ECONOMIC TORTS AND CONSTRUCTION DISPUTES – *PALMER BIRCH v LLOYD*

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Introduction

> 'This claim reveals the perils of contracting with an undercapitalised limited liability company, with no guarantees from the individuals associated with it, as HHL was plainly one such company.
>
> The claim also reveals less directly the potential pitfalls for those individuals who choose to operate through the medium of such a limited company which proves not to be good for its contractual obligations, including those who may have directed its affairs from the shadows (or quite openly but perhaps not quite constitutionally). Whether or not in this case they extend to the individuals concerned having incurred direct tortious liability to PB is the fundamental point running through the issues I have to decide.' HHJ Russen QC.[1]

The economic torts are not usually considered to be part and parcel of the construction lawyer's armoury when pursuing non-paying parties. A recent decision of the TCC could lead to increased use of them against defaulting parties and their backers and may also lead to a need to consider the structure of construction projects so as to protect financiers from possible action.

This paper examines the decision in *Palmer Birch v Lloyd* after a brief overview of the economic torts of procuring or inducing a breach of contract; causing loss by unlawful means; and conspiracy to cause loss by unlawful means. It concludes with suggestions as to the possible lessons to learn for both sides of a construction project.

Economic torts

Procuring/Inducing a breach of contract

The constituent elements of this tort are:

- A contract
- Breach of that contract
- Procurement/Inducement to breach the contract
- Knowledge
- Intention

1 *Palmer Birch v Lloyd* [2018] EWHC 2316 (TCC), [2018] 4 WLR 164, [2018] BLR 722, 180 Con LR 50.

The leading case is *OBG v Allan*[2] which dispelled the unified tort theory of the economic torts. As will be seen, they have some common features but significant differences.

Liability in this tort is secondary or accessory to the primary liability of the contract breaker whose liability must be proved even if they are not sued. There is no wider tort of interference with a contract, short of breach, unless another separate tort is made out.

The act/s of procurement/inducement do not need to be unlawful in themselves (unlike the other two torts). Acts of encouragement, threat, persuasion and so forth are included but importantly mere prevention is not enough and the dividing line between procurement/inducement on the one hand and prevention on the other is not always clear. An example prevention case is *Stocznia Gdanska SA v Latvian Shipping Co* (No. 3)[3] where the parent company had refused to fund a subsidiary where there was no pre-existing obligation to do so resulting in the subsidiary's default. This case predates *OBG* so should be treated with caution insofar as it rests on the unified theory. On the other side of the line is *Marex Financial Limited v Sevilleja*[4] where the defendant had stripped assets from a judgment debtor of which he was beneficial owner to frustrate the judgment (overturned on appeal on different grounds).

Palmer Birch itself is a good example of where courts are likely to draw the line in funding cases. Deprivation of funding *to* the contract breaker is mere prevention but dissipation of assets/funding *from* the contract breaker is an inducement.

The tortfeasor must intend to procure a breach of contract. That is both necessary and sufficient and requires the tortfeasor to know that the act/s being procured will have the effect of breaching the contract. Constructive knowledge is not sufficient. If the breach of contract is neither a desired end nor a means to an end but merely a foreseeable consequence of the actions, the necessary intention will not be made out.

Causing loss by unlawful means

The constituent elements of this tort are:

- Unlawful interference with the freedom of a third party to deal with the claimant
- With the intention of injuring the claimant's economic interests
- Causation
- Loss to the claimant's economic interests

2 *OBG Ltd v Allan* [2007] UKHL 21, [2008] AC 1, [2008] 1 All ER (Comm) 1, [2007] 2 WLR 920, [2007] 4 All ER 545.

3 *Stocznia Gdanska SA v Latvian Shipping Co* (No. 3) [2002] EWCA Civ 889, [2002] 2 All ER (Comm) 768, [2002] 2 Lloyd's Rep 436.

4 *Marex Financial Ltd v Sevilleja (Garcia)* [2017] EWHC 918, [2017] 4 WLR 105, [2017] WLR(D) 287, [2018] 1 All ER (Comm) 761.

Liability in this tort is primary and requires the use of means which are in themselves unlawful.

The unlawful interference needs to be independently actionable by the third party against the tortfeasor. The only exception to that is where the third party has suffered no loss. If the act would have been actionable had loss been suffered that suffices. The freedom of the third party to deal with the claimant must be interfered with – see *RCA Corporation v Pollard*:[5] the sale of bootleg Elvis Presley records was not actionable despite being a criminal act because it did not interfere with the claimant's freedom to deal with Elvis's estate.

In this tort, the intention required is to harm the claimant's economic interests but it does not need to be the sole or predominant intention. However, mere foreseeability does not suffice if it is neither a desired end nor a means to an end. *Palmer Birch* points out that where the gain to the wrongdoer is necessarily at the expense of the claimant or the flip side of the gain and this is known to be the case, then the requisite intention will be made out.

Causation needs to be established at two levels, first between the unlawful acts and interference with the freedom of the third party to deal with the claimant and second, between those unlawful acts and the loss suffered by the claimant.

The tort is confined to damage to economic interests – see *Chalfont St Peter Parish Council v Holy Cross Sisters Trustees Incorporated.*[6]

Conspiracy to cause loss by unlawful means

The constituent elements of this tort are:

- A combination/understanding between two or more persons (not necessarily a binding agreement)
- Intention to injure (but this need not be the sole or predominant purpose of the conspirators)
- Concerted action pursuant to the conspiracy
- Use of unlawful means as part of the action
- Loss resulting to the target

Unlawful means are defined broadly to include criminal acts, torts, breach of contract and of fiduciary duty although the potential breadth of the tort is circumscribed by the causation requirement. See *Total Network SL v Revenue and Customs Commissioners*[7] – the unlawful acts must be the means by which the damage to the claimant is caused.

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5 *RCA Corporation v Pollard* [1983] 1 Ch 135 (CA), [1982] 3 All ER 771.

6 *Chalfont St Peter Parish Council v Holy Cross Sisters Trustees Incorporated* [2019] EWHC 1128 (QB).

7 *Total Network SL v Revenue and Customs Commissioners* [2008] UKHL 19, [2008] 1 AC 1174, [2008] 2 All ER 413, [2008] 2 WLR 711.

Common elements

Common elements of the three economic torts examined are that some loss is required to be demonstrated although damages are then at large. The loss must be to economic interests. In contrast with certain areas of tort law pure economic loss is the norm rather than the exception.

Palmer Birch v Lloyd – a case study

The judgment runs to 382 paragraphs of analysis of the complex factual background and the law of economic torts. In summary, the facts are as follows:

The claimant – Palmer Birch is a partnership carrying on a construction business specialising in the refurbishment of large houses ('PB').

The defendants – Michael and Christopher Lloyd are brothers. Christopher was the sole shareholder and director of Hillersdon House Ltd ('HHL'). HHL was incorporated in 2010. The judge described his voice as a director as 'almost ventriloquial'. Michael was not a director of HHL. He was a non-domiciled businessman with interests in companies in Cyprus and Kenya. His UK home was Hillersdon House since 2014.

PB entered into a JCT contract with HHL to carry out £5 million of works to be completed in 72 weeks at Hillersdon House in 2012. The property was a 14-bedroom manor house of 18,000 square feet and 200 acres of land at Cullompton, Devon. There was a full design team and Project Manager. The original Project Manager was replaced with Mr Binmore of GCC in 2013.

HHL did not own Hillersdon House but had a lease granted in 2011 and a licence to alter granted in 2012 from the owner, a Cypriot company called Seizar Holdings Limited ('SHL') which was owned by Michael. The funds to buy Hillersdon House came from another of Michael's Cypriot companies, Bluecoat. SHL and Michael lent/advanced a large amount of the funds used to pay PB. Some of Michael's funds came from his UK bank EFG.

The contract contained the usual JCT provisions for interim payments and termination. The last interim certificate paid to PB was number 33. Number 34, due for payment in December 2014, and number 35, due in January 2015, in the total sum of over £400,000 were not paid.

Paragraph [35] of the judgment summarises what had happened up to this time:

> 'By the time Interim Certificate 34 was issued on 1 December 2014 further funding had become an issue for Michael. I will have to return below to the circumstances surrounding this in my assessment of the evidence but the general picture of things by that time was one where:
>
> i) in 2012, Michael had agreed to pay his ex-wife a 'very substantial cash sum' (as he expressed it in his witness statement) under their divorce settlement which had led him to approach EFG for

funding, thereby giving EFG a degree of say in relation to the project;

ii) in August 2013, Mr Binmore (as Contract Administrator) had awarded an extension of time of 34½ days by reference to PB's clause 2.27 notice in November 2013 based upon exceptionally adverse weather conditions;

iii) by August 2013 Michael was falling out with Savills (wearing their Project Manager hat) and was unhappy to pay their fees because he regarded them as responsible for a failure to manage the project so as to be on budget and within time. This led Savills to say that they would be terminating their Quantity Surveying services and, in turn, that led Michael to say (in an email dated 14 August 2013) that he would be consulting with HHL's solicitors with a view to making a claim against them in the region of £250,000;

iv) in November 2013 Michael had agreed to pay PB what was described as 'an ex-contractual payment' of £75,000 in recognition of additional preliminaries and loss and expense incurred in respect of works instructed and delays prior to 30 November 2012. Also in November 2013 Mr Binmore of GCC granted a further EOT of 45 days (to 16 December 2013) by reference to the other matters, beyond adverse weather, that PB had relied upon in their clause 2.27 notice a year earlier (such as missing or inaccurate information and delayed receipt of a sanitary ware schedule);

v) by November 2013, further works were instructed to be added to the Works stipulated in the contract (when the anticipated costs of completing those were estimated in September to have risen to £5.7m) at an additional cost of £923,280. Many of the items in the additional works were ones that had previously been pruned during the tender process to keep the contract price down;

vi) in February 2014, following a site meeting with Michael and Nelson Birch, Mr Binmore was recording an agreement for the payment 'on account' of preliminaries in respect of the period after 16 December 2013 until such date as might be fixed by a further EOT decision;

vii) in June 2014, Mr Paradise, with the caveat that the figures were ever changing and did not take account of the further anticipated claim for preliminaries in the light of PB's recent purported notice on 31 May 2014 seeking a further extension of time (see below), informed Michael that £5.868m had already been paid under the contract. With a total anticipated cost of £7.217m there was a further £1,349,497 plus VAT to pay. By June 2014, Michael and/or HHL had paid a total of £185,250 in respect of preliminaries (in effect PB's standing costs and overheads incurred regardless of progress, or lack of it) with a further £32,760 plus VAT sought in respect of them in the May valuation and duly paid. The July and August valuations also included claims in

respect of preliminaries (totalling approximately £90,000 plus VAT) which were paid, so that a VAT inclusive figure of £355,476 came to be paid in respect of preliminaries;

viii) by late July 2014 the £2.3m facility from EFG had been more than exhausted (and the excess of £352,585 over the £2.3m facility was being treated as repayable on demand rather than on 31 October 2015). This led the bank to indicate that Michael's and Christopher's London property at Albion Street, W2 should be sold unless Michael either refinanced with a third party lender or made some progress in realising an investment he had made in Kenya. In October 2013, and therefore during the life of the contract and the EFG loan, Michael had (through offshore companies in the BVI and Mauritius) made an investment of an unspecified amount in a property development known as Buffalo Mall, Navisha, Kenya ('Buffalo Mall'). His witness statement says that he made it in the hope that it would realise £1m by the end of 2014 and £1m by 2016;

ix) in August 2014 Michael had written to Mr Binmore expressing alarm that PB were (in place of a completion date of 16 October anticipated by their May request for an EOT) talking about completion in December. He said: 'WE need a proper program and for that program to be managed! Why do persist [sic] in letting PB get away without providing a proper program?';

x) by mid-September, by a letter dated 18 September 2014 referring to the information that had since been provided to support the EOT requested on 31 May 2014, PB were indicating that practical completion would be 17 March 2015;

xi) by late September 2014 Michael was investigating the possibility of obtaining alternative funding from Secure Trust Bank (who had proposed an investment loan of £3.5m supported by security not only over the Property but also a charge over a £500,000 cash deposit, a personal guarantee and second legal charges over Albion Street and Michael's Cornish property). However, his preference was to stay with EFG and, to that end, he told them he had prepared Albion Street for sale though his preference was to realise instead the value of his investment in Buffalo Mall. He also told me that he did not then have a cash deposit of £500,000 which could only have come from the proceeds of Buffalo Mall;

xii) by late October 2014 Michael had formed the view that Mr Binmore was not up to his role (or certainly the adjudication upon the EOT request) and he had discussed with Mr Offen the idea of engaging an independent programming expert 'to sort out this mess' (per Michael's email of 31 October 2014). Mr Offen had spoken to Mr Roger Gibson who they had in mind as the expert and who had indicated he was prepared to act;

xiii) on 11 November 2014 EFG had agreed, in the light of HHL's receipt of a VAT refund to advance a further £360,000 on certain

specific conditions related to the commissioning of the heating system at the Property and independent certification of the value of invoices;

xiv) by early November 2014 Michael and Michelmores had raised with Mr Binmore, at a meeting on 7 November 2014, their idea of HHL and PB jointly instructing an independent programming expert who (in place of Mr Binmore) would make a binding decision upon the amount of additional time to be awarded to PB to complete the works; and

xv) by early December 2014 the position appeared to be one where any further funding of the project by Michael or SHL was dependent upon the receipt of the Buffalo Mall monies.'

It was rightly accepted at trial that non-payment of the two interim certificates was a breach of contract. The judge noted that

> 'In the period surrounding HHL's default in relation to Invoices 34 and 35 the company did have available some monies which might have been used towards the payment of the invoices but which were not applied towards them.'[8]

Events in January 2015 included attempts by PB to obtain personal guarantees from Michael and advice given to Michael/HHL about liquidating HHL.

In March 2015 Mr Binmore's retainer was terminated as a result of his having granted an EOT to PB. Another Project Manager was appointed albeit not for long.

In April 2015 the contract was 'terminated' by HHL. It was accepted at trial (again correctly) that the termination was a repudiatory breach of contract. A without prejudice letter was sent on the same day which effectively invited PB to abandon all its claims. It was also discovered that some of PB's site containers had been broken into and tools and equipment taken. HHL was put into creditor's voluntary liquidation in June 2015.

The judgment notes:

> 'The fact that the Statement of Affairs presented to the meeting showed an estimated deficiency of over £11m forms the backdrop to PB's tortious claims against Michael and Christopher. At that meeting PB estimated the value of their claim against HHL to be £1,082,000.'[9]

It further includes that 'the evidence … shows, overwhelmingly, that Michael regarded himself as the effective client of PB.'[10]

8 *Palmer Birch v Lloyd*, note 1, para [48].
9 *Palmer Birch v Lloyd*, note 1, para [101].
10 *Palmer Birch v Lloyd*, note 1, para [109].

Paragraphs [110]–[112] state:

> ‘110. Michael therefore had no interest in the company with the immediate legal right to possession under its 21 year lease. Yet he had funded SHL’s purchase of Hillersdon House (to the tune of £3.2m) and was also to provide the many millions of pounds that HHL was to expend upon the property and its contents. His witness statement explained (at paragraph 504) that by the end of April 2015 SHL had advanced £8.7 million to HHL (£3.7m of which had come from EFG Bank under a facility secured by his personal guarantee and other property of his) and he personally had lent the company some £1.7 million.
>
> 111. It would have been and was obvious to Michael and his advisors from the outset that HHL had no means of repaying the many millions of pounds that he was to inject into the property via that £100 company, nor even, prior to the commencement of any business, the means to pay any rent to its landlord SHL for the use of the property (allowing for Michael’s intended co-occupation) which even in its pre-refurbished state was a valuable one. Therefore, from the outset and well over a year before HHL entered into the contract with PB, his solicitors Michelmores were proposing in August 2010 that the relationship between SHL and HHL would be regulated by three agreements: (1) the Lease; (2) a Loan Agreement; and (3) a Put and Call Option.
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> 112. The combined effect of those three agreements ensured that Michael’s further, post-acquisition investment in Hillersdon House was not truly at risk by virtue of the fact that it had been channelled through a limited company that very arguably was never solvent during its short life.’

Paragraphs [126] and [127] identify the key issues:

> ‘126. On a general level, my determination of the economic tort claims (at least at the stage of assessing the conduct of Christopher and/or Michael) involves consideration of the question whether in late 2014 or the first few months of 2015 a decision was made by the brothers, or by Michael, to leave HHL and its third party creditors (or at least some of them including PB) high-and-dry. It was a key element of PB’s case that Michael’s knowledge that the liquidation of HHL could save him significant sums in respect of work already undertaken in relation to the Property (owed not just to PB but other third party creditors of the company) underpinned what PB says was his preparedness to engage in tortious conduct.
>
> 127. The reality of the situation is also of real significance given the lines of defence adopted by the brothers in response to the alleged torts. As I have already touched upon above and address further below, it is a central plank of their defence that the distinct legal personality of HHL and the absence of any obligation upon Michael or SHL to commit further funds to HHL, beyond those previously agreed to be lent and already advanced, means that (for

the purposes of the inducement tort) there was no relevant inducement as opposed to non-actionable prevention. And, in respect of all three torts, they say no loss was caused when it is apparent that HHL in any event lacked the means to pay PB. Whether or not those are good defences I have found to be one of the more difficult matters to decide.'

Paragraph [130] is instructive:

'130. In that regard, the way HHL's history was presented to creditors at the meeting on 25 June 2015 is illuminating (see paragraph 100 above). The demise of HHL was explained then by reference to the financial backers losing confidence in HHL's ability to control the project and a decision to cease further funding of the company. Yet there was in reality only one financial backer whose further funding was in question and the provision of which would keep the outstanding loan from EFG to SHL in place to see the expanded Works through to completion. There is no indication in the contemporaneous documents that he, Michael, had lost confidence in HHL as opposed to those with whom it contracted. Indeed, such an expression of lost confidence on the part of Michael would have amounted to a loss of confidence in himself when (as we explain below) the evidence shows that he effectively ran HHL's construction project and it was he, rather than Christopher, who sought to call the shots in HHL's dealings with PB and the professionals retained on the Contract.'

The applicable legal principles are set out and considered by the judge from paragraphs [153]–[266] of the judgment. We have set out the basic principles applicable to each of the three economic torts above. The judge's assessment of the witness evidence is at paragraphs [267]–[345].

The judge made his findings with reasons for each:

i) 'Finding 1: Michael was fully aware by no later than 19 November 2014 that HHL had no right to suspend the Works.'

ii) 'Finding 2: The non-payment of Invoice 34 after 15 December 2014 and non-payment of Invoice 35 after 20 January 2015 constituted breaches of contract by HHL. As already noted, this is admitted by the defendants and correctly so.'

iii) 'Finding 3: The payments to Oana, SHL's administrator, around the time Invoices 34 and 35 were falling due constituted a misapplication of HHL's monies but the payments to SHL in respect of interest did not.'

iv) 'Finding 4: By no later than early January 2015 Michael had fully in mind the negotiating leverage available to HHL as a limited liability company with no cash resources of its own, significant debts and a precarious tenure of the Property.'

v) 'Finding 5: 'By no later than the end of January 2015 Michael and Christopher (whose involvement was necessary because he was

the sole appointed director of HHL) had decided that the preferred route for getting rid of the existing and further contemplated financial claims by PB under the Contract, with SHL continuing to enjoy the benefit of the Works to date, was the liquidation of HHL. By no later than that time, they decided and colluded to act accordingly.'

vi) 'Finding 6: The replacement of GCC as Contract Administrator by Alder King did not dissuade Michael and Christopher from pursuing the liquidation option but instead reinforced their decision to pursue that course.'

vii) 'Finding 7: Christopher did not receive advice on 21 April 2015 from Mr Kirk, the insolvency practitioner later appointed as liquidator, that HHL should be put into liquidation so as to justify (commercially if not contractually) HHL giving notice of immediate termination of the Contract the following day.'

viii) 'Finding 8: The notice of immediate termination of the Contract given by Michelmores' letter dated 22 April 2015 was a repudiatory breach of the Contract. This is admitted by the defendants and, again, correctly so.'

ix) 'Finding 9: Christopher's collusion with Michael after January 2015 was not such that he can properly be described as having acted only within the scope of his constitutional role within HHL, so that his part in it cannot be treated as justifying liability only on the part of HHL (which has not been alleged by PB) and not him personally.'

x) 'Finding 10: Christopher therefore acted in a way which exposes him to liability under the one economic tort which is alleged against him, the unlawful means conspiracy.'

xi) 'Finding 11: For much the same reasons Christopher cannot seek shelter behind HHL in respect of the claim in conversion that is made against him if he participated in any act of conversion.'

xii) 'Finding 12: Materials belonging to PB (but not tools) were removed by Michael, or on his instructions, when he had no right to take them.'

xiii) 'Finding 13: There is no evidence to implicate Christopher in the conversion of PB's materials.'[11]

On the basis of those findings the judge decided that Michael did procure HHL's repudiatory breach of the contract and committed the inducement tort alleged in so far as the termination of the contract and cessation of the Works were concerned. He drew the distinction between inducement and mere prevention, the latter not being actionable as noted above. He held that the non-payment of certificates 34 and 35 was not actionable because

11 *Palmer Birch v Lloyd*, note 1, para [346].

> ‘Michael is able to rely upon the basic fact that, at the time they fell due, the company simply lacked the financial means to pay them and that fact alone accounted for the relevant breach.’.[12]

However there was no such defence available to Michael as to HHL’s repudiatory breach of the contract on 22 April 2015. That was

> ‘one actively brought about by Michael as a result of the decision, reached by no later than the end of January 2015, to bring about the liquidation of HHL but not, with that event, the cessation of any further refurbishment of the Property. By 22 April 2015 Michael may have had enough of PB but there was no reason why HHL should have done so… by pressing on with the decision to liquidate in accordance with my fifth, sixth and seventh findings, Michael did cross the line from prevention to inducement. And he did so by purporting to speak for HHL as if he was the Client under the Contract. This is not, therefore, a case where the alleged inducer can say that the breach would in any event have taken place without any inducement on his part’.[13]

Crucially for the decision in this case where the defence emphasised the corporate character of HHL and characterised the claim as an impermissible attempt to breach the corporate veil the judge held that ‘Michael’s conduct was not a reflection of HHL’s separate corporate personality but an abuse of it’.[14] It was also an important factor that the decision to liquidate HHL was taken after monies had been received which would have seen the project to completion. The judge was satisfied that on the facts of this case the actions of Michael in *diverting* funds from HHL’s bank account when they could and should have done so was an act of inducement. The judge rejected an attempt to rely on the defence of justification as on the wrong side of the case law line commenting that Michael’s actions were ‘motivated by nothing more than commercial (and property-based) self-interest’.[15] The ‘no loss’ argument was also rejected.

As to the unlawful means conspiracy alleged, on the basis of his fourth to tenth findings the judge decided that Michael and Christopher did collude to bring about the repudiatory breach of the contract:

> ‘In my judgment, the evidence safely supports the inference that by no later than late January 2015 Michael and Christopher had reached an agreement to bring about the liquidation of HHL so that it might escape from the Contract and thereby avoid meeting PB’s existing and anticipated claims.’[16]

The conversion claim against Michael was also upheld on the evidence but not against Christopher.[17]

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12 *Palmer Birch v Lloyd*, note 1, para [358].
13 *Palmer Birch v Lloyd*, note 1, para [359].
14 *Palmer Birch v Lloyd*, note 1, para [360].
15 *Palmer Birch v Lloyd*, note 1, para [362].
16 *Palmer Birch v Lloyd*, note 1, para [372].
17 *Palmer Birch v Lloyd*, note 1, para [380].

Lessons to learn

One of the key elements of the defence to the claims against Christopher and Michael was their reliance on the corporate nature of HHL and the principle enshrined in English law since Salomon v Salomon[18] that directors and limited liability companies have different legal personalities. In our view this case does not offend that principle at all. Christopher was the sole director of HHL, Michael had no official role with HHL at all. The judge's decision was driven by the conduct of Christopher and Michael and the way in which each of them abused the corporate personality of HHL – as per the numerous references above. It is suggested that the non-director cannot on any view rely on the corporate personality of HHL when he has no official role in its governance and yet clearly was its governing mind/funder. Likewise the actual director cannot rely on the corporate veil when s/he does not act in reality as the directing mind of the company. So an important lesson for those who choose to operate through limited liability companies is to ensure that they operate within the bounds of company law themselves and do not allow third parties to run their companies through them.

It is perhaps too simplistic to say that this case serves as a further warning to contractors not to enter into contracts with impecunious employers since that warning is surely not really needed however much the truth of it is forgotten. That said, this case does serve as a reminder to investigate the corporate structure and deal structure behind projects and to insist on some form of protection if the structure looks to be unusual and/or if either party is a stranger to the other.

Lawyers for parties to construction projects will now need to advise corporate clients and their directors of the repercussions of this case and litigation lawyers will need to consider using the economic torts when the primary party to a contract is either in liquidation or otherwise impecunious.

Andrew Singer QC and **Kelly Pennifer** are barristers practising at Kings Chambers.

18 *Salomon v Salomon & Co Ltd* [1896] UKHL 1, [1897] AC 22.

'The object of the Society
is to promote the study and understanding of
construction law amongst all those involved
in the construction industry'

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