conclusion. However they may just have been due to coincidence, or due to the years of practical experience which Mr Baggaley and Mr Johnson both had in relation to this type of product. The Defendants cited the well-known case of *Faccenda Chicken v Fowler* [1987] Ch 177 in support of that last point, and I agree that it is relevant. There was also force in the Defendants' arguments that many of the alleged similarities in products were not confidential at all, and that the Claimant itself had previously published such details in one way or another.

Other allegations of misuse

130. The Claimant alleged that the disclosure given to date is unlikely to reveal the true extent of misuse of the documents on the Toshiba drive, and the extent of use of EMJ's Hot Lists or customer lists. For instance the Defendants had given no disclosure at all of the misuse of the material on the Toshiba drive because their case (which I have rejected) was that Mr Baggaley had returned the Toshiba drive to Mr O'Neill and had not used it at all. Furthermore no disclosure had been given of Mekina's manufacturing or quality control documents.
131. I agree with this submission. However I regard the topic of what further disclosure arises as a result of my findings on liability as being very much for another day, and I shall not embark on it now.

Legal conclusions

132. I now consider the legal consequences of the findings of fact I have made above, with reference to:
- (1) breach of contract
 - (2) breach of confidence,
 - (3) infringement of copyright
 - (4) breach of fiduciary duty
 - (5) unlawful means conspiracy
 - (6) joint liability to commit such wrongs.

Breach of contract/breach of confidence

133. These are closely related, since the confidentiality provisions of the relevant contracts also applied post-termination.

Mr Baggaley

134. By copying over 11 000 EMJ files to the Toshiba drive for use in a business competing with EMJ while still employed by EMJ, Mr Baggaley acted both in breach of confidence and in breach of contract. He was also in breach of his implied duty of good faith and fidelity. His failure to return such material was a further breach of contract.

Mr Baggaley thereby breached clauses 16, 18, and 23 of his contract and Section B of the Safeguards section of the handbook.

135. Mr Baggaley's subsequent use of the material on the Toshiba drive to create Mekina's CAD drawing, Mekina's calc sheet, and Mekina's business plan, and the subsequent use of such Mekina materials which incorporated the Claimant's confidential information were also breaches of clauses 16 and 18 of his contract and Section B, and breaches of confidence. I doubt that this trial has uncovered the full extent of such misuse.

Mr Johnson

136. I have rejected the Claimant's case that Mr Johnson removed any material from EMJ when employed. Nor is there any suggestion that he was involved in the original copying of the Toshiba drive. Hence Mr Johnson was not in breach of his contract or his Settlement Agreement as a result of either of these. The claim for breaches of the duties of good faith and fidelity were restricted to the time period when he was working at EMJ, so these claims fall away too.
137. Mr Johnson's use of the Hot List for Mekina's internal purposes (ie for the business plan shown to Dura, and for Mr Baggaley's use in August 2023) was a breach of contract and breach of confidence. Specifically, it was a breach of clauses 15 and 17 of his contract, Section B of the Safeguards section of the handbook, and clause 8.1 of his Settlement Agreement.

Mr Baggaley and Mr Johnson

138. The Defendants' failure to give proper disclosure makes it difficult to determine whether it was Mr Baggaley or Mr Johnson or both who used confidential EMJ customer lists (either from the Toshiba drive, or the Hot List, or both) for the February 2024 mailshots. However the evidence shows that both of them were interested in the Hot List over a period of time, and given the importance of customer marketing to such a small business in my view the only reasonable finding to make is that they both had sufficient personal involvement so as to make themselves individually liable for both breach of contract and breach of confidence in this respect.

Infringement of copyright

139. The fact, as I have found it to be, that the Mekina drawings were created from an EMJ drawing might be thought to give rise to a claim of copyright infringement. The Claimant's problem is that although it did identify an EMJ drawing it neither pleaded nor evidenced any claim to copyright subsistence or ownership in it. I doubt this makes any practical difference since it was not disputed that if I accepted the Claimant's case on the facts, it was thereby established that the creation of the Mekina drawings involved breaches of contract and confidence, and I have so found.

Breach of fiduciary duty

140. As I have explained above it was not disputed that senior employees of a company, who are not its legal directors, may nevertheless owe the company fiduciary duties depending on such matters as the contract of employment, the employee's duties, and what was described as being the relevant employee's place in the company hierarchy.
141. It was not disputed that Mr Baggaley was Operations Manager in day to day charge of EMJ's business from at least November 2016. This was a senior position on any view. Moreover, as the Defendants themselves emphasised, for most of a decade he was the person running EMJ's operations on the ground (see their closing at paragraph 85(1) and also at 164). This was a responsible and demanding job: Mr Baggaley told me that when he left, he was doing 90 hours a week. It is true that Mr Baggaley reported to Mr Sean Minihane, but Mr Minihane was not based at EMJ's premises.
142. It followed that the Claimant necessarily placed a great deal of trust in Mr Baggaley to ensure that the factory ran properly. This was true both when the factory was at its original location at Filey, North Yorkshire, and following its relocation to Scunthorpe in Lincolnshire in March 2021. The evidence also established that Mr Baggaley would from time to time give reports directly to the Claimant's Board at board meetings. The Defendants point out, correctly, that Mr Baggaley did not have access to financial information, but I do not regard this as decisive given the other factors.
143. I have no doubt that if Mr Baggaley, as the senior man on the spot, had come across an employee making plans to compete with EMJ, such as copying vast numbers of EMJ documents for such purpose, he would have been under a fiduciary duty to report that to the Claimant. The fact that it was his own plan makes no difference: it merely means that he was obliged to report himself. His failure to do so constitutes a breach of fiduciary duty which he owed to the Claimant.
144. I was not addressed on whether Mr Baggaley would, post-employment, have had a fiduciary obligation to report on Mr Johnson's post-employment breaches and so I will express no view on that.

Joint liability

145. It was not suggested that Mr Johnson was involved in the actual creation of the two Mekina CAD drawings or the calculation sheets. However I have no doubt that from an early stage – and certainly from before his meeting with the investor on 1 December 2022 – Mr Johnson knew that Mr Baggaley had taken enough EMJ confidential material to run a competing business, and also knew that Mr Baggaley was using that EMJ confidential material in order to build up Mekina's competing business. There only were two people in Mekina's business, both being 25% shareholders therein, and Mr Johnson must have known how Mr Baggaley was creating Mekina's technical documents (ie the CAD drawings and calculation sheets) and producing lists of customers in order to advance Mekina's business. Furthermore these are all important business documents which both Mr Baggaley and Mr Johnson must have used in Mekina's dealings with its customers.
146. Two consequences follow. First insofar as Mr Johnson's own use of such materials (ie Mekina CAD drawings, calculation sheets, lists of customers) are concerned, it seems

to me he is liable for breach of confidence and breach of contract in any event. Secondly, even in the unlikely event that Mr Johnson merely assisted Mr Baggaley's use of such documents, such assistance was more than trivial, and was given pursuant to a common design. Either way, Mr Johnson is liable along with Mr Baggaley for such use.

147. I also find that insofar as any the breaches of confidence referred to above were committed by Mekina instead of, or in addition to, Mr Baggaley and Mr Johnson, then Mr Baggaley and Mr Johnson both knowingly procured Mekina to commit such breaches. As I said above, they were the only two people in Mekina's business.

Unlawful means conspiracy

148. Relatively little time was spent on this at trial, but it remains a live issue. Given my findings thus far, I accept that the Claimant has established the first 3 elements required by the tort. The question I find difficult is whether it has established the fourth, namely loss and damage to the Claimant resulting from the conspiracy.
149. I have already found that EMJ's information (including customer lists) was used to prepare business plans and to target customers. It is true that there is no specific evidence about whether the Claimant lost any particular contracts, or customers, because of the Defendant's unlawful acts but I have no confidence that the Defendants gave proper disclosure in relation to such matters.
150. It seems likely to me that the Defendants' wrongful acts caused the Defendants to gain, eg by achieving greater commercial success, and earlier, than would otherwise have been the case absent their wrongdoing. As against that it is not self-evident that the Defendants' gain was "*inseparably linked with EMJ's loss*", which is how it was put in paragraph 195 of the Claimant's closing. As the Defendants submitted, both sides operate in an open market; and the fact that the Claimant might lose business as a result was at most a foreseeable incident, not a necessary one.
151. Taking all these factors into account, it nevertheless seems to me more likely than not that the Claimant did suffer loss and damage resulting from the conspiracy, and I so find. Hence this cause of action succeeds. Whether this finding actually adds anything of substance to my existing findings is a matter for another day.

Relevance of the information of allegedly confidential information in a public pleading

152. Before concluding I should deal with an overarching submission made by the Defendants, as follows. They repeatedly stressed that the Claimant had included allegedly confidential information "*in a public pleading*". By this they meant the effect of CPR Part 5.4C(1)(a), which provides as follows:

5.4C

(1) The general rule is that a person who is not a party to proceedings may obtain from the court records a copy of –

(a) a statement of case, but not any documents filed with or attached to the

statement of case, or intended by the party whose statement it is to be served with it;

153. It was never clear to me which documents the Defendants said were relevant for purposes of this rule. The Defendants put it more generally, on the basis of “*the Claimant has set out much of the information it alleges is confidential in its public pleading*” rather than in a Confidential Schedule: see their closing at paragraph 128. The Defendants then submitted that the lack of a Confidential Schedule justified the following inferences (see their paragraph 129):

“The only proper inferences are that there is no truly confidential information capable of being particularised, and that the Claimant is not, and has never been, concerned with preventing information entering the public domain; instead, the aim of this litigation is not to protect confidential information but to cripple the Defendant in order to remove a competitor from the market.”

154. I do not see why this follows. I can see that if confidential information subsequently enters the public domain following its misuse, this may affect whether an injunction is granted to prevent further misuse (for which the Defendants cited *Mustad v Dosen* [1964] 1 WLR 109). I will assume without deciding that the effect of CPR Part 5.4C(1)(a) is sufficient to engage this principle. I still cannot understand why this should mean that “*there is no truly confidential information capable of being particularised*” or why this means I can properly infer that the Claimant’s aim was “*not to protect confidential information but to cripple the Defendant*”.

Additional damages

155. Finally the Claimant claims damages in accordance with Article 13 of the IP Enforcement Directive, (2004/48/EC) in relation to misuses of trade secrets and infringement of intellectual property rights on the ground that such acts were carried out by the Defendants with knowledge or reasonable grounds to know that they amounted to actionable misuse and infringement: see the AmPOC at para 76. It was not disputed that Article 13 applied to breach of confidence. If it had been so disputed, the Claimant would not have dropped its reliance on the Trade Secrets Directive.
156. The action has succeeded in relation to breach of confidence and the Defendants did not dispute that Article 13 was engaged. Their point was that the Defendants did not know or have reason to believe that their actions were wrongful. I reject that. I accept the Claimants’ submission that the Defendants were fully aware of what they were doing and that their acts were unlawful, and merely hoped that their acts would not be discovered. I was not asked to make any finding about flagrancy, insofar as that matters, and I shall not do so.

Conclusion

157. The Defendants complained about the Claimant’s overall conduct of this litigation and submitted that the Claimant was trying to oppress the Defendants. I reject that. While it is true that the Claimant dropped some peripheral causes of action of minor importance, I regard that as being merely a matter of costs at most. Overall it seems to

me that it is the Defendants' unlawful acts and lies which has driven the Claimant to this litigation, rather than the Claimant using this action to oppress the Defendants.

158. In the result the action succeeds to the extent indicated above. I will hear counsel as to the form of relief I should grant.