Neutral Citation Number [2021] EWHC 2506 (Ch)

CR-2019-006007

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF CSB 123 LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 23/09/2021

Before :

ICC JUDGE BARBER

- -

Between :

MARK SIMON REYNOLDS
(As Liquidator of CSB 123 Limited)

Applicant

- and –

CAROLINE STANBURY

Respondent

- -

Hugo Groves (instructed by Blake Morgan LLP) for the **Applicant**
Andrew Trollope QC and Elaine Palser (instructed by RPC) for the **Respondent**

Hearing dates: 26, 27, 28, 29, 30 April and 4, 5 May 2021
(followed by further written submissions)

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Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 9.30 a.m on 23 September 2021

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ICC Judge Barber

1. This is an application brought under s.212 of the Insolvency Act 1986 by Mr Reynolds, as liquidator of CSB 123 Ltd ('SC1') against Ms Stanbury, a director of SC1. In broad summary, the Applicant claims that the Respondent transferred SC1's business and assets for no consideration to connected parties. The Applicant maintains that this was in breach of the duties owed by the Respondent to SC1 pursuant to ss171-175 of the Companies Act 2006 and an unlawful distribution of capital. The Respondent maintains that the application is misconceived and denies any wrongdoing.

The burden of proof

2. The parties were at odds on who bears the burden of proof. The Respondent maintains that this is the Applicant's application and that the Applicant bears the burden of proof. The Applicant maintains that where a director is the recipient of a benefit from the company, the evidential burden is on the director to prove that the payment or transfer of the benefit was proper. In this regard I was referred (inter alia) to Re HLC Environmental Projects Ltd [2013] EWHC 2876 (Ch), Re Mumtaz Properties Ltd [2011] EWCA 109, GHLM Trading Ltd v Maroo [2012] EWHC 61 (Ch), Colin Gwyer & Associates v London Wharf (Limehouse) Ltd [2003] BCLC 153 and Lexi Holdings plc v Luqman [2007] EWHC 2652.

3. In Burke (Liquidator of Idessa (UK) Ltd) v Morrison EWHC 804 (Ch) , Ms Lesley Anderson QC, sitting as a Deputy High Court Judge, had said this:

> 'I am satisfied that whether it is to be viewed strictly as a shifting of the evidential burden or simply an example of the well-settled principle that a fiduciary is obliged to account for his dealings with the trust estate … [counsel for the liquidator] is correct to say that once the liquidator proves the relevant payment has been made the evidential burden is on the Respondents to explain the transactions in question. Depending on the other evidence, it may be that the absence of a satisfactory explanation drives the Court to conclude that there was no proper justification for the payment. However, it seems to me to be a step too far for [counsel for the liquidator] to say that, absent such an explanation, in all cases the default position is liability for the Respondent directors. In some cases, despite the absence of any adequate explanation, it may be clear from the other evidence that the payment was one which was made in good faith and for proper company purposes.'

4. In GHLM Trading Ltd v Maroo, Newey J, having explored the authorities, confirmed at [149]:

> 'In the circumstances, I agree with Mr Miles that, once it is shown that a company director has received company money, it is for him to show that the payment was proper….'

5. In Maroo, Newey J also referred to as 'helpful' a passage from the judgment of Mr Robert Miles QC, sitting as a Deputy High Court Judge, in the case of Gillman & Soame Ltd v Young [2007] EWHC 1245 (Ch). In that case, a company (referred to as 'GSL') claimed that a former director (a Mr Young) was liable for breach of fiduciary duty for misappropriating company assets. At paragraph [82], the learned deputy stated:

> 'I should also say something about the burden of proof. Where a person in a fiduciary position receives property of his principal the burden is on him to account … This principle applies to company directors as it does to trustees … It is, therefore, for GSL to prove that Mr Young received a particular payment from the company; but where it does so, it is for him to show that the payment was proper.'

6. At paragraph 115 of Re HLC Environmental Projects Ltd, the learned deputy judge stated:

> 'I accept Miss Leahy's submission that in a misfeasance claim where, as here in respect of the Personal Payments, it is proved that a director is himself the recipient of a benefit from the company, the evidential burden is then on him to prove that the payment was proper: see Idessa (UK) Ltd v Morrison [2011] EWHC 804 (Ch)… per Lesley Anderson QC at [28] and GHLM Trading Ltd v Maroo [2012] EWHC 61 (Ch) .. per Newey J at [149].'

7. Naturally I accept with gratitude the guidance given in these passages.

8. In my judgment the correct approach is as follows. Overall, the burden of proof is on the Applicant. He must prove his pleaded case. To the extent, however, that the Applicant's pleaded case rests on the wrongful transfer to the Respondent (or those connected with her) of money or other assets belonging to SC1, a two-stage process is involved. First, it is for the Applicant to prove, within the bounds of his pleaded case, the transfer of given sums or other assets belonging to SC1. As part of this first stage, where ownership of the asset or money in question is in issue, it is for the Applicant to establish on a balance of probabilities that the asset or money in question belonged to SC1. It is only once the Applicant has established the transfer or payment of assets or money *belonging to SC1* that the second stage is engaged. At the second stage, the evidential burden is on the Respondent to prove that the payment or transfer was proper.

Approach to the evidence

9. A number of observations have been made in the caselaw as to the fallibility of human memory and the importance of contemporaneous documents as a means of getting to the truth. The following summary of pertinent observations is drawn, with

gratitude, from the judgment of Mrs Justice Joanna Smith in TMO Renewables Limited [2021] EWHC 2033 (Ch) at [103] to [107].

10. In Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm), Leggatt J opined (i) (at [18]) that memory is especially unreliable when it comes to recalling past beliefs, which are revised to make them more consistent with our present beliefs (ii) (at [19]) that the process of civil litigation itself subjects the memories of witnesses to powerful biases because witnesses often have a stake in a particular version of events; and (iii) (at [20]) that the process of preparing for trial can of itself interfere with memory, the effect of the process of preparing being to establish in the mind of the witness the matters recorded in his or her own statement and other material and to cause the witness's memory of events to be based increasingly on this material rather than on the original experience of the events.

11. These observations caused Leggatt J to conclude in Gestmin (at [22]) that:

> '….. the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose - though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of the witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth .'

12. The Court of Appeal made related observations in the case of Simetra Global Assets Ltd v Ikon Finance Ltd [2019] 4 WLR 112. At [48] Males LJ said:

> '[48] In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including emails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those

> documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour when giving evidence.'

13. I pause briefly to note that the observations of both Leggatt J and Males LJ arose in the context of commercial cases. In Martin v Kogan [2020] FSR 3, the Court of Appeal again addressed the issue of witness evidence. At [88] Floyd LJ said this:

> '[88] Gestmin is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed …. But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all of the evidence. Heuristics or mental shortcuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence.'

14. Whilst naturally I take all such observations into account, I am particularly grateful for the guidance given by Floyd LJ in Martin v Kogan at [88]. I would add that, in this case, the task of fact-finding is made more difficult by the loss or destruction of a substantial amount of relevant contemporaneous documentation, including email correspondence, through no fault of the Respondent. I shall return to the impact of this in due course.

Written Evidence

15. For the purposes of this application, I have read the following witness statements together with their exhibits:

(1) witness statements of Mark Reynolds dated 9 September 2019 and 30 October 2020;

(2) witness statement of the Respondent dated 9 October 2020;

(3) witness statement of the Respondent's father, Anthony Stanbury, dated 9 October 2020;

(4) witness statement of Ms Rania Harb, dated 9 November 2020;

(5) witness statement of Ms Pauline Doyle dated 8 October 2020;

(6) witness statement of Ms Ophelia Malone dated 7 October 2020;

(7) witness statement of Ms Dorothee de Pauw dated 1 October 2020;

(8) witness statement of Ms Petra Ecclestone dated 25 September 2020.

16. In addition, I have read the expert reports of Mr Trevor Slack and Mr Ben Hobby respectively and their later joint statement of 25 November 2020.

Witnesses of Fact

17. For the Applicant I heard evidence from Mr Reynolds. Since his appointment as liquidator of SC1 came long after the events which formed the basis of the application, he was not in a position to give any direct evidence about those events. He confirmed both of his witness statements to be true without any qualification, even though his first witness statement supported an application notice which had since been substantially amended to introduce a different case. He refused to accept any responsibility for the loss or destruction of relevant documents and sought to play down their significance. Somewhat surprisingly for an office-holder, in oral testimony, he displayed a degree of personal hostility towards the Respondent at times, making somewhat contemptuous references, on more than occasion, to the Respondent having 'cherry-picked' items to purchase from Gift Library.com Limited, for example. Overall, however, I am satisfied that Mr Reynolds was honest in his responses to questions put to him. That said, beyond the production of documents, his evidence was of little probative value.

18. For the Respondent, I heard evidence from the Respondent, her father Anthony Stanbury, Ms Rania Harb, the Respondent's former executive assistant, Pauline Doyle, former finance director of Gift Library.com Limited, Ophelia Malone (nee Hohler), former PR head at Gift Library.com Limited .

19. The Respondent and her father Anthony Stanbury were each credible and honest witnesses. Their confusion at points as to the odd detail, the timing of given events, or the order in which events occurred, was entirely understandable given the passage of time and the number of documents which are no longer available. Many of the issues raised by the application concerned meetings, discussions and legal or accounting decisions that took place eight or nine years ago. Overall, whilst I bear in mind that they are father and daughter, I am satisfied that the Respondent and Mr Stanbury each answered questions put to them honestly and to the best of their ability and recollection. It was clear that they prepared their written evidence independently of each other, as they made different mistakes.

20. Ms Harb, Ms Pauline Doyle and Ms Ophelia Malone were all honest witnesses who responded readily and truthfully to questions put to them. I take into account the fact that none of these individuals have any ongoing professional connection with the Respondent. Again, as with the Respondent and Anthony Stanbury, Ms Harb's confusion at points as to the odd detail or the timing of given events was entirely understandable given the passage of time and the number of documents which are no longer available. Overall, I am satisfied that each of these witnesses answered questions put to them honestly and to the best of their ability and recollection.

21. Hearsay notices were served in respect of Ms Petra Ecclestone and Ms Dorothee de Pauw and they did not give oral evidence. I was invited by both parties to read their

statements in their absence. Mr Groves urged me to attach no or little weight to their evidence.

Expert Witnesses

22. Each side presented expert valuation evidence as to the value of SC1 as at 22 October 2012 and as at 31 January 2013. Mr Trevor Slack of Griffins appeared for the Applicant and Mr Ben Hobby of Baker Tilly appeared for the Respondent. I shall comment on specific elements of the expert evidence as and when relevant during the course of this judgment. At this stage I shall confine myself to some general observations.

23. Mr Slack did not fare well in the witness box. His report did not stand up to close scrutiny and he had no persuasive answer to a number of key questions put to him in cross-examination. There were also points in his oral testimony at which he failed to comply with his overriding duty to assist the court. One of his responses in cross examination was so astonishing that he had to be reminded by the court that he was giving evidence under oath and that the court process was ‘not a game’. He twice apologised to the court for his answer after that intervention.

24. In contrast, Mr Hobby presented as an entirely credible expert witness with a keen awareness of his oath and his duty to assist the court. His report was extremely thorough. In cross examination, he very properly stayed within the bounds of his report and research. I am satisfied that Mr Hobby did his best to assist the court to the best of his ability.

Background

25. I shall begin by setting out the factual background to this application. To the extent that there is any issue over aspects of this history, the following paragraphs constitute my findings in this respect.

26. The Respondent is a highly regarded fashion stylist. By the time that she was in her early twenties, she realised that she could make money styling wealthy people that she knew. Initially she worked from her home in London. Her sole trader business grew by word-of-mouth and, over time, she became the personal fashion stylist for a small, select group of (between 5 and 10) extremely high net worth individuals, including Tamara and Petra Ecclestone, Kirsty Bertarelli and Dorothee de Pauw. The Respondent did not advertise her business at all as she did not need to; her clients were either friends or introduced through mutual acquaintances and they came to her. As put by the Respondent:

> ‘I never publicised or marketed my personal styling business,
> as I did not want nor have time for any more clients.’

27. Whilst her client base was small and intimate, each client had substantial disposable income and would want the most luxurious pieces to wear at social engagements, wardrobes for travelling abroad and high-end outfits for everyday wear. These clients would spend considerable sums on luxury clothes and accessories selected by the Respondent, because they trusted her taste and her eye for fashion. As put by Ms Rania Harb, former executive assistant to the Respondent, whose evidence I accept:

> 'They were very particular, very busy clients with very exacting standards… They didn't want to use anyone else as they trusted her to know what they wanted and what looked good; they didn't want to waste time speaking to someone else when the advice that mattered to them was Caroline's.'

28. The Respondent's clients would book her for a number of days at a time to organise their wardrobe for a season. The Respondent would go into their homes, sit with them and put looks together. Some clients required 'look books' to be delivered to their housekeepers, so the housekeeper would know what to pack for a given holiday or event. The Respondent took clients to London or Paris fashion week from time to time and would travel to them if they were abroad. The Respondent would also message a client if she spotted something that she thought that client might like when she was out shopping or attending fashion events.

29. It was a highly personalised service. The Respondent's clients expected her to be available at the drop of a hat. Again, as put by Ms Harb, whose evidence I accept:

> 'A client might ring and say they were going to Aspen tomorrow and needed moon boots, and they would need to know that Caroline would obtain for them the kind of moon boots they would like and would coordinate with the rest of this key wardrobe, ready for their flight the next day.'

30. The Respondent charged an hourly fee for her styling services plus commission on the items that her personal styling clients purchased through her or on her advice. Some items she purchased for a given client on her own American Express credit card and then invoiced the client for the cost plus commission. Some items would be purchased by the client direct (or via the Respondent using the client's credit card with the client's permission) and the Respondent would then invoice simply for commission. The Respondent charged a 10% commission on most items, although at times, an increased percentage would be charged if the item was particularly rare or hard to come by. In addition, as she developed relationships with certain stores, some stores would give her a further 10% discount on items such as jewellery.

31. The Respondent regularly shopped for her clients in the high-end boutiques in London and became a highly valued customer at Harrods, earning her first access to luxury wear and accessories when the new seasons came into stock. Harrods would allow the Respondent to sign out £100,000 worth of stock at a time, to take and show her clients.

Hermes Bags

32. One of the luxury products that the Respondent's styling clients most frequently desired were Hermes Birkin and Kelly handbags. Hermes bags were internationally recognised as investment pieces. At the time, Hermes stores were highly selective as to who they would sell to; customers were often put on a waiting list for given bags and were usually limited to buying only two pieces a year. The Respondent had styling clients who wanted such luxury bags in a wide range of styles and colours. They would be willing to spend more than double the original cost of the handbag to secure the one they wanted; whilst they would often sell for, say, between £14,000

and £30,000, certain clients would spend up to £70,000 for particular pieces, such as a special limited edition crocodile Kelly bag in a particular colour.

33. At the time, Hermes did not sell their handbags to any third-party retailers and there was a considerable market for second and third hand Hermes bags. The Respondent had her own personal collection of such bags. She also enjoyed an extensive network of connections in the fashion world. If one of her personal styling clients wanted a Birkin or Kelly handbag that she didn't own personally, the Respondent was able to source the desired combination of design and colour through her international connections.

34. Over time, the Respondent's personal styling clients gradually extended the scope of what they wanted her to assist them with and, in addition to their wardrobes, she would be asked to source gifts for them; from the high value jewellery they might give to their partner, to the stocking fillers their children would receive at Christmas. It became commonplace for her to arrange all her clients' gifts, from birthdays and social events to Christmas and other holidays. The Respondent was doing this alongside her personal styling business and recognised an opportunity to carve out a new luxury gifts business which had the potential to cater to hundreds of thousands of customers, in contrast to the intimate client base that she could maintain as a personal stylist. It was this that led to the incorporation of Gift.Library.com Limited.

Gift Library.Com Limited

35. On 21 July 2008, the Respondent incorporated Gift Library.com Limited ('GL'). This was an online luxury goods retailer which operated out of leasehold premises at The Coda Centre, 189 Munster Road, London SW6 6AW. The Respondent was sole shareholder and sole director initially. In evidence she explained that she founded GL as her 'nest egg', as she saw real potential for growth through this concept.

36. To get the new business off to a flying start, the Respondent contacted her personal styling clients and asked them to support her in her new company, which they did. She also approached her godfather Mr Alan Rind, a wealthy private investor and director of Stonecliffe Rock Limited ('Stonecliffe'), for investment in GL. Alan Rind was a good friend of the family, having known the Respondent's father for over 50 years.

37. Stonecliffe made an initial investment of £500,000 in GL, secured by way of a debenture. Originally the loan was due for repayment in 2012, but this was later extended to 31 January 2015. Mr Rind's fellow director at Stonecliffe, Mr David Morein, was appointed as a director of GL. On the recommendation of Mr Rind and Mr Morein, Mr Ian Fenton ('Mr Fenton') of FSPG Chartered Accountants ('FSPG'), who was Mr Morein's son-in-law and a fellow director at Stonecliffe, was retained to manage the accounting affairs of GL. At this stage, the Respondent also instructed Mr Fenton of FSPG as her personal accountant, in order to have one source of financial advice for all queries relating to her personal and business affairs.

38. GL was ahead of its time. Online shopping was relatively new. At its peak, GL had a team of 50 employees. The Respondent curated the GL catalogue, ensuring that the stock exclusively comprised of items that she would own herself or that she would choose to give as gifts. As put by the Respondent,

> 'The idea was that Gift Library clients would have a catalogue of products per season, each individually selected or approved by me, ranging from trinkets to designer jewellery and handbags costing many thousands of pounds, all of which were guaranteed always to be in stock. That is what separated us from other online retailers; we carried stock of virtually everything on the website. Clients could pick anything from the catalogue in the comfort that it would be tasteful and stylish, and that they could receive it that day (often by hand delivery)'.

39. The Respondent was heavily involved in all of the marketing material. The GL catalogue was an essential marketing tool, designed to sit on the customer's desk, easily accessible for the busy professional who realised at the last minute that they needed a gift for a given occasion. A number of the GL catalogue issues had photographs of the Respondent on the front cover and, interspersed with images of the gifts, were pictures of her and her comments about the featured products. The Respondent's French bulldog, Buster, also featured heavily in the GL promotional materials, photographed alongside a number of the products in the catalogue and appearing on the wrapping paper and stickers used; he was effectively the brand's logo.

40. GL grew to have thousands of clients. As with many internet-based start-ups, however, it required a considerable amount of working capital to operate.

41. In June 2010, a further investor for GL was found, Trendex Invest SA ('Trendex'). Trendex was the company of a good friend of the Respondent, Ms Goga Ashkenazi. As a term of the investment, Ms Ashkenazi became the third director of GL. Another friend of the Respondent, Ms Tamara Beckwith, also invested in GL in around June 2011. She became a shareholder but not a director.

42. In the meantime, the Respondent had continued with her personal styling business as a sole trader. In 2010, Mr Fenton of FSPG advised her that she should set up a company and run her personal styling business through that. It was this that led to the incorporation of Style Counsel Limited.

Style Counsel Limited ('SC1')

43. In September 2010, on the advice of FSPG, the Respondent incorporated SC1. The Respondent addresses this at paragraph 80 of her witness statement, stating as follows:

> 'I was advised that this should be set up for financial management/tax reasons only and the intention was that I would continue to carry on my styling on the same basis; my clients were simply employing me, Caroline Stanbury, because they knew me and trusted my personal fashion sense.'

44. The Respondent was appointed sole director of SC1 and FSPG were retained as its accountants. Its registered office of SC1 was 21 Bedford Square, the address of FSPG. The Respondent held 1 Ordinary £1 share. In addition, 99 B Ordinary Non-Voting shares of £1 each were allotted in favour of the Respondent's three children and 100 C Ordinary Non-Voting shares were allotted in favour of the Respondent's personal assistant, Ms Rania Harb.

45. SC1 was a small concern. It had no premises of its own; the Respondent ran SC1 from her desk at GL's trading premises in Munster Road. It held no stock, save for the odd item spotted by the Respondent on a shopping trip and purchased ad hoc, in anticipation that a particular client would like it. Although the Respondent was from time to time assisted by 'runners' paid an hourly or daily fee on an ad hoc basis for specific tasks, SC1 did not have any employees either, save for (latterly) the Respondent's executive assistant, Ms Harb. Whilst the Respondent drew a modest PAYE salary from SC1, she was largely remunerated through dividends and had no contract of employment with SC1, written or otherwise: Ultraframe (UK) Limited v Clayton (No 2) 2003 WL 22826999 at [20]-[21]; Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497 at 515: see too paragraphs 302-314 below. The Respondent was sole director, controlling shareholder, and enjoyed complete autonomy over the work that she undertook. She did as little or as much work as she pleased. Her oral testimony reflected the reality: 'It was me and one employee' [ie Ms Harb].

46. As accountants for SC1, FSPG were extensively involved in the day to day administration of SC1. They prepared invoices for SC1. They also provided book-keeping and banking services for the company as well as preparing annual accounts, VAT and other tax returns, providing tax advice and dealing with filings at Companies House.

47. SC1 opened a bank account with Barclays Bank, sort code 20-36-13 account number 93554570 on 5 November 2010 ('the Barclays account'). It had a PDQ terminal (ie a credit card machine) for ease of payment and also a number of bank cards, some of which were used by runners to pick up various items. SC1 also had a client account with FSPG. Invoices for SC1 gave details of both the Barclays account and the FSPG client account; customers had the option of making payment to either account. Duplicate bank statements relating to the Barclay's account were sent to FSPG, which undertook regular (monthly) reconciliations.

48. The income streams of SC1 remained the same as those enjoyed by the Respondent as a sole trader, namely (1) an hourly charge for the Respondent's personal styling services; (2) commission or uplift on items, including luxury bags and jewellery, that the Respondent's personal styling clients from time to time purchased on her advice, as part of the personal styling service; and (3) commission or uplift on items (such as a particular luxury bag in a given style or colour) that the Respondent's personal styling clients from time to time asked her to source for them through her global connections.

49. Payment arrangements followed a similar pattern to those of the Respondent's former sole trader business, save for the interposition of SC1. SC1 invoiced clients at the hourly rate hitherto charged by the Respondent for her personal styling services and

for the hourly rate of any 'runners' used on an ad hoc basis as part of that service. In relation to purchases of clothing, luxury bags or jewellery, on some occasions SC1 (or the Respondent herself, using her personal American Express card) purchased the selected items for a given client and then SC1 invoiced the client for the cost of those items plus an uplift. On other occasions the client would purchase the selected items directly (or via the Respondent using the client's credit card) from the supplier and SC1 would then invoice simply for commission. In some cases, purchases would happen very quickly (within hours of a piece being spotted); in others there could be a 'lead time', to source a given piece. Where there was a 'lead time', SC1 would sometimes invoice for a part-payment and invoice for the balance once the piece had been sourced and delivered.

50. Save for the odd item purchased ad hoc on a shopping trip in anticipation that a particular styling client would like it, SC1 did not carry a stock of clothing, bags and jewellery; the Respondent simply had extremely good connections with luxury stores, designers and suppliers and her own personal collection of luxury bags. Save for the odd rare item with a 'lead time', SC1 did not have a 'forward order' book either. The Respondent's personal styling clients could call at the drop of a hat (on occasion at 2am or on Christmas Day) and for the most part demanded immediate satisfaction.

Ms Rania Harb

51. By March 2011, the Respondent realised that she needed an executive assistant to support her in her roles in relation to GL and SC1. Accordingly, Ms Rania Harb was taken on. Initially Ms Harb was employed by GL, although in later years she received some salary from SC1 and latterly SC2 as the emphasis of her work changed. The Respondent described Ms Harb as her 'right-hand woman, managing the logistics of my styling business and Gift Library as well as my personal diary.' Ms Harb's role was fluid; as she put it: 'anything that Caroline needed to function'.

52. Among her various duties, Ms Harb would deal with all of the administrative tasks that arose from the Respondent's personal styling activities, including being the point of contact with FSPG, who dealt with invoicing for SC1 as well as other book-keeping and accounting functions. When an invoice was required, Ms Harb would send FSPG the information and any copy documentation requested, for FSPG to prepare the invoice.

53. Ms Harb kept paper records in relation to each personal styling job; as she put it, she would have 'receipts thrown at her from all directions' and one of her tasks was to piece it all together, setting out a breakdown of the sums to be charged and the expenses to be re-imbursed, to work through with FSPG. For each styling job, Ms Harb stapled together all the receipts and other paperwork which related to it (including on occasion a hard copy of any key email exchange) together with a breakdown of the figures. She stored the stapled documents in a set of white files marked 'Style Counsel' which she kept at GL's trading premises on Munster Road.

54. Ms Harb also set out in email communications with given clients and FSPG the details of any matters agreed, saving the emails onto her computer at GL's premises, so that any queries which arose about a given job or the sums charged for it could be resolved quickly and efficiently. She only used a GL email address whilst working for

both GL and SC1; SC1 did not own a domain name at the time. Her evidence (which in this regard I accept) was that she

> 'kept a very clear 'paper trail' of everything I did by email; even when I dealt with matters by telephone, I followed it up by email to ensure that there was a proper record of the transaction or discussion. I would describe myself as 'a hoarder' and I kept everything. That would all have been kept on the Gift Library server along with financials like management accounts, stock lists, supplier paperwork, purchase prices and invoices for goods….'

55. If FSPG raised a query about a cash withdrawal or unexplained payment from SC1's bank account, which they regularly monitored, Ms Harb would provide information and any back-up documentation requested to explain the payment or withdrawal. If a lunch for GL business was mistakenly paid by the Respondent on an SC1 credit card, Ms Harb would work through the allocation queries with FSPG.

56. In the Respondent's words, Ms Harb 'was incredibly proficient and good at her job and I trusted her. Rania's hands-on involvement allowed me to carry out my role as the creative.'

The Artemis Investment

57. In 2012, GL started to experience cash flow difficulties. Its business model required it to carry a lot of stock, so that any order could be completed within promised timescales. It also required an extensive marketing budget. It was clear that additional funding would be needed for the business to succeed.

58. In or about June 2012, the Respondent approached Mr John Dodd, a fund manager at Artemis Alpha Trust plc ('Artemis') whom she had met at a shooting weekend in Oxfordshire the year before. Artemis was a listed UK investment trust with a broad mandate to invest in a variety of assets. It had already successfully invested in a number of unlisted internet-based retail companies. Mr Dodd sent various people from Artemis to carry out due diligence on GL and report back. Following due diligence, in late August/early September 2012, Artemis offered to invest £1,500,000 in GL. The first draft 'offer' letter in evidence to this effect, sent by Artemis to GL, was dated 29 August 2012.

59. The Respondent's father, Mr Stanbury, who had joined GL as Chief Operating Officer in 2011, was party to the Respondent's deliberations over this period. Mr Stanbury (a former managing director of the Jaeger group) was a highly experienced businessman. Mr Stanbury concluded that both GL, and the Respondent in her personal capacity, should engage a good law firm, to ensure that they had access to sound commercial, corporate and employment advice as and when required. The Respondent agreed with this proposal and, at Mr Stanbury's suggestion, Mr David Roberts, a partner in the corporate team at Taylor Wessing, was approached and thereafter retained to advise and act for GL and for the Respondent.

60. As put by Mr Stanbury in his s.235 interview:

> 'I rang a friend of mine who was very experienced in this world and [said] I need a lawyer and I needed him to be the best and I need him to be one where I had no association at all before, that's how I came to Taylor Wessing and David Roberts….'

61. From email correspondence in evidence, the initial approach to Mr Roberts of Taylor Wessing appears to have been made by Mr Stanbury, on behalf of the Respondent and GL, on or about 13 September 2012. On 14 September 2012, Taylor Wessing sent Mr Stanbury (for onward transmission to the Respondent) terms of business, a schedule of hourly rates and a draft engagement letter for the Respondent to sign.

62. Given the pace of events by that stage, Mr Roberts started advising the Respondent and her father even before the paperwork was signed off; chains of email correspondence passing between the Respondent, Mr Stanbury, Mr Rind and Mr Morein were being sent to Mr Roberts for comment and advice from 14 September 2012 and, as early as 16 September 2012, Mr Roberts was emailing Mr Stanbury with advice for the Respondent. A draft letter, for the Respondent to send out to all directors of GL, was run past Mr Roberts for approval by email dated 19 September 2012. The email, sent by Mr Stanbury to Mr Roberts and cc'd to the Respondent, is a clear example on the degree of trust and confidence reposed by the Respondent and her father in Mr Roberts from very early on in their relationship. It reads as follows:

> 'Dear David,
>
> Caroline wants to be absolutely certain that in the current situation by writing to the directors of the company she is doing the correct thing.
>
> Can you approve this letter as being 'fit for purpose' please.'

63. Shortly thereafter, Taylor Wessing were formally instructed by both GL and the Respondent to provide commercial, corporate and employment advice as and when required.

64. Subsequent emails in evidence show that Mr Roberts and Taylor Wessing were advising GL and the Respondent on a wide range of matters, on a 'blow by blow' basis, from September 2012 onwards, as the Artemis negotiations progressed. Emails were being exchanged, long after office hours, between Taylor Wessing and the Respondent and her father, on a regular basis over this period. The advice given by Taylor Wessing included (i) advice on the Respondent's duties as a director of GL in the event that the Artemis investment did not go through, (ii) advice on the terms and structure of the proposed Artemis investment itself and (iii) advice on matters relating to SC1. It also included 'conflicts' advice, in which Mr Roberts considered his position in acting for both GL and the Respondent.

65. It was a condition precedent to the Artemis investment that GL should acquire the issued share capital in SC1. As later explained by Mr Dodd in his letters to the Official Receiver dated 28 April 2017 and to Blake Morgan dated 11 February 2021, however, it was the business of GL (as an internet based retail gift service available to

the general public) and its potential for future growth that was 'attractive' to Artemis and which 'formed the basis of the investment'. It was in order to ensure that the Respondent was focussed on the business of GL that Artemis wanted SC1 brought within the group, as a wholly owned subsidiary of GL.

66. As explained by Mr Dodd in his letter to the OR of 28 April 2017 (and relied upon by the Applicant at paragraph 56 of his Amended Reply):

> 'It was envisaged that in due course the business of [SC1], whose main asset was Caroline Stanbury herself, would eventually be subsumed into GL, leaving [SC1] as a dormant subsidiary'.

67. Mr Dodd's recollections in 2017 of a proposed merger are borne out by the contemporaneous correspondence in evidence. By an email dated 10 October 2012 headed 'Gift Library', for example, Mr Dodd emailed Mr Furhaan Khan of Lepe partners, saying:

> 'I am looking for advice on restructuring and to help with financing of the above. We need to have a fresh start so shareholders agreement etc. merger of a complimentary business and to put in place a new board …'

68. An exchange between Mr Dodd and the Respondent's father on 17 October 2012 also makes reference to the 'need to integrate' Style Counsel and 'projections of the two businesses integrated as well as the SC accounts'.

69. In simplified terms, the Artemis investment involved two stages: (1) a share restructuring, to make SC1 a wholly-owned subsidiary of GL and (2) the investment by Artemis of £1,500,000 in GL.

70. The reality behind that simple summary was, however, rather different. The share restructuring and the Artemis investment was a complex process which involved extensive input from lawyers and accountants. Taylor Wessing LLP acted for and advised GL and the Respondent personally. FSPG were advising the Respondent, SC1 and GL. Macfarlanes LLP and Lepe Partners were instructed to act for and advise Artemis.

71. The 'bible of documents', prepared by Macfarlanes and Taylor Wessing (with input from others including FSPG) in the run-up to completion comprised 75 items, including board minutes for GL, ordinary and special resolutions of GL, new articles of association for GL, stock transfer forms and share certificates, Forms SH01 and SH06 in respect of newly allotted and cancelled shares, waivers of pre-emption rights, sole director resolutions of SC1, special and ordinary resolutions of SC1, amended articles for SC1, a share purchase agreement in respect of the sale of shares in SC1 by the Respondent to GL, a subscription and shareholders agreement in respect of GL, a detailed disclosure letter dated 21 November 2012 from GL and the Respondent to Artemis ('the Disclosure Letter'), GL completion minutes, GL completion resolutions, resignation letters, forms TM01, TM02, AP01 in relation to various appointments and terminations of position, and powers of attorney.

72. The Disclosure Letter, drafted by Taylor Wessing, from GL and the Respondent to Artemis, also made express reference to a proposed transfer of business opportunities from SC1 to GL. Taylor Wessing formally recorded the proposed arrangements as follows:

> 'On 20 November 2012 the Subsidiary [SC1] agreed with the Company [GL] that it would hand over all sales (and related) commissions to the Company [GL] – as requested by Artemis and a consideration of £102,000 which remains outstanding. Please refer to tabs 67 to 69 of the Disclosure Bundle.'

73. Whilst the 'Disclosure Bundle' was not in evidence, on the evidence before me, I am satisfied that the reference in the Disclosure Letter to 'all sales' is a reference to *future* sales opportunities. As previously explored, apart from the occasional long lead request for a rare item, SC1 did not run an order book as such, so this provision cannot have been intended to refer to *existing* orders; it was not how the business operated. Moreover, both SC1 and GL had professionally drawn accounts, which made fastidious reference to related party transactions. No transaction involving the transfer of debtors (or any other relevant assets) is recorded in the professionally drawn filed accounts for the relevant accounting year for either company.

74. For the sake of completeness, I should mention at this stage that, in the context of enquiries about the disclosures to be made on the Artemis investment, there was reference in emails sent by Taylor Wessing to FSPG on 15 November 2012 to the Respondent having 'recently put 600,000 USD worth of business through Gift-library that would otherwise have gone through Style Counsel'. On close reading of the emails exchanged between Taylor Wessing and FSPG, considered in the context of the evidence as a whole, however, I am satisfied that this was an error on the part of Taylor Wessing; the 'business' put through GL referred to in the emails in question were simply Christmas sales from GL's catalogue, arising as a result of the Respondent's introduction of the Ecclestone family to the GL catalogue. This is clear from the exchange of emails between Taylor Wessing and FSPG on 15-16 November 2012, culminating in the email from David Tropp of FSPG to Taylor Wessing dated 16 November 2012 timed at 18.33. This was not business that SC1 would otherwise have undertaken.

75. The outstanding 'consideration' of £102,000 referred to in the Disclosure Letter appears to relate to a waiver of a commission fee, initially charged by SC1 to GL by invoice dated 31 October 2012, for the introduction of that 'business' to GL. The invoice dated 31 October 2012 addressed to GL seeks payment of £102,000 (inclusive of VAT) in respect of 'Fees for introduction of Ecclestone family'. The Respondent had introduced the Ecclestone family to GL and they had made substantial purchases from GL's gift catalogue. SC1 had then charged a commission for that introduction. It appears that it was that commission which was to be waived.

The scope of Taylor Wessing's involvement

76. Whilst Taylor Wessing were formally instructed by GL and by the Respondent, it is clear from the evidence that in the run-up to restructuring and the Artemis investment, they also advised and assisted the Respondent on a number of matters relating to SC1.

77. By way of example, Taylor Wessing advised on and assisted with matters relating to the register of members of SC1 in the run-up to the restructuring (see email dated 14 November 2012, timed at 20.03, from Mr Roberts to the Respondent, Mr Stanbury and others).

78. Taylor Wessing and FSPG also prepared a number of other pre-investment documents in respect of SC1. At the time, SC1 held a few pieces of art, such as a Tracy Emin painting, and one or two items of jewellery, which were recorded in its books as investments. Taylor Wessing and FSPG prepared sole director written resolutions for SC1, signed by the Respondent on 20 November 2012, approving interim dividends, including interim dividends in specie of the paintings and jewellery. These sole director resolutions are carefully drawn in conventional terms, making reference to relevant provisions under the Companies Act 2006, SC1's last annual accounts, interim accounts and profits available for distribution, before setting out the resolutions made. These were included in the ultimate bible of documents on completion of the Artemis investment.

79. Also included in the bible of documents prepared for the Artemis Investment were written resolutions dated 20 November 2012 of the shareholders of SC1 (by then, the Respondent in her own right and the Respondent and her father as trustees for the Respondent's children) approving the interim dividend, and a deed of transfer of the paintings and jewellery forming the subject matter of the interim dividend; again, prepared by Taylor Wessing.

80. The interim dividend is referred to in the Disclosure Letter under paragraph 5 at item 4.

81. The bible of documents also included written resolutions dated 20 November 2012 of the shareholders of SC1, ratifying and approving certain historic loan agreements entered into by SC1 with its directors and ratifying the conduct of each person who was a director at the time of the execution of the loan agreements by SC1, which conduct would otherwise amount to a breach of certain of the director's duties. These resolutions were also referred to in the Disclosure Letter under paragraph 5 at item 10.2.

82. Even if Taylor Wessing were not formally instructed by SC1, therefore, they were clearly advising and assisting the Respondent on matters concerning SC1, including dealings with its assets.

The FSPG Valuation

83. For the purposes of the restructuring and investment, in late October 2012, valuations of GL and SC1 were prepared by FSPG. The Respondent and her father asked FSPG to prepare these at the request of John Dodd of Artemis. Save for asking FSPG to prepare them, neither the Respondent nor her father were involved in the preparation of the valuations in any way. Both valuations were brief, the valuation of GL at £400,000 spanning two pages and the valuation of SC1 at £1.4m comprising only one page. The Respondent's evidence was that that these valuations were carried out for a very limited purpose; Artemis having already (i) conducted its own due diligence, (ii) decided to invest; and (iii) decided on the amount to invest. Her evidence was that the

valuations were required simply 'in order to recalibrate the share structure to allow for the allotment of sufficient shares to me to keep me engaged in Gift Library'.

84. There is support for the Respondent's recollections as to the purpose of the valuations of GL and SC1 in October 2012 in the contemporaneous correspondence in evidence. By an email dated 25 October 2012, for example, from Furhaan Khan of Lepe partners (acting for Artemis) to Mr Rose of Macfarlanes, Mr Roberts of Taylor Wessing, Ian Fenton of FSPG, John Dodd of Artemis, Mr Stanbury and others, sent at a point at which Taylor Wessing were on the brink of putting together a 'steps' paper for the proposed Artemis investment of £1.5m, Mr Khan wrote (inter alia) as follows (with emphasis added):

> 'As a follow-up to the meeting this morning, please let me know if the following is agreeable.
>
> 1. DR [David Roberts of Taylor Wessing] to draft deed of waiver to clear out all shareholders apart from Caroline Stanbury e.g. Tamara Beckwith
>
> 2. *DR and IF [Ian Fenton of FSPG] to come back with valuations on Gift Library and Style Counsel*
>
> 3. *DR, IF and Lepe to work out dilution after considering valuation .....*
>
> *For the avoidance of doubt, the shareholder structure will be as follows, following a £1.5m investment from Artemis*
>
> 51% Artemis
>
> 44% Caroline Stanbury
>
> 5% Trendex
>
> Please let me know if there is anything else I've missed.
>
> Thanks'

85. The terms of this email suggest that the purpose of the valuation was not in order to determine how much Artemis would invest (which had already been decided; the sum itself is referred to in the email) but rather, as the email states, to 'work out dilution'. This supports the Respondent's recollection.

86. In a later letter dated 11 February 2021 from Mr Dodd of Artemis to Blake Morgan, the Applicant's solicitors, Mr Dodd stated that 'Artemis was mainly interested in the business of GL, and not that of SC1. The valuation of SC1 was not therefore a driver of Artemis' investment…'

(1) The share restructuring: 20 November 2012

87. The share restructuring took place on 20 November 2012.

88. Immediately before the restructuring, the Respondent was sole director of SC1 and the shareholders in SC1 were (1) the Respondent (as the holder of 1 ordinary share of £1 in SC1) ('the Ordinary Share') and (2) the Respondent and her father, Mr Stanbury, who (in their capacity as trustees for the Respondents's children, Aaron, Yasmine and Zack) held three tranches of 33 B ordinary shares of £1 each on trust respectively for Aaron, Yasmine and Zack (the 'B Shares').

89. By an agreement dated 20 November 2012 made between (1) the Respondent (2) the Respondent and Mr Stanbury ('the Trustees') and (3) GL, the Respondent and the Trustees agreed to sell the Ordinary Share and the B Shares (respectively) to GL. The consideration for the sale of the Ordinary Share and the B Shares was the issue of 8771 ordinary shares in GL, to be shared amongst the Respondent and the Trustees in the following proportions:

(1) 8,333 ordinary shares in GL in the name of the Respondent;

(2) 146 ordinary shares in GL in the name of the Trustees held on trust for Yasmine;

(3) 146 ordinary shares in GL in the name of the Trustees held on trust for Aaron; and

(4) 146 ordinary shares in GL in the name of the Trustees held on trust for Zack.

(2) the Artemis investment: 21 November 2012

90. The second stage was the investment by Artemis of £1,500,000 in GL. This was effected by way of an allotment and issue to Artemis of 11,738 A Ordinary Shares of £1 each in GL at an aggregate subscription price of £1,500,000 pursuant to a subscription and shareholders' agreement dated 21 November 2012 made between (1) Artemis (2) the Respondent (3) Trendex (4) Stonecliffe (5) Tamara Beckwith and (6) GL.

91. Immediately before completion of the subscription and shareholders' agreement of 21 November 2012, the directors of GL were the Respondent, Ms Ashkenazi and Mr Morein and the shareholders in GL were as follows:

The Respondent	8116 C Shares
The Trustees	438 D Shares
Stonecliffe	697 NV Shares
Trendex	1106 NV Shares
The Respondent	914 NV Shares
Tamara Beckwith	6 NV Shares

92. Immediately after completion of the subscription and shareholders' agreement of 21 November 2012, the shareholders in GL were as follows:

Artemis	11,738 A Shares

The Respondent	8116 C Shares
The Trustees	438 D Shares
Stonecliffe	697 NV Shares
Trendex	1106 NV Shares
The Respondent	914 NV Shares
Tamara Beckwith	6 NV Shares

93. On 21 November 2012, following completion of the Artemis investment, the appointments of Mr Morein as a director and secretary of GL and Ms Ashkenazi as director of GL were terminated and Mr Stanbury and Mr Dodd were appointed directors in their place. The directors of GL immediately after the Artemis investment were therefore the Respondent, Mr Stanbury and Mr Dodd.

94. Mr Dodd was also appointed a director of SC1 on completion of the Artemis investment on 21 November 2012. At all material times thereafter, the directors of SC1 were the Respondent and Mr Dodd. Under Article 9.1 of SC1's new Articles, drafted by Macfarlanes and adopted at the request of Artemis (email from Taylor Wessing to Mr Stanbury dated 14 November 2012), Mr Dodd was chairman of the board of directors of SC1.

Post-completion discussions on the merger of SC1 and GL

95. Discussions about arrangements for the merger of SC1 and GL continued after completion of the share restructure and the Artemis investment. By email dated 27 November 2012, Mr Stanbury wrote to Mr Dodd to summarise matters discussed at a meeting the previous day. The email provided (inter alia) as follows:

> 'SALARIES
>
> Caroline CEO and Founder £12,500 per month Contract to be discussed.
>
> Anthony MD £10,000 per month suggest a 2 or 3 year contract.
>
> Both the above to commence this month please (November 2012)
>
> STYLE COUNSEL
>
> Will be integrated with GL in January using one firm of accountants same bank accountants etc. Caroline and I will work out how to integrate sales and which to keep separate.'

96. The Respondent's proposed salary from GL became something of a sticking point at this stage. According to the Respondent's personal tax return for the year ended 5 April 2012, the Respondent had received only £30,000 in salary from GL in that year; the bulk of her income had come from SC1, as to £7000 salary and £145,000 in dividends. Following the restructuring, GL was 100% shareholder in SC1. Whilst GL was on a far more even keel in the wake of the Artemis investment (its filed accounts for the year ending 31 December 2012 showing net current assets of £1.4m), GL could not afford to pay the Respondent a salary which would reflect the dividend income which she had enjoyed (and but for the November 2012 restructuring would have enjoyed in the future) from SC1.

97. During the course of discussions which, on the evidence as a whole, I find on a balance of probabilities took place between 27 November 2012 (the date of Mr Stanbury's email to Mr Dodd referred to at paragraph 95 above) and 22 January 2013 (the date of Mr Stanbury's email referred to at paragraph 110 below), the Respondent voiced her unhappiness to Mr Dodd. In these discussions, the Respondent made clear to Mr Dodd that she could not afford to live on her salary from GL. In his s.235 interview, Mr Stanbury recalled one such discussion, as follows:

> 'Caroline was complaining at one point to John Dodd [saying] "look you're getting everything and my salary isn't huge and … how am I going to live", so John Dodd said to her "well you keep the things that you do and you don't need Gift Library to do for you, where you can make as much money as you like. I want the handbag business and the jewellery business in Gift Library"…. He said "I don't want to know how much money you make from selling clothes to X Y or Z".'

98. At a later stage of the s.235 interview, Mr Stanbury added:

> 'I was certainly in the room when that discussion took place…. Caroline said "if you take all of Style Counsel you will then have to pay me a lot more in Gift Library because I can't live on what my current salary is" … he said "well how about I take those two things and you keep the rest, you keep the styling and she said "fine .. I'll do that with you".'

99. I take into account that Mr Stanbury was issued with a perjury warning at the beginning of his s.235 interview. On the evidence as a whole, I accept Mr Stanbury's recollections, set out in paragraphs 97 and 98 above, as an accurate summary of the discussions which took place. It will be noted that, at the time that these discussions took place, the Respondent and Mr Dodd were the only two directors in SC1, and the Respondent, Mr Stanbury and Mr Dodd were the only three directors of GL, the 100% shareholder in SC1. It will also be noted that Mr Dodd was director of Artemis, the majority shareholder in GL at the time. The only other shareholders in GL holding voting shares at the time were (1) the Respondent (in her own right) and (2) the

Respondent and Mr Stanbury (as trustees for the Respondent's children). All other shareholdings in GL were non-voting: see paragraph 92 above.

100. Whilst the Respondent was confused about the timeline of these discussions, she gave supporting evidence on their content. During her s.235 interview, she said:

> 'John Dodd, Artemis, wanted the big sales… jewellery and handbags ..for Gift Library… which I agreed to and we would keep the styling of whole look and the clothes because he didn't want that part of the business….'

101. As explained by Mr Stanbury in his written evidence (which in this regard I accept):

> 'Once the [Artemis] Investment had completed, it became apparent that … personal styling …. was, in reality, of no value to [GL] going forwards. Dodd's interest was in the high value, high profile items that Caroline would sell to her styling clients, namely the Hermes handbags and high-end jewellery'.

102. In oral testimony, the Respondent gave evidence to similar effect, explaining that Mr Dodd 'didn't want to get into clothing – sizes, styles, seasons'. His interest was in the Hermes handbags and high-end jewellery.

103. At paragraph 19 of her witness statement, the Respondent gave evidence that:

> 'It was Dodd's clear instruction to me that I should continue my personal styling outside of Gift Library, without the Hermes handbags and bespoke jewellery, and that I should make as much of a success of it as possible, on the basis that those styling clients would then make purchases from Gift Library…. Dodd told me that I was better placed on a boat in St Tropez with rich styling clients maintaining those relationships so they … continued to purchase all of their gifts from Gift Library than I was sitting behind a desk…'

104. Whilst the Respondent was mistaken about the timing of these discussions (believing them to have taken place in the run-up to the November 2012 Restructuring rather than after it), on the evidence as a whole, I am satisfied that the Respondent's account of the gist of what was said to her by Mr Dodd is in all material respects accurate. From GL's perspective, it plainly made sense to encourage - and to enable - the Respondent to continue to provide personal styling services to her styling clients, on the basis that those styling clients would continue to make purchases from the GL catalogue. These were ultra high net worth individuals; from past sales (such as the sales to the Ecclestone family referred to in evidence) it was clear that when they did make purchases from GL's catalogue, the purchases often ran to the tens of thousands - and at times hundreds of thousands - of pounds. Against that backdrop, it was obvious why Mr Dodd would not want the Respondent sitting at a desk, rather than, as he put it, 'on a boat in St Tropez with rich styling clients'. For this to work, however, the Respondent had to be able to earn more than GL could afford to pay her.

It was in this context that the Respondent was told to continue her personal styling 'outside of Gift Library'.

105. Given the gaps in the documentation in evidence, it is not possible to identify precisely when these discussions between the Respondent and Mr Dodd took place. On the evidence as a whole however, I am satisfied on a balance of probabilities that these discussions took place between 27 November 2012 (the date of Mr Stanbury's email referred to at paragraph 95 above) and 22 January 2013 (the date of Mr Stanbury's email, referred to at paragraph 110 below).

The January 2013 agreement

106. On 8 January 2013, a meeting took place between John Dodd and Mr Stanbury (acting on behalf of himself and the Respondent). As will be recalled, by this stage, (1) the directors of GL were Mr Stanbury, the Respondent and Mr Dodd; (2) the directors of SC1 were the Respondent and Mr Dodd; and (3) GL held 100% of the shares in SC1: see generally paragraph 99 above. Mr Stanbury produced a note of the meeting of 8 January 2013 on the same day, on GL headed notepaper, setting out the matters discussed. The note provided inter alia as follows:

> 'NOTES ON MEETING WITH JOHN DODD and ANTHONY STANBURY 8th January 2013 …
>
> …
>
> STYLE COUNSEL [SC1]
>
> This business [SC1] is now fully integrated into GL and in principle it is not going to be used in future. Caroline has agreed to the following split of activity.
>
> . All sales of Birkins [bags] to go through GL. We will pay C a commission at a rate to be agreed
>
> . All sales of jewellery to go through GL … commission as above
>
> . All sales from all wholesale accounts through GL
>
> . Styling charges to go through Caroline's personal company
>
> . Shoppers and stylists to be employed by Caroline's company
>
> . Clothes for styling clients to be billed by Caroline's company
>
> . GL will continue to pay for the driver
>
> It will probably be easiest if we transfer ownership of Style Counsel [SC1] back to CAS [the Respondent] for a nominal £1. Leaving us with one business as opposed to two. Taylor Wessing sees no problems in us doing so but I am checking

> with FSPG the accountants regarding tax. John please let me know if you do not want to do this.
>
> I have discussed the cost of Caroline's PA [Ms Harb] with her. We have now taken into GL all of her key earning opportunities such as Birkins, jewellery etc. and which last year amounted to in excess of £800k and left her with styling which is the most time-consuming and smallest earner….
>
> SHARE OPTION SCHEME
>
> Taylor Wessing is advising and AS will advise the board in due course.'

107. Mr Stanbury's evidence, which I accept, was that he had discussed these proposed arrangements with Taylor Wessing and that the proposal of a sale by GL to the Respondent of GL's 100% shareholding in SC1 for £1 had been at Taylor Wessing's suggestion.

108. Mr Stanbury emailed his note of 8 January 2013 to Mr Dodd (cc-ing the Respondent) on 9 January 2013. Mr Dodd responded by email less than 15 minutes later, saying (with emphasis added):

> 'Anthony,
>
> The main issues remain with Style Counsel. commissions were never discussed. *My recollection was that sale of Birkins/jewellery thru GL*. The agreement which was approved was the merger of the 2 businesses with Caroline not suffering "financially" in terms of historic earnings. By splitting the business again and CS drawing £150,000 we are nearly back at the beginning which is a material deviation from our agreement. Please relook at this.
>
> John'

109. Read in the context of the evidence as a whole, I am satisfied that the objections voiced by Mr Dodd to 'splitting the business again' were objections to commissions on the bag and jewellery sales being split. They were not objections to the Respondent carrying on her personal styling business for her own personal benefit.

110. From the contemporaneous correspondence in evidence, it is clear that further discussions took place between Mr Dodd, the Respondent and Mr Stanbury between 9 January 2013 and 22 January 2013. On the evidence as a whole, I am satisfied that the Respondent and Mr Stanbury consulted with Mr Roberts of Taylor Wessing and FSPG with regard to the matters under discussion over this period. By 22 January 2013, Mr Dodd, Mr Stanbury and the Respondent had reached an agreement. By email dated 22 January 2013 (at 08.26) headed 'Style Counsel', Mr Stanbury wrote to Mr Roberts of Taylor Wessing, Mr Hirschovitz of Taylor Wessing, Mr Fenton of

FSPG, the Respondent, Mr Dodd, and Mr Zaman of Brookman Accounting (a firm by then providing accounting services to GL), as follows:

> 'Dear David [Roberts of Taylor Wessing],
>
> Further to our recent conversation I can now confirm that we [GL] have taken all that we need from Style Counsel [SC1] and that Caroline and John Dodd are agreed as to the future split of sales and commissions. Consequently we are now in a position to transfer the shares [in SC1] from GL back to Caroline at a nominal or zero cost. As the year end is January 30th it would be helpful if we could start February as we mean to go on ie operating with one company only for all sales.
>
> Kind regards
>
> Anthony Stanbury'

111. In his s.235 Interview in March 2019, Mr Stanbury explained the reference in his email of 22 January 2012 to GL having 'taken all we need' from SC1. His evidence (which I accept) was:

> 'I think we had agreed on the principle that we [GL] would do X Y and Z …. There was nothing to take… it reads as if we've actually taken something or transferred something. I don't believe that to be the case.. we had done whatever we needed to do for the business to go on as it now is going to, in other words that we Gift Library will do the business on handbags and jewellery and Caroline will do the rest.'

112. At a later stage in his s.235 interview, Mr Stanbury added:

> 'This was the shaping of a very personal private little business that my daughter ran into something rather grander … and a split up of activities in her mind as opposed to, as you put it, assets…..
>
> Just remember this, there were no handbags and there was no jewellery. We didn't sit on them, they weren't in our warehouse…. When we wanted a handbag, you want to buy a £30,000 handbag for your wife, our job is to go and find it….'

113. Looking at the parties to which Mr Stanbury's email of 22 January 2013 was sent, it will be seen that, in addition to the Respondent, they included Taylor Wessing (who acted as solicitors for both GL and the Respondent), FSPG (accountants for GL, SC1 and the Respondent), Mr Dodd (a director of both GL and SC1, and director of Artemis, the majority shareholder in GL) and Mr Zaman of Brookman Accounting (which by then undertook some book-keeping and payroll functions for GL).

114. David Roberts of Taylor Wessing responded minutes later, addressing his email to the same parties, saying:

> 'Anthony
>
> We have already prepared some simple docs to effect this. We will circulate them – the end of month January should be comfortable met.
>
> I shall call you tomorrow
>
> Best
>
> David'

115. It will be noted that there was no suggestion in Mr Roberts' email that there was anything wrong with the course of action being proposed. Quite the contrary, he confirmed that the paperwork was already prepared to cover it.

116. Mr Dodd did not raise any objections either. He, too, responded promptly to Mr Stanbury's email of 22 January 2013 as well (at 08.32 the same day), stating simply:

> 'Anthony
>
> I think for the year ahead I should see sight of what is going thru GL and [SC1]. Bill Currie has agreed to come on board and with his retail background and support we will have a good following to build on.
>
> Regards
>
> John'

117. Read in the context of the evidence as a whole, I am satisfied that Mr Dodd's request for sight of 'what is going thru' GL and SC1 was in order to ensure that bag and jewellery sales were put through GL as agreed.

118. Mr Stanbury responded the same day (at 08.50) to Mr Dodd:

> 'Absolutely, sales are split so that GL gets all goods sold including Birkins and jewellery, whilst the styling goes to SC. That has begun and I will tell Caroline that I will be showing you the SC numbers quarterly…'

119. At this stage, (22 January 2013), there was a clear agreement between Mr Dodd of Artemis (at that stage majority shareholder in GL), GL (by the Respondent, Mr Dodd and Mr Stanbury), SC1 (by the Respondent and Mr Dodd) and the Respondent that GL would transfer back to the Respondent the shares in SC1 at zero or nominal cost.

120. Later the same day (22 January 2012), by an email addressed to Mr Stanbury, the Respondent, Mr Roberts and Ms Laura Potamianos, Mr Hirschovits of Taylor Wessing wrote attaching 'the suite of documents required to sell Style Counsel from Gift Library back to Caroline'. The attached documents included the sale document, minutes of SC1 approving the share transfer, GL minutes, share certificates and stock

transfer forms. The email asked that the documents be signed but not dated, and returned back to Mr Hirschovits.

121. It will be noted that this email was not sent to Mr Dodd. On the evidence as a whole, I am satisfied that this was because the email concerned the implementation stage of arrangements which had already been agreed with him.

122. Over the course of the next two days, Taylor Wessing and FSPG had further discussions on the structure to be employed. As a result of those discussions, the plan changed from (1) a sale by GL to the Respondent of the shares in SC1 for £1 to (2) the incorporation of a new company and SC1 being left as a dormant subsidiary of GL. It is clear from the evidence as a whole (and I so find) that this change of tack was at the instigation of the professionals, that is to say, Taylor Wessing and FSPG, rather than the Respondent or her father. From Mr Stanbury's notes of his meeting with Mr Dodd dated 8 January 2013, it appears most likely that the change of tack was driven by fiscal considerations.

123. The new plan was introduced by an email dated 24 January 2013 from Adam Hirschovits at Taylor Wessing, addressed to Mr Stanbury, David Roberts and Laura Potamianos. Mr Hirschovits wrote as follows:

> 'Anthony
>
> A new transaction structure has been agreed, having spoken to Ian [Fenton of FSPG], for the 'Style Counsel' transfer to Caroline.
>
> Essentially, we will incorporate a new company ('Newco'). Following this, Newco and Style Counsel will simultaneously pass resolutions confirming that they swap names.
>
> What would you like the shareholding structure of Newco to be? Should it be the same as we had with Style Counsel prior to Artemis investment (i.e children holding shares on trust with a split share class structure), or would you like to make Caroline the sole shareholder (or something else)?
>
> Separately, please find attached an 'incorporation questionnaire' which needs to be populated such that we can incorporate Newco, and then proceed with the name change resolutions. If the proposed shareholders are different to the proposed directors, we would need information on the shareholders akin to that requested in the attached of the directors.
>
> I hope this is clear - do let me know if it is not/ if you wish to discuss.
>
> Kind regards
>
> Adam'

124. It will be noted that, again, this email was not copied into Mr Dodd. The Applicant contends that this is significant, and that the setting up of 'Newco' was a covert exercise, done behind Mr Dodd's back. On the evidence as a whole, I reject that analysis. Again, as with Mr Hirschovits' email of 22 January 2012 referred to at paragraph 120 above, Mr Hirschovits' email of 24 January 2012, quoted at paragraph 123 above, concerned implementation. It had already been agreed with Mr Dodd that handbag and jewellery sales would go through GL and that the Respondent was to be left with the benefit of her personal styling business.

125. By further email dated 29 January 2013 addressed to Mr Stanbury, Mr Fenton of FSPG, Ms Harb of GL, Mr Roberts of Taylor Wessing and others, Mr Hirschovits wrote attaching draft documents described as follows:

> '. a set of articles of association for Newco (which envisages two classes of shares which have attached to them the same rights as were attached to the A and B shares in Style Counsel);
>
> . a set of declaration of trusts for each of the children (each of whom will be issued one B ordinary share in the capital of Newco);
>
> . minutes of both Newco and Style Counsel approving the special resolutions to swap names; and
>
> . special resolutions of Newco and Style Counsel confirming the name swaps'.

He continued (with emphasis added):

> 'We will also provide, as part of the execution pack, Companies House forms to confirm the changes of names.
>
> Presumably Newco's accounting reference date and registered office should be the same as Gift-Library? Separately, as this company [SC1] will essentially do nothing *([SC1] will adopt this name and sit as a dormant subsid of Gift Library*), do you have any objections to the name 'CSB123 Limited'? Once we have this confirmation, we can proceed with incorporation of Newco.
>
> Do let me know if you wish to discuss.
>
> Kind regards
>
> Adam'

126. It will be noted that by this email, in explaining the arrangements which the professionals (Taylor Wessing and FSPG), in context, were recommending should be put in place, Mr Hirschovits of Taylor Wessing makes express reference to SC1 (a) adopting the name CSB123 and (b) sitting as a dormant subsidiary of GL.

127. By a further email dated 31 January 2013 from Adam Hirschovits of Taylor Wessing to Mr Stanbury, Ms Harb, the Respondent, Ian Fenton of FSPG, and Mr Roberts of Taylor Wessing, Mr Hirschovits attached a full suite of execution documents, including

(1) certificate of incorporation of CSB 123 Limited;

(2) articles of association of CSB123 Limited

(3) declarations of trust for the Respondent's children in respect of the shares they hold in CSB 123 Limited;

(4) a set of incorporation minutes for CSB 123 Limited;

(5) a set of board minutes of CSB123 Limited, relating to the change of name resolution;

(6) a set of board minutes of SC1, relating to the change of name resolution;

(7) written resolution of CSB123 Limited, agreeing to the change of name;

(8) written resolution of SC1, agreeing to the change of name, to be signed on behalf of GL as shareholder; and

(9) companies house confirmation of change of name form for CSB123 Limited.

The email concluded: 'I would be grateful if you could refrain from dating any of the documents. Once you have signed documents 3-12, please send them back to our offices, marked from my attention. I will then arrange for the relevant forms to be filed at Companies House.

I will send, under separate cover of email, the share certificates for the CSB123 Limited shareholders, which will need signing by a director and a witness.'

128. The evidence of the Respondent and her father, which I accept, is that, relying on the advice received from Taylor Wessing and FSPG, they signed the documents required to set up the new company, CSB123 Limited, and to effect a change of names with SC1. Their understanding was that SC1 was thereafter, in the words of Mr Hirschovits of Taylor Wessing, to 'sit as a dormant subsid of [GL]': see email of 29 January 2013, quoted at paragraph 125 above.

SC2

129. CSB123 Limited was incorporated on 31 January 2013 and changed its name to Style Counsel Limited (hereafter, 'SC2') by special resolution the same day. Notice of SC2's change of name was filed by Taylor Wessing at Companies House on 2 February 2013. The registered office of SC2 was 21 Bedford Square, London WC1B 3HH, the address of FSPG.

130. SC1 changed its name to CSB123 Limited. Notice of SC1's change of name was filed by Taylor Wessing at Companies House on 2 February 2013 and took effect on 5 February 2013. Form NM01 was used for this purpose (notice of change of name by

special resolution dated 31 January 2013 pursuant to s.78 CA 2006). That is to say, GL, as sole shareholder in SC1, consented to the change of name.

Mr Dodd's knowledge of SC2

131. Mr Dodd has since suggested in correspondence that he knew nothing of the incorporation of SC2 or the change of name. Mr Dodd, however, was not asked to attend a s.235 interview and did not give evidence before me.

132. On the evidence as a whole, I am satisfied on a balance of probabilities that by 31 January 2013, all members of the board of GL (comprising Mr Dodd, the Respondent and Mr Stanbury), both directors of SC1 (the Respondent and Mr Dodd) and (through Mr Dodd) the majority shareholder, Artemis, were informed of and consented to the Respondent ceasing to work for SC1, SC1 ceasing to trade and sitting dormant under GL, the incorporation of SC2, the Respondent providing her personal styling services through SC2, and the name change (the 'January arrangements'). I so find.

133. The fact that no board minutes for GL or SC1 referring to the January arrangements have been adduced in evidence is only one of many factors to take into account. Given the amount of documentation no longer available in this case due to data loss and the passage of time it does not lead inexorably to the conclusion that there was no GL or SC1 approval for the January arrangements. In correspondence with the OR in 2016, for example, Mr Dodd confirmed that decisions were often taken by telephone or email. Mr Stanbury's evidence was that when board meetings for GL were held, he often took notes, but no longer has access to his records due to data loss at GL's premises following its entry into administration. Given the passage of time and missing documentation, Mr Groves' attempts to extract from various witnesses in cross examination confirmation that there were no board meetings or board decisions in given years were unpersuasive.

134. By her written testimony, Ms Harb recalled asking the Respondent to get the permission of GL and Artemis to retain the Style Counsel name for SC2 for operational convenience. At paragraph 21 of her statement, her evidence was as follows:

> 'At the time, nobody raised any objection to my request to keep the Style Counsel name. I recall Caroline coming back from a meeting saying that we could continue to use it, and so I am now confused as to why this has become an issue; the entire board of Gift Library were continuously involved and there were lawyers and accountants on both sides who I understood were all completely aware of my request. I believe this because I recall reminding Caroline to bring the issue up in meetings, as I was so anxious about having to spend time trying to create new banking facilities for 'CSB 123 Limited …'.

While Ms Harb was confused about the timing of these exchanges (thinking they occurred in the run-up to Christmas 2012 rather than in January 2013, I am satisfied that the substance of her recollection is accurate.

135. During her s235 interview in March 2019 (given under a perjury warning and conducted by telephone, at a time when the Respondent did not have sight of any documents but was told that Mr Groves did), the Respondent had a clear recollection of asking Mr Dodd if she could keep the name 'Style Counsel' for her new business (in context SC2) and of Mr Dodd agreeing. She recalled an email from Mr Dodd, in which Mr Dodd had confirmed his agreement that she could take the name back. Her recollection of Mr Dodd's email was so clear that she assumed that Mr Groves would have it in front of him, in the bundle which he was working from for the interview. She said:

> 'the email that he sent you can see saying "you can take the name back, its .. no value to us…",',
>
> adding
>
> 'why would he give it back to us if he didn't know I was keeping the business? I asked him very clearly if I could keep the business and it was easier for me to keep the name that I had so that I didn't have to change the PDQ machine or the bank set up so that we could keep going'

136. At a later stage in her s235 interview, when asked 'Did you tell Artemis about what you were doing in relation to this new transaction structure and … incorporation of Style Counsel 2', the Respondent replied, 'Absolutely', again referring to an email about 'transferring the name back to me'. During the interview Mr Groves and others suggested alternative emails in their bundle that she might be referring to, but the Respondent was adamant that there was another, saying 'there's one that's John Dodd in it … saying that I'm able to keep the Style Counsel name'.

137. Considered in the context of the evidence overall, I accept the Respondent's recollections of Mr Dodd's emailed confirmation of his consent to her keeping the name Style Counsel for SC2 as genuine and accurate.

138. Given the timing of the name-change resolutions, the email recalled by the Respondent in her s.235 interview must have been sent by 31 January 2013; there would be no point in seeking permission (or written confirmation of permission orally granted) after the requisite resolutions had been passed. The fact that the email in question is not in evidence is readily explicable given the amount of documentation no longer available in this case due to data loss and the passage of time.

139. It is correct to state that, in cross-examination before me, the Respondent could not recall whether Mr Dodd knew about the name-change. In assessing the Respondent's evidence however, I take account of the fact that the Respondent was cross-examined for several hours, in a hot court room (the air-conditioning was not working properly at the time) and was under considerable pressure. I also take account of the fact that by the date of the trial, a further 2 years had passed since the time of her s235 interview. She *had* recalled the GL directors, including Mr Dodd, agreeing that she could keep the name Style Counsel for her new business at the time of preparing her witness statement (see paragraph 104 for example).

140. In oral testimony Mr Stanbury was initially a little confused on this issue but ultimately said that, whilst he could not recall discussing the incorporation of SC2 and the name swap with Mr Dodd, 'normally I would have informed him of everything', later adding that he was in 'no doubt' that 'this split was done, not only with the agreement of Mr Dodd, but at his will'.

141. I pause here to note that Mr Stanbury and Mr Dodd had regular weekly discussions, which had started in November 2012, as evidenced by an email from Mr Stanbury to Mr Dodd dated 27 November 2012.

142. In assessing the likelihood of Mr Dodd having been informed of and agreeing to the January arrangements, I have taken account of the evidence overall. By the end of January 2013, it is clear that Mr Dodd knew of (and agreed to) plans (a) for any future luxury handbag and jewellery sales generated from the Respondent's personal styling clients to be put through GL and (b) for the Respondent personally to be left with the benefit of her styling work. The reasons were clear. As Mr Dodd knew, GL could not afford to pay the Respondent a salary equivalent to the dividends which she had previously enjoyed from SC1 and the Respondent could not afford to live on the salary that GL could pay her. Mr Dodd had no interest in the Respondent's personal styling work. Mr Dodd also saw the commercial benefits for GL in leaving the Respondent free to carry on with her personal styling work in her own right, generating purchases from GL's gift catalogue through her personal styling clients.

143. Whether (b) was achieved by GL transferring the SC1 shares back to the Respondent for £1 and the Respondent continuing to her personal styling work through SC1, or by the Respondent ceasing to provide her personal styling services through SC1 and providing such services through SC2 instead, with SC1 sitting dormant under GL, was an issue of practical implementation as far as Mr Dodd was concerned. On the evidence before me I am satisfied that is for that reason, rather than any lack of transparency, that the emails concerning practical implementation in the latter half of January 2013 (such as those quoted at paragraphs 123, 125 and 127 above) do not include Mr Dodd; he would not have involved himself on a blow by blow basis with that aspect. By his oral testimony, which in this regard I accept, Mr Stanbury described Mr Dodd as having a very short attention span; as he put it, 'John Dodd wouldn't be involved in the smaller detail'.

144. The fact that Mr Dodd was not involved on a blow by blow basis with the practical mechanics of the January arrangements does not lead inexorably to the conclusion that he did not know of and agree to the same.

145. It was clear from their evidence overall that the Respondent and Mr Stanbury each had an extremely good relationship with Mr Dodd. Mr Dodd considered the Respondent essential to the future success of GL and wanted to make things work. The Respondent and Mr Stanbury had no reason to conceal from Mr Dodd the mechanics of the arrangements being put in place on the advice of the lawyers and accountants and I find that they did not do so.

146. It is correct to state that it took a while for some individuals working in the accounting department at Artemis to catch up with events. By email dated 6 June 2013, for example, from Mr Aitken (part of the accounting department of Artemis) to

Ms Natalie Clarke of Brookman Accounting (who by then were carrying out day to day accounting functions for GL), Mr Aitken asked:

> 'With regard to Style Counsel, the schedules you sent across refer to Style Counsel Limited (accounts to 31 October 2012), CSB 123 Limited (trial balances) and Style Counsel Limited (Feb/Mar P&L accounts). Could you clarify why there are different names – has there been some sort of reorganisation? In terms of ultimate ownership of Style Counsel, is this wholly owned by Gift Library?'

By email dated 7 June 2013, Ms Clarke of Brookmans replied:

> 'Style Counsel should be a subsidiary but it is not trading anymore and changed its name to CSB123. Please find papers showing the change of name ….'

147. Mr Stewart of Artemis wrote back thanking Ms Clarke the same day. The email of reply, dated 7 June 2013, did not raise any concerns. I was taken to no other correspondence in evidence to suggest that Artemis at any stage expressed surprise at, or objected to, the cesser of trading of SC1 or its change of name.

148. The fact that two individuals in Artemis' accounting department were unaware of SC1's cesser of trading in June 2013 is but one factor to be considered in the context of the evidence overall. It does not lead inexorably to the conclusion that Artemis, through Mr Dodd, did not know of or consent to the January arrangements. Mr Dodd may not have told the accounting department immediately; or he may have told one individual there who had not passed the message on to all others working in the department. There are a number of possible explanations.

149. Another factor to be taken into account is the response of Artemis in June 2013. Had Mr Dodd not been aware of and consented to the January arrangements, one would expect to see follow-up correspondence on the issue. There was none in evidence.

150. Even allowing for the gaps in documentation in evidence, another factor to take into account is the unchallenged evidence of relations between Artemis and GL after June 2013, when the email exchange (outlined at paragraphs 146-147 above) took place. Artemis continued to have a good relationship with GL and went on to invest further substantial sums into GL after June 2013. Had the Respondent and Mr Stanbury engaged in covert activities with Taylor Wessing and FSPG in January 2013, secretly arranging for SC1 to cease trading and setting up another company behind Mr Dodd's back as the Applicant suggests, it is extremely unlikely that Artemis would go on to invest a further million pounds into GL after the June 2013 exchange referred to at paragraphs 146-7 above.

151. The Respondent and Ms Harb ran SC2 from their desks at GL for all to see. Artemis regularly attended GL's trading premises. In her s235 interview, the Respondent recalled that 'Artemis was fully involved with everything .. I had their company in my office pretty much every week'. Ms Harb too, gave evidence of regular exchanges with Artemis, saying that 'we felt a sense of security when Artemis came in,, they had a whole team of people. We were just a start up. They were doing due diligence'. Ms

Doyle (who joined the finance department of GL in mid 2014) gave oral evidence that she was aware of SC2 from 'considering company accounts and management accounts and speaking to employees' at GL; SC2 was clearly no secret. By her written evidence (at para 10), she also spoke of her 'frequent interaction' with Mr Kumar of Artemis, with whom she communicated with 'at least two or three times a month'. Mr Kumar attended the GL board meetings on behalf of Artemis, having been 'appointed to monitor and offer support with any financial issues' that GL might encounter. As part of his monitoring role, Mr Kumar would often send requests to Ms Doyle for financial and other information, which she would then provide. The correspondence in evidence also shows FSPG and Brookman Accounting regularly liaising with Artemis, sending accounting information and updates on filings at Companies House. Overall, there was a high degree of transparency.

152. By December 2014, Artemis was writing to GL asking why SC1 had not yet been dissolved (see paragraphs 188-190 below). In his subsequent statement of affairs for GL dated 2 March 2015, Mr Dodd did not list SC1 as a subsidiary (although he did list WLS, referred to later in this judgment). I consider it legitimate to conclude from this omission, considered against the backdrop of the evidence overall, that Mr Dodd believed that SC1 had already been dissolved by that stage.

153. Overall, on the evidence which I have heard and read, I am satisfied that by 31 January 2013, all members of the board of GL (comprising Mr Dodd, the Respondent and Mr Stanbury), both directors of SC1 (the Respondent and Mr Dodd) and (through Mr Dodd) the majority shareholder of GL, Artemis, were informed of and consented to the January arrangements.

154. I further find that Mr Dodd was in error in stating in correspondence that he was unaware of SC2 and the name change. Given the passage of time, it is unsurprising that Mr Dodd does not have a vivid recollection of precisely what the ultimate arrangements were for putting into effect the agreement reached in January 2013. I also bear in mind the likelihood of Mr Dodd wishing to avoid any criticism of his own conduct. Whilst I do not suggest that Mr Dodd would intentionally have misrepresented matters, he may well have persuaded himself of a different version of events to that which took place.

Commencement and cesser of trading: SC1 and SC2

155. Whilst the initial plan appears to have been for SC1 to cease trading (and for SC2 to start trading) at the end of January 2013, in the event, SC1 did not cease to trade (and SC2 did not start to trade) until April 2013. I so find.

156. Some of the SC1 invoices dated between January 2013 and April 2013 related to luxury bags and jewellery. The evidence of the Respondent and Mr Stanbury's evidence, which I accept, was that on some occasions GL faced cashflow difficulties which prevented it from satisfying such orders, which were often time critical. The Respondent also gave evidence, which I accept, that there were a few orders placed earlier with SC1 for rarer items with a longer lead time to source, which had not yet completed. Little turns on this.

157. SC1 carried on invoicing for work until April 2013; there were a few invoices after that point, but from the invoice numbering and dating it is clear that they were few

and far between: from the descriptions in the invoices I consider it legitimate to conclude that the invoices after April 2013 were run-off or catch-up items rather than indicia of ongoing trading. I am fortified in that conclusion by the (professionally prepared) filed accounts for SC1 for the year ending 31 January 2014, (which state in terms that SC1 ceased to trade in April 2013), by a comparison of turnover for SC1, which dropped from £1.4m in the year ended 31 January 2013 to £226,494 in the year ended 31 January 2014, by the invoicing pattern for SC2 (which from the numbers and dates on SC2's invoices, started invoicing in April 2013), by the timing of the inter-company account set up by FSPG, and by the conclusions on this issue set out in Mr Hobby's report.

158. On a balance of probabilities I find that the reason why SC1 continued trading until April 2013 and SC2 did not start trading until April 2013 was that it took some time to register SC2 for VAT purposes. Correspondence exchanged between FSPG and BDO Stoy Hayward between 28 February 2013 and 4 March 2013 supports this conclusion.

SC2: Trading

159. As with SC1, SC2 remained a small concern. It had no premises of its own; the Respondent ran SC2 from her desk at GL's trading premises in Munster Road. It held no stock, save for the odd item spotted by the Respondent or a 'runner' on a shopping trip and purchased ad hoc, in anticipation that a particular styling client would like it.

160. FSPG were retained as accountants for SC2. The services provided by FSPG to SC2 mirrored those provided to SC1. Again, FSPG were extensively involved in the day to day administration of SC2. They prepared invoices for SC2. They also provided book-keeping and banking services for SC2 as well as preparing annual accounts, VAT and other tax returns, providing tax advice and dealing with filings at Companies House. They continued to receive duplicate bank statements relating to SC2's bank account at Barclays bank and to undertake monthly bank reconciliations.

161. The Respondent and Mr Stanbury were appointed as directors of SC2 and remained such at all material times thereafter. Ms Harb was retained as an employee of SC2. Her duties and functions in relation to SC2 mirrored those previously described for SC1, including liaising with FSPG as and when required. Ms Harb continued to keep paper records in relation to each personal styling job, stapling together all the receipts and other paperwork which related to it (including on occasion a hard copy of any key email exchange) together with a breakdown of the figures. She stored the stapled documents in a set of white files marked 'Style Counsel' which she kept at GL's trading premises on Munster Road.

162. Ms Harb also set out in email communications with given clients and FSPG the details of any matters agreed, saving the emails onto her computer at GL's premises, so that any queries which arose about a given job or the sums charged for it could be resolved quickly and efficiently. She only used a GL email address whilst working for both GL and SC2; SC2 did not own a domain name at the time. From her evidence overall, I am satisfied that when working for SC2, Ms Harb continued to keep a clear 'paper trail' in the manner described at paragraph 54 above.

163. The shareholdings in SC2 initially reflected those proposed by Taylor Wessing's email of 29 January 2013 ; the Respondent holding one ordinary A share in her own right, and the Respondent and Mr Stanbury as Trustees holding 3 ordinary B shares, one for each of the Respondent's children Aaron, Yasmine and Zack. On 1 July 2013, two further shares in SC2 were allotted; one ordinary C share to the Respondent's (then) husband, Cem Habib and one ordinary D share to Ms Harb.

164. SC2 retained the Barclays bank account for its own use. Whilst unconventional, I am satisfied that there was no dishonest intent behind this and that it was done with the consent of GL and Artemis. The written evidence of the Respondent and Ms Harb, which in this regard I accept, was that retention of the Barclays account for use by SC2 was driven by practical considerations; in particular, the PDQ terminal, which was used for the majority (approximately 90%) of payments. The Respondent's written evidence, which in this regard I accept, was that it was FSPG who advised her to keep the Barclays account for SC2. FSPG's knowledge of arrangements for SC2 to retain the Barclays account is reflected in contemporaneous correspondence in evidence (see by way of example the email of Ms Meng of FSPG to BDO dated 28 February 2013).

165. In February 2013, the name on the bank statements issued in relation to the Barclays account was changed from Style Counsel Limited to CSB 123 Limited (to reflect SC1's new name). It was then changed back to Style Counsel Limited (SC2's name), however, a few months later, to reflect SC2's adoption of the account.

166. Whilst there was not in evidence a full run of the correspondence with Barclays bank on the issue, it is clear from such correspondence as there was in evidence that the change in the name of the account from CSB123 Limited back to Style Counsel Limited was as a result of correspondence between the bank and FSPG, followed up by 'chasers' to the bank from Mr Harb at FSPG's request.

167. An email dated 8 August 2013, for example, shows Ms Meng of FSPG asking Ms Harb to chase the bank about the change of name, saying 'I don't think I have received any response from your banker to my last email chasing this, and wonder if it is better for you to contact them'. There are follow-up chasers the same day from Ms Harb to the bank on the issue.

168. Overall, whilst the change of name back to Style Counsel Limited took longer than expected, it is clear from the evidence overall that Barclays bank was aware of SC2's adoption of the account for its own use and accepted it.

GL: WLS and the Ross Investment 2013/2014

169. According to its filed accounts, for the period ending 31 January 2013 and the year ending 31 January 2014, GL remained balance sheet solvent, with net current assets of £1.2m and £2.4m respectively and cash at bank and in hand of £989,777 and £1.79m respectively. In October/November 2013, GL acquired a company known as Wedding List Solutions Limited ('WLS'). The plan was for WLS to provide working capital to GL when the 'wedding season' was in full swing, and for GL to fund WLS over the winter months, when sales from GL's website would be at their peak. The Respondent and Mr Stanbury became directors of WLS and Mr Gary Channon (former owner of WLS) became a director of GL.

170. Shortly thereafter, in or around December 2013, David Ross (co-founder of Carphone Warehouse) approached the Respondent and Mr Stanbury expressing an interest in investing in GL. David Ross knew of GL as his girlfriend worked there. GL was not looking for any further investment at that time, but David Ross wanted to invest. Mr Ross sent his own team in to carry out due diligence. In January 2014, Mr Ross invested £2 million in GL via his company, Oval (2243) Limited ('Oval'). As part of the Ross investment, Oval obtained preferential voting shares in GL.

171. Whilst David Ross did not become a director of GL, from the time of the Ross investment, Mr Ross started to attend (or be represented at) every meeting of GL and expressed a number of strong views on how GL should be run.

172. Mr Stanbury stood down as COO and stopped working for GL in March 2014. By his written evidence he explained his decision as follows:

> 'I left because Ross immediately started enforcing changes which I could clearly see did not benefit the company. Ross decided that the investment in the Wedding Shop was a foolish idea and that, despite [GL] having already purchased the company, no money should be spent on developing that part of the business within [GL]. In addition, Ross quickly decided that the [GL] catalogue was a waste of money; he clearly did not understand the amount of traffic that these brochures generated to the [GL] website and how pivotal this form of marketing was to the brand. I could tell very quickly that Ross had no understanding of luxury retail and that he was wholly unequipped to be making decisions on behalf of [GL].This, combined with the way in which he treated my daughter and the [GL] employees, meant that Ross and I were sure to fall out quickly. I was not going to put my daughter in the position of having to choose between her father as COO and her biggest investor and, accordingly, I decided to leave the business. The corporate environment had become so toxic as to be unworkable and I no longer felt that I could perform the functions of my role as COO effectively.'

173. On 2 July 2014, Mr Stanbury resigned as a director of GL.

174. Over the course of 2014, a number of factors combined which impacted negatively on GL's cashflow. WLS only generated enough operational income to cover its own needs and no additional cash was available to pay back an initial £125,000 loan from GL made in February 2014 or to ease the burden on GL's working capital requirements during the summer of 2014. Whilst Artemis had made a further loan to GL of £300,000 in or around October 2014, GL faced significant cashflow challenges. Whilst the cause of these challenges and of GL's ultimate demise are not matters before me, the Respondent and her father maintain that one of the problems was David Ross's insistence, in the autumn/winter of 2014, that the number of catalogues that GL produced be reduced from the intended 500,000 copies to 25,000 copies, a move which they say was disastrous for the business, given its customer base.

175. The Respondent gave evidence that she found it increasingly difficult to work with Mr Ross, describing him as ‘a very difficult investor to work with, being a man who was used to getting his own way. He was confident that he knew how best to run [GL], but there are stark differences between a business such as Carphone Warehouse and an online luxury goods retailer, the latter being far more bespoke.’

176. According to the Respondent’s written evidence, Mr Ross ‘was in constant contention with Rind and Dodd as to the daily management of [GL], all men wanting to drive the decision-making’. She added:

> ‘It was very difficult for me to stand up for myself in meetings with them, the men being intimidating and unwilling to listen to my recommendations, despite the fact that the [GL] brand was built around my personal taste and recommendations, and I knew what the clients wanted. It was a very difficult period where I felt like I was being systematically bullied by Ross; he would ask me inappropriate personal questions during board meetings in an attempt to publicly embarrass and belittle me, making me anxious of any interaction with him…. Ross ultimately caused me to become ill for an extended period of time which, of course, had an adverse impact on my ability to run the business. I couldn’t work with Ross; all of the joy had been taken out of my job.’

177. By October 2014, the Respondent stood down as CEO of GL. By an email dated 9 October 2014 sent by the Respondent to Mr Ross, Mr Dodd and others, the Respondent wrote setting out for discussion the options for GL as she saw them: either (1) to keep GL going, which required agreement on her replacement as CEO and ‘agreement on the funding needs of the two businesses [GL and WLS] on a proper [ie rather than ‘hand to mouth’] basis’ or (2) in the absence of agreement on those two matters, to shut down GL. The email continued:

> ‘However, whatever happens, in my dealings with you, I must be treated with dignity and respect which, like everyone else, I have a right to expect….. Your constantly hostile and disrespectful manner is starting to affect my health and I will not allow this to carry on. I’m not asking for special treatment, just decency and civility.’

178. At about this time (October 2014), the Respondent decided to close down SC2. The evidence of the Respondent and Ms Harb, which in this regard I accept, was that the Respondent had lost a number of her ultra-high net worth clients, including Tamara Ecclestone, who had started a family and Petra Ecclestone, who had moved to the US. Ms Harb’s oral testimony, which I accept, was that the Respondent ‘went down to a couple of clients’. As the Respondent only had a small number of styling clients (who each spent considerable sums of money with her), the loss of key clients such as the Ecclestone sisters had a significant impact. Another problem was the rise of Instagram; again, Ms Harb’s evidence (which I accept) was that ‘people were

messaging our clients direct on Instagram – cutting out the middle man. It wasn't as lucrative any more'. In addition, by this time, the Respondent was engaged in a reality TV show, called 'Ladies of London', which ran for three seasons.

SC2's entry into MVL

179. In the run up to closing down SC2, accounts were prepared by FSPG for SC1 and GL.

180. On 30 October 2014, abbreviated accounts for SC1 for the period ending 31 January 2014 were filed. These were professionally drawn accounts, signed on 24 October 2014, showing SC1 to have ceased trading in April 2013 and to be balance sheet solvent. The accounts were in the same format as the filed accounts prepared by FSPG for SC1 in previous years.

181. On 30 October 2014, abbreviated accounts for GL for the period ending 31 January 2014 were filed. These were professionally drawn accounts, signed on 24 October 2014. The filed version bears a stamp at the top 'FSPG File Copy'. The accounts were in the same format as other accounts in evidence prepared by FSPG.

182. On 28 October 2014, the Respondent and Mr Stanbury signed a declaration of solvency in respect of SC2. Appended to the declaration was a statement of assets and liabilities as at 28 October 2014, prepared by FSPG. According to the statement, total assets less liabilities stood at £649,215.

183. On 30 October 2014, SC2 went into a members' voluntary liquidation. At a General Meeting of SC2 duly convened and held that day at 4th Floor, Allan House, 10 John Princes Street, London W1G 0AH, the following subjoined resolution was duly passed as a special and ordinary resolution of the company:

> 'That the Company be wound up voluntarily and that Lloyd Hinton (IP No 9516) of Insolve Plus Ltd, 4th Floor Allan House, 10 John Princes Street, London W1G 0AH be and hereby is appointed Liquidator for the purpose of such winding-up, that the Liquidator be authorised to distribute the assets in cash and in specie at his discretion and that the Liquidator be authorised to pay any class of creditors in full'

184. Mr Hinton retained FSPG to prepare and submit the Corporation Tax Return and cessation accounts for SC2 up to the date of liquidation. As later explained in his first Annual Progress Report for SC2 dated 11 December 2015 (at para 3):

> 'The Company's accountants, FSPG were instructed to prepare and submit the Corporation Tax Return and accounts up to the date of Liquidation… The choice of FSPG was based on their familiarity with the Company having prepared previous accounts and returns and their ability to perform this type of work .'

185. In the MVL for SC2, Mr Hinton made a distribution in specie of £549,370 on 30 October 2014 and a further distribution in specie of £24,710 on 29 February 2016 (totalling £574,080): see progress report for SC2 dated 29 October 2019.

186. At the time that SC2 entered MVL on 30 October 2014, SC1 was still in existence but dormant. Its registered office remained 21 Bedford Square, London WC1B 3HH, the address of FSPG.

187. On 12 December 2014, FSPG filed an Annual Return for CS1 dated 7 September 2014. SC1's next accounts, for the year ending 31 January 2015 were due to be filed by 31 October 2015.

188. On the same day (12 December 2014), Ms Pauline Doyle, finance director for GL, sent an email to Mr Kartik Kumar of Artemis, which provided as follows:

> 'Hi Kartik,
>
> I have just had confirmation from our company secretary that all statutory filings at Companies House for both CSB123 [SC1] and Gift Library are up to date.
>
> Please let me know if you need any further information.
>
> Regards
>
> Pauline'

189. Mr Kumar of Artemis emailed a reply less than 10 minutes later on the same day, stating:

> 'Hi Pauline,
>
> Why hasn't CSB123 [SC1] been dissolved? Also, I don't think John should be listed as a director for CSB123?
>
> Thanks,
>
> Kartik'

190. Ms Doyle wrote back 5 minutes later on 12 December 2014, stating

> 'Hi,
>
> CSB123/Style Councel is in the process of being dissolved.
>
> We are just waiting for FSPG to confirm that all the necessary paperwork is complete.
>
> Regards,
>
> Pauline'

191. I consider it legitimate to conclude from this exchange that, as at December 2014, GL's understanding was that SC1 was about to be dissolved. It appears that events overtook it.

192. The 2014 Christmas trading period for GL was disappointing. It failed to meet sales forecasts and much needed revenue did not come into the business as expected. This created a hole in the cashflow of GL, as it had been funding WLS and on two occasions had paid the end of month salaries. In January 2015, GL shareholders were funding both GL and WLS on a week by week basis while further funding and investment was sought.

193. In the meantime, GL's repayment deadline of 31 January 2015 for the Stonecliffe debenture loomed large. The directors of GL had thought this deadline could be extended. According to the evidence of the Respondent and Ms Harb, David Ross had said that his representatives would liaise with Mr Rind to resolve the matter. They say that, in the event, Mr Ross's representative (Ed Fry) failed to submit a proposal for repayment until after the agreed deadline had passed. As put by the Respondent:

> 'I expressed to the Board and Ross repeatedly (both orally and in writing) the importance of dealing with the issue. I asked them constantly, as I know how temperamental and litigious Rind can be. I was led to believe and did believe that a postponement of the date from the payment of the sum due under the Debenture was perfectly feasible and would be agreed, however it was a power-play and the Debenture was overdue before Ross or Fry took any positive steps to liaise with Rind again. I therefore strongly believe that the demise of GL was avoidable'.

194. In correspondence with the Insolvency Service in 2016, Mr Dodd also expressed his belief that had an agreement been reached with Stonecliffe in early 2015 as expected, GL would have survived.

195. Mr Stanbury gave evidence to similar effect. In written evidence he stated that:

> 'GL was a viable, healthy business with a very strong future. The company was ultimately ruined by the non-cooperation of three powerful men (Ross, Rind and Dodd)'.

GL's entry into administration

196. On 16 February 2015, GL was placed into administration. Mr Lloyd Hinton (of Insolve Plus Ltd) and the Applicant (of Valentine & Co) were appointed administrators. It was a hostile out of court appointment by Stonecliffe Rock Limited as qualifying floating charge holder. The Respondent was on a family skiing trip at the time. Ms Harb was present at the Munster Road premises when the administrators took over.

197. Both the Respondent and Ms Harb gave evidence, which I accept, that all of the electronic documentation relating to GL, SC1 and SC2 was maintained on the same servers based at GL's premises and that desktop computers, iPads, iPhones and

laptops used for GL, SC1 and SC2 were stored at GL's premises at the time that GL went into administration. Ms Harb also gave evidence, which I accept, that she kept hard copy files relating to SC1 and SC2 at GL's premises and that these files were stored at GL's premises at the time that GL went into administration.

198. Shortly after GL's entry into administration (i) a significant amount of electronic data stored at GL's trading premises was lost or destroyed and (ii) the paper records relating to SC1 and SC2 kept by Ms Harb at GL's trading premises were lost or destroyed. This happened on the GL administrators' watch.

199. Mr Hinton played the lead role in the GL administration initially. The administrators' report to creditors of GL dated 2 April 2015 stated that:

> 'Creditors should note that Lloyd Hinton is the Liquidator of a connected company, [SC2] – in Members Voluntary Liquidation …, the director of which (Caroline Stanbury) is also a Director of [GL]. The Liquidation is a solvent liquidation and therefore we do not consider there to be a conflict of interest. In any event, if any matters arise in GL which relate to [SC2] they will be dealt with by Valentine & Co [ie Mr Reynolds' firm]'

200. By his statement of affairs for GL, Mr Dodd summarised the causes of GL's insolvency as 'excess cash burn and achieving lower sales than budgeted'. According to Mr Dodd's statement of affairs, GL's assets as at the date of administration were (1) office/computer equipment: £44,698 (2) stock 'at cost': £358,895 and (3) a debt owed by WLS of £646,000. In addition, GL owned shares in WLS, which was still trading at the time.

201. The GL administrators decided to continue to trade GL in administration for a short period with a view to a sale as a going concern. Asset agents, Winterhill Largo plc were instructed to value the business and assets and to prepare a sales prospectus. Offers for the business were required by a deadline of 24 February 2015. Two offers were received, which Winterhill advised should be rejected, on the basis that a higher return could be achieved on a break up basis. Trading ceased on 26 February 2015 and part of GL's premises, Unit 25, was vacated on 25 February 2015. The remaining part (Unit 23) was vacated on 16 March 2015 following a sale of the chattel assets.

202. GL's stock had a book value of £549,248 (as per accounts for the year ended 31 January 2014) and (according to Mr Dodd's statement of affairs) an estimated value as at 2 March 2015 (at cost) of £358,895. Winterhill, however, valued the stock at £30,000 and sold it for £29,000. Questions have been raised as to Winterhill's professionalism in the sales process. Winterhill itself went into an insolvency process in 2016 and at least one of its directors was subsequently made bankrupt. The Applicant and Mr Stanbury believe the price achieved by Winterhill for GL's stock to have been a significant undervalue. That issue, however, is not before me.

203. Another asset of GL was its claim against WLS for £646,233 (largely relating to rent and connected expenses paid by GL in respect of premises occupied by WLS). WLS disputed the £646,233 claimed but admitted that £150,000 was due, which it said that it could not repay. In the event, the GL administrators struck a deal with Channon and

Company Limited (a company run by Gary Channon, who was also a director of GL). Under the terms of the deal, Channon & Company paid GL's administrators £50,000 for GL's shares in WLS and for the return of stock said to belong to WLS and the claim for £646,000 was dropped. At paragraph 22 of her Statement, Pauline Doyle, who was asked by the GL Administrators to assist for 10 days following GL's entry into administration, recalls:

> 'I later came to learn that [WLS] had been acquired by one of its directors, Gary Channon, for a sum of circa £50,000, which I believed to be quite low considering that I had calculated a sum of circa £150,000 being owed to Gift Library from the inter-company account'.

204. Overall, therefore, recoveries within the GL administration have been extremely low.

205. From the correspondence in evidence, it appears that Mr Ross was quick to blame the Respondent for the loss of his investment. On 22 May 2015 his legal department wrote to the Respondent stating that they had been 'working with Valentine & Co and Insolve Plus, as Joint Administrators of [GL]', since the company entered administration in February 2015. The letter stated that Mr Ross and Mountain Berg Ltd (formerly Oval (2245) Ltd) felt 'forced to investigate the circumstances leading to the administration' and that they were 'working with the administrators in that regard.' (I pause to note that very shortly thereafter, by letter of 13 August 2015, the Applicant sent a letter to the Respondent demanding £1.4 million and threatening bankruptcy proceedings, a point to which I shall return). Mr Ross subsequently instructed Harbottle & Lewis to send a letter before claim dated 30 September 2015 to the Respondent. RPC responded to Harbottle & Lewis by letter dated 28 October 2015, refuting all allegations on the Respondent's behalf.

206. In the meantime, GL moved from administration to creditors' voluntary liquidation in September 2015. Mr Hinton and Mr Reynolds were appointed liquidators.

SC1's dissolution

207. On 8 December 2015, the Registrar of Companies sent a letter to the directors of SC1 warning that SC1 would be struck off on the expiration of 2 months unless cause was shown. The letter was addressed simply to 'The Directors' (who remained the Respondent and Mr Dodd). It was sent to the offices of FSPG (21 Bedford Square), which remained the registered office of SC1.

208. From the evidence before me, which in certain respects is incomplete, it would appear that FSPG did not act on that letter. The reasons for this are unclear. FSPG had continued to deal with filings for SC1 after SC2 had started trading. An Annual Return for SC1 dated 7 September 2013 was filed at Companies House on 10 September 2013. Abbreviated Accounts for SC1 for the period ending 31 January 2013, showing SC1 to be balance sheet solvent, were filed on 22 October 2013. Abbreviated Accounts for SC1 for the period ending 31 January 2014, again showing SC1 to be balance sheet solvent and to have ceased trading in April 2013, were filed on 30 October 2014. An Annual Return for SC1 dated 7 September 2014 was filed on 12 December 2014. Logically the next step would have been the filing of dormant accounts, or for arrangements to have been put in place for a voluntary striking off

under s.1003/1004 CA 2006; certainly Ms Doyle's understanding in December 2014 (as per her email exchange with Mr Kumar) was that FSPG were arranging SC1's dissolution. For whatever reason, however, it appears that FSPG did not engage with Companies House in relation to the warning letter of 8 December 2015. On the evidence as a whole, I am satisfied that the Respondent was not informed of the warning letter at the time and was unaware that any filings remained outstanding for SC1.

209. As no action was taken in respect of SC1's outstanding accounts, SC1 was struck off and dissolved on 23 February 2016.

SC1's restoration

210. SC1 was restored to the register on 23 March 2017 on the application of GL acting by its liquidators Mr Hinton and Mr Reynolds. It was wound up on the just and equitable ground. Mr Reynolds was appointed as liquidator on a Secretary of State appointment on 17 May 2017.

Delay

211. The Respondent maintains that she has been seriously prejudiced in her defence to these proceedings by the Applicant's delay in bringing them.

212. The Applicant first intimated a claim against the Respondent by letter of 13 August 2015, in his capacity as administrator of GL. I was taken to no correspondence to suggest that this letter was the culmination of earlier exchanges between the Applicant and the Respondent and consider it legitimate to conclude that it was not. It appears to have come out of the blue.

213. By his letter of 13 August 2015, the Applicant alleged that the business of SC1 had been transferred to SC2 in January 2013 for no consideration, and that in consequence the Respondent owed GL £1.4m, based on the valuation of FSPG carried out in October 2012.

214. The letter of 13 August 2015 provides as follows:

> 'My investigations have unearthed a valuation of [SC1] ….in the sum of £1,400,000 as at 22 October 2012. This valuation was conducted by FSPG Chartered Accountants, copy enclosed for ease of reference….
>
> In January 2013, it appears that a new company was incorporated … initially with the name CSB123 Limited however this company is now known as Style Counsel Limited and has been placed into Members Voluntary Liquidation with Lloyd Hinton of Insolve Plus Limited with realisable assets at the date of liquidation of £649,215 according to your sworn Declaration of Solvency.
>
> It appears that the business of the original [SC1] has been transferred to [SC2] with no due consideration paid to [GL].

> Bearing in mind the valuation conducted barely three months prior to the transfer of business, I would have expected consideration of at least £1,400,000 to have been paid to [GL].
> ….
>
> Accordingly, I should be grateful for your immediate proposals for payment of the sum of £1,400,000 representing the proper value of [SC1] by return.
>
> Please note that in the absence of your repayment I will have no alternative other than to commence recovery proceedings which may well culminate in my bringing a bankruptcy petition'.

215. In the ensuing correspondence in 2015, the Respondent's solicitors, RPC, made clear that they considered the Applicant's claim to be misconceived. They also confirmed that the Respondent did not hold copies of any hard copy or electronic documents, explaining that these were taken when GL was placed into administration: (letters from RPC to the Applicant dated 26 August, 14 September and 14 October 2015).

216. By their letter of 14 September 2015, RPC also explained the arrangements agreed concerning Hermes bags and personal styling. Whilst RPC were working without sight of any documents at this stage and some of the details (including timings) were incorrect, their letter of 14 September 2015 did make tolerably clear the Respondent's case that an agreement had been reached with GL which involved future 'Hermes trade' being put through GL and the Respondent retaining styling. The Applicant clearly registered the point at the time, as he then undertook a review of invoices relating to handbag sales (see letter from Applicant to RPC dated 9 October 2015).

217. By 5 February 2016, the Applicant (by then in his capacity as liquidator of GL) had instructed his current solicitors, Blake Morgan, to send a letter before claim to RPC. By their letter of 5 February 2016, Blake Morgan quoted from Mr Stanbury's email dated 22 January 2013 and made reference to Mr Hershowitz's email of 24 January 2013 (quoted at paragraphs 110 and 123 above). Blake Morgan went on to allege that the Respondent had caused the transfer of SC1's business to SC2 in January 2013 and demanded payment to GL's liquidators of £1.4m. The Applicant also took out ATE insurance in April 2016, with a view to pursuing a claim against the Respondent in his capacity as liquidator of GL.

218. At some stage in 2016, however, the Applicant had second thoughts about pursuing the claim on behalf of GL. He decided that he wished to pursue his intended claim for £1.4m on behalf of SC1 instead. By this stage, SC1 had been struck off and dissolved; this had occurred in February 2016. In addition, the Applicant was not (and never had been) appointed as office-holder of SC1.

219. The Applicant set about applying to have SC1 restored to the register. It was clear from his oral testimony that his purpose in restoring SC1 to the register was in order to seek his own appointment as office-holder and thereafter to pursue a claim against the Respondent. As he put it 'the cause of action lay in SC1, so SC1 had to be restored.'

220. Notwithstanding that RPC had by their letter of 26 August 2015 specifically asked the Applicant to 'note their interest' on the Respondent's behalf, and that the Applicant and his solicitors had been corresponding with RPC since then, the Applicant did not inform RPC or the Respondent of his plans to apply for restoration of SC1. He gave no notice to RPC or the Respondent of the hearing on 23 March 2017 at which SC1 was restored to the register and wound up on the just and equitable ground. The Official Receiver acted as liquidator initially. The Applicant was appointed as liquidator of SC1 in May 2017, on a Secretary of State appointment.

221. The Respondent completed a questionnaire for the Applicant in respect of SC1 on 7 September 2017, shortly after receipt of evidence of the Applicant's appointment. Within that questionnaire, she confirmed that she lived in Dubai, held no papers in relation to GL, SC1 or SC2 and had no access to her emails or any documents.

222. On the application of the Official Receiver, a public examination hearing relating to SC1 had been fixed for the Respondent to attend on 1 November 2017. In October 2017, in the run-up to that hearing, RPC emailed the Applicant on several occasions, making repeated offers to make the Respondent available for any questions that the Applicant might have regarding SC1, suggesting dates when the Respondent planned to be in London. These offers of an interview were not taken up by the Applicant.

223. The Respondent then heard nothing from the Applicant for 9 months. The Applicant next wrote by letter dated 24 July 2018, asking the Respondent to attend an interview in London for 'clarification' in respect of what were described simply as 'the transactions between' GL, SC1 and SC2. RPC responded by letter dated 1 August 2018, reminding the Applicant that the Respondent lived in Dubai and suggesting a telephone or video call interview with a written agenda circulated beforehand, to give the Respondent a chance to prepare, or alternatively questions in writing for the Respondent to provide written answers to. Blake Morgan offered some dates in October and November 2018 by letter of 20 September 2018, but then retracted some of the dates offered. Alternative dates in November 2018 were put forward. In the event, no interview took place until some months later, in March 2019, when the Respondent (based in Dubai) was interviewed by telephone.

224. The Respondent has complained that the telephone interview which took place in March 2019 was conducted in an unfair manner. The Respondent was given no meaningful notice of any of the questions to be asked; only very broad subject headings were provided. She was provided with no bundle of documents for the interview. The Applicant's representative, Mr Groves of Counsel, who conducted the questioning, worked from a bundle of documents. Counsel for the Respondent (based in London) was given a copy of the bundle, but only at the time of the interview, not before. Mr Groves made frequent reference to documents in the bundle during questioning, whilst the Respondent (who was in Dubai with only her husband beside her) was entirely dependent on her unaided memory of events. Having considered the notes of the interview in the context of the evidence overall, in my judgment, the criticisms set out at paragraph 119 of the Amended Defence as to the manner in which the interview was conducted are well founded.

225. On the same day, Mr Stanbury was interviewed. Again, Mr Stanbury was given no meaningful advance notice of the questions to be asked; only broad subject headings

were provided. The Applicant (through Counsel) went ahead with the interview notwithstanding being informed that Mr Stanbury was suffering from breathlessness and was due to have open-heart surgery in less than a week.

226. Shortly after these interviews, the Applicant arranged for his solicitors Blake Morgan to send the Respondent a further letter before claim, dated 20 May 2019. This was broadly along the same lines as the 2015 letter before claim, but this time on behalf of SC1 rather than GL. It provided:

> 'It is now the Liquidator's intention to bring a claim against your client in relation to her conduct as a director of [SC1]. In short, our client's position is that your client breached her duties to [SC1] by procuring and/or allowing the transfer of the business of [SC1] to a connected company for no consideration on or shortly after 31 January 2013, and/or effecting an unlawful distribution of capital in favour of herself.'

227. The letter before claim went on to seek a contribution from the Respondent in the sum of £1,400,000 'being the loss suffered by [SC1] as a result of the improper and unlawful transfer of its business to [SC2].'

228. By the time this letter was sent, more than 6 years had passed since the events alleged.

229. The current application was issued four months later, on 9 September 2019.

230. The Applicant had no adequate explanation for his failure to issue the application until 2019, when (in his role as GL administrator) he had sent his first letter before claim to the Respondent in 2015 about essentially the same allegations and had taken out ATE insurance in 2016 to bring a claim against her. The Respondent had made repeated offers to attend interview in 2017, but these were not taken up.

231. The Applicant's attempts to blame the Respondent for the delay were not made out on the evidence. There were various attempts to lay the blame for the delay on errors of detail and timing of events contained in letters from RPC to the Applicant sent (without access to underlying documents) on the Applicant's behalf and in questionnaires completed by the Applicant with RPC's assistance (again, without access to underlying documents), but these errors do not begin to explain or justify the delay. A passing error as to which companies were subsidiaries of GL was relied upon, for example, when the fact that GL and SC1 were parent and subsidiary was clearly set out in the filed accounts for each company: a simple company search would have established their relationship. An error as to the timing of cesser of trading of SC1 (which from memory was said to be November 2012 rather than April 2013) was also relied upon, when the timing of SC1's cesser of trading was clearly set out in SC1's filed accounts for the year ending 31 January 2014 and readily verifiable by way of a simple letter of enquiry to SC1's accountants, FSPG. There are other examples but these will suffice. In the interests of brevity, I will not list them all.

232. The Applicant's attempts to justify part or all of the delay in issuing proceedings on the need to carry out investigations were not made out on the evidence either. In this regard the SIP 9 breakdowns attached to the Applicant's annual progress reports since the date of his appointment are informative:

(1) According to the SIP 9 breakdown attached to the Applicant's progress report for the first year of his appointment as liquidator of CS1 (17 May 2017 to 16 May 2018), a total of 35.5 hours were spent by Valentine & Co on matters relating to this appointment in the year. These 35.5 hours comprised 'partner' time of 33.9 hours and 'assistants and support staff' time of 1.6 hours). Of the overall total of 35.5 hours, 16.7 hours (all partner time) were spent on investigations, the balance being spent on administration and planning. That is to say: just over two working days in the year were spent on investigations. No hours at all were spent on creditors.

(2) According to the SIP 9 breakdown attached to his progress report for the second year of his appointment as liquidator of CS1 (17 May 2018 to 17 May 2019), a total of 24.2 hours were spent upon this appointment in the year (partner time 23.4 hours, assistants and support staff 0.8 hours), of which 7.10 hours (all partner time) was spent on investigations, the balance being spent on administration and planning (17 hours) and creditors (0.1 hour). It was only a few days after the end of the second year of his appointment as liquidator, having spent 7.10 hours on investigations in the whole year, that (on 20 May 2019) the Applicant considered himself in a position to send out, via Blake Morgan, his ultimate letter before claim.

(3) According to the SIP 9 breakdown attached to his progress report for the third year of his appointment as liquidator of CS1 (17 May 2019 to 17 May 2020), which is the year in which proceedings were issued (on 9 September 2019), a total of 55.95 hours were spent on this appointment (partner time 55.05 hours, assistants and support staff 0.9 hours) of which 50.75 hours were spent on investigations, the balance (5.2 hours) being spent on administration and planning. No time was spent on creditors. That is to say, it was only in the third year of the Applicant's appointment that time spent on investigations started picking up – and the bulk of this work must have been carried out after the letter before action was sent on 20 May 2019.

(4) It appears that it was only in the year 17 May 2020 to 16 May 2021, some 8 months after proceedings were issued, and the year in which the trial took place, that activity really picked up. According to the SIP 9 breakdown for that year, a total of 370.6 hours were spent on the appointment (partner time 368.6 hours, assistants and support staff 1.3 hours). Still no time was spent on creditors.

233. In addition to the SIP 9 breakdowns, other evidence supports the conclusion that the Applicant and his firm Valentine & Co carried out very few investigations into this matter prior to issuing proceedings. By way of example:

(1) The Applicant did not undertake a s235 interview of Mr Dodd, notwithstanding Mr Dodd's role as director of SC1, director of GL (100% shareholder in SC1) and director of Artemis, the majority shareholder in GL over the relevant period. Mr Dodd had completed a questionnaire in relation to GL in 2015 but the Applicant did not write to him asking him to provide a statement for these proceedings until 7 August 2020, very shortly before the deadline for exchange of witness statements. Indeed, from the transcript of the s.235 interview of the Respondent in March 2019, it appears that, as at March 2019, Counsel for the Applicant, who conducted the interview, was not even aware that Mr Dodd was a director of SC1. At page 71 of the transcript of the interview, Mr Groves asks 'what's John Dodd got to do with Style Counsel 1? Is he a director of it?' and in a follow up question, asks 'what's that got to do with Style

Counsel 1 and its assets? He's [in context Mr Dodd] not a director ….' In fact, according to the Articles of SC1 adopted in November 2012, Mr Dodd was not only a director of SC1, he was Chairman of the Board of Directors of SC1.

(2) Whilst the Applicant did request certain documents from FSPG (the scope of the request remaining unknown as no letters of request from the Applicant to FSPG have been included in the bundle), the Applicant did not interview (or raise any meaningful questions about SC1's affairs in correspondence with) Mr Fenton or anyone else at FSPG, notwithstanding that

(i) he had relied (since 2015) upon a one-page valuation of SC1 prepared by FSPG as the backbone of his claim;

(ii) FSPG's name appears on accounts filed for both GL and SC1;

(iii) it was readily apparent from Liquidator's progress reports filed at Companies House for SC2 that FSPG prepared cessation accounts for SC2 at Mr Hinton's request, and

(iv) the registered office of SC1 was FSPG's address.

(3) Whilst the Applicant had requested bank statements from Barclays bank (which were provided), he had not interviewed (or raised questions in correspondence of) anyone from the bank in relation to SC2's adoption of SC1's account.

(4) Notwithstanding filed accounts for SC1 for the year ending 31 January 2014 showing SC1 (i) to have ceased trading in April 2013 (ii) to be balance sheet solvent and (iii) to have no creditors other than a modest inter-company balance owed to SC2, it was confirmed through Counsel at trial that the Applicant had carried out no creditor enquiries; even routine enquiries of HMRC habitually undertaken by office-holders, to see if any tax was outstanding. Quite what the 0.1 hours spent on creditors in the year 17 May 2018 to 16 May 2019 related to remains unknown, but the most likely explanation is a VAT refund of £2,254.08 received in that period. According to the cumulative SIP 9 summary contained in the Applicant's most recent progress report dated 9 July 2021, overall time spent on creditors of SC1 remains the same: that is to say - 0.1 hours over the period 17 May 2017 to 16 May 2021.

234. There was no evidence before me to suggest that the Applicant had expended significant time in seeking to recover (or reconstruct) SC1's books and records either. It became clear during his cross examination that he had taken no or no reasonable steps to acquaint himself with when or how the electronic data stored on servers at GL's trading premises had been lost, what had become of the servers, computers, laptops and mobile phones on which electronic data had been stored at GL's premises; or what steps (if any) had been taken to recover such data. Whilst he had obtained some files from FSPG and Taylor Wessing in 2015 in his capacity as administrator of GL, these files were limited; and the letters by which they were requested were not in evidence. From the evidence it was clear that it was the Respondent who did most of the running in obtaining the fuller records from FSPG, Taylor Wessing, Artemis and others contained in the trial bundles.

235. The Applicant's attempts to confine the debate on delay to the period running from 2017 (the date of his appointment as liquidator of SC1) were also unpersuasive. The Applicant had formed an intention to bring proceedings against the Respondent in 2015; the fact that initially he wasted time pursuing a claim on behalf of GL rather than SC1, thereby delaying matters from 2015 to 2017, was entirely of his own making.

236. In short, there was no adequate explanation for the Applicant's delay in bringing these proceedings.

237. The Respondent has been seriously prejudiced in her ability to defend these proceedings by the Applicant's delay in bringing the same. Memories have undoubtedly faded considerably over the past 8 years. Mr Stanbury, an important witness, is now elderly with a serious heart condition. The passage of time has also made it much more difficult to reconstruct missing documentation from third party sources.

Missing Documentation

238. The prejudice caused to the Respondent by the Applicant's delay in bringing these proceedings is exacerbated by the loss of electronic data and hard copy documents on the GL administrators' watch, shortly after GL entered administration. On the evidence before me I am satisfied that blame for these losses cannot be laid at the Respondent's door.

239. The Applicant had known since 2015 that the Respondent had no documentation. RPC made that clear in 2015 and were pressing for access to documents in the Applicant's possession as administrator/liquidator of GL (see by way of example letters from RPC dated 14 October, 18 November 2015, 1 December 2015). Yet it was not until November 2019, after issue of these proceedings, that the Applicant admitted that a substantial amount of data had been lost.

240. By letter dated 4 November 2019, after repeated requests from the Respondent for access to documents relating to SC1 and GL, the Applicant's solicitors, Blake Morgan, admitted that:

> 'We have been advised that the data on the server [belonging] to [GL] was transferred to a terastation shortly after the appointment of the [GL] Administrators, however, the terastation failed before a backup of the data could be taken. The Liquidators therefore do not [have] the data that came from this server.'

241. The Applicant had known this since 2016, but had not informed the Respondent or her solicitors until November 2019.

242. The Respondent's evidence, which in this regard I accept, was that electronic documentation relating to GL, SC1 and SC2 was maintained on the servers based at GL's premises and that desktop computers, iPads, iPhones or laptops used for GL, SC1 and SC2 were stored at GL's premises at the time that GL went into administration in February 2015.

243. Ms Harb's evidence, which in this regard I accept, was that she used her GL email address for all matters relating to SC1 and SC2 as she did not have a separate email address for SC1 or SC2. At paragraph 18 of her statement she confirms that:

> 'It is my belief that virtually everything we did at Gift Library and Style Counsel [in context SC1 and SC2] was carefully documented and recorded, whether by email or other documentation. It is disappointing to learn that … our email accounts are now largely unavailable, as they would have been of significant assistance to me in recalling more of the details about events relating to those companies and to the specific issues raised by the Applicant…'

244. By her oral evidence, which again I accept, Ms Harb also explained in addition to saving email communications with clients on her computer at GL's premises, she also saved her communications with FSPG, with whom she liaised regularly in relation to the production of invoices and any allocation, banking, tax or other queries which arose. These emails were saved on her computer at GL's premises, so that any queries which arose about a given job, the sums charged for it, or how it was allocated or paid for could be resolved quickly and efficiently.

245. In an attempt to reconstruct the missing documents, the Respondent (inter alia) sought third-party disclosure from FSPG. As a result of her efforts, substantial documentation was produced by FSPG, but not a full run of the missing email correspondence. In addition, the Respondent, Mr Stanbury and Ms Harb do not have access to any of their own emails, which were stored on GL's server.

246. The Valuation Report prepared by Winterhill for the GL Administrators on 20 February 2015, following an inspection on 16 February 2015, makes reference in schedule 1 to numerous servers and a significant amount of computer equipment on site. Whilst attempts appear to have been made to distinguish (in schedule 4) computer equipment belonging to WLS, no attempt appears to have been made to identify servers and other computer equipment in schedule 1 which were used for SC1, notwithstanding the fact that SC1 is clearly named in GL's filed accounts as its subsidiary and that a simple company search against SC1 as at February 2015 would have revealed that SC1's trading premises had been the same as that of GL.

247. On the evidence which I have heard and read, I am satisfied that the Mac computer, used by the Respondent for GL, SC1 and SC2 and kept at GL's premises, was amongst the computer equipment lost or disposed of by the GL administrators. The Applicant's solicitors later tried to maintain that the Respondent purchased the Mac computer back from the GL administrators, but the Applicant adduced no evidence to support this contention and I accept the Respondent's evidence that she didn't.

248. In short, none of the servers, desktop computers, iPads, iPhones or laptops used for GL, SC1 and SC2 and stored at GL's trading premises are now available. They were all lost or disposed of by GL's administrators shortly after GL went into administration.

249. In addition, paper records relating to SC1 and SC2 which were kept at GL's trading premises at the time that GL went into administration, including Ms Harb's white files, have also gone missing on the GL administrators' watch.

250. Records relating to GL's stock are also missing.

251. Mr Reynolds refused to accept any responsibility for the substantial loss of data stored at GL's premises at the time that he was appointed joint administrator of GL. He said that he hadn't dealt with that aspect of the administration; that was Mr Hinton's side of things, he said. In cross-examination he admitted that he had not set foot in GL's trading premises. It was, however, a joint appointment; and it is the Applicant who is pursuing a case in which the missing documentation is relevant.

252. Some hard copy documents survived. Whilst no 'chain of custody' records (ie from the date of appointment onwards) were kept by the GL administrators, the Applicant accepts that he received 15 boxes of paper records from Mr Hinton in March 2015. These records had been stored at GL's premises and were first taken into Mr Hinton's possession. Mr Hinton passed them on to the Applicant, without an inventory, in March 2015. The Applicant's staff prepared a fairly 'high level' inventory at the time of receipt from Mr Hinton in March 2015.

253. The Respondent's solicitors, RPC, first asked for copies of the 15 boxes of documents in 2015. They were supplied with a small bundle of hard copy documents in November 2015 but were not given access to (or copies of) the documents contained in the 15 boxes. Valentine & Co later stated that they hadn't received a letter sent in December 2015 requesting copies.

254. RPC repeated their request for copies of the 15 boxes of documents in 2016 (see by way of example letter from RPC to Valentine & Co dated 26 August 2016, email RPC to Valentine dated 13 September 2016, response 16 September 2016). They were told that the cost of making copies would be prohibitive.

255. In June 2019, after receipt of the Applicant's (ultimate) letter before claim, RPC pressed again for copies of the 15 boxes of documents by letter dated 13 June 2019, to which they received no reply. They chased again on 1 July 2019. Blake Morgan responded over 2 weeks later, by letter dated 16 July 2019, stating that RPC were failing to distinguish between the liquidation and liquidator of GL and SC1 respectively, adding: 'For clarity, it is the latter that is bringing the claim against Ms Stanbury, so the former is a third party.' Blake Morgan also stated that 'relevant and proportionate documents' had already been provided and that any unparticularised application for pre-action disclosure would simply be a 'fishing expedition'. They went on to state that RPC were welcome to inspect the 15 boxes of documents at Blake Morgan's offices.

256. RPC responded by letter of 18 July 2019, offering dates that they could attend to inspect the 15 boxes of documents.

257. Blake Morgan set a date (26 July 2019) for inspection. The day before inspection however, on 25 July 2019, Blake Morgan wrote further, stating as follows:

> 'We write further to our previous correspondence.

> In advance of your attendance at our offices, tomorrow, on 26 July 2019, we have started to prepare the documents so that they are available to you. It has come to our attention that there appears to be a fundamental misunderstanding about the documents that you may be expecting to review tomorrow.
>
> The reference to c.15 boxes was originally made in the letter of 9 November 2015 by the Liquidator of [GL] and subsequent to that an inventory of those boxes were sent to you on 27 November 2015. Having looked at those boxes again the documents in them are solely documents which belong to [GL], and are not wholly relevant to the claim brought on behalf of [SC1]. That being said, there are certain documents which were obtained on behalf of the Liquidator of [GL], which do relate to the claim by [SC1] and our client accepts these should be disclosed to you.
>
> We do appreciate that in our letter of 16 July 2019 we invited you to see the c15 boxes and that was an error on our part and we apologise for any confusion caused.
>
> We therefore confirm that the documents which will be available for you to review tomorrow are as follows:
>
> . 8 lever arch folders relating to correspondence from Taylor Wessing; and
>
> . 1 lever arch folder of documents from FSPG.'

258. It became clear from Blake Morgan's later letter of 31 July 2019 that the Taylor Wessing documents and FSPG documents referred to had been received from Taylor Wessing and FSPG themselves; they did not form part of the documents contained in the 15 boxes delivered by Mr Hinton to the Applicant.

259. In short, as at July 2019, some 4 years after access was first requested to the 15 boxes of documents recovered from GL's premises, access was still being denied. Moreover, the Taylor Wessing and FSPG papers that Blake Morgan did supply to RPC were incomplete; Blake Morgan omitting to provide a number of attachments to emails, for example.

260. By letter of 16 August 2019, RPC wrote to Blake Morgan, asking for the Applicant's consent for Taylor Wessing and FSPG to release copies of their papers directly to the Respondent; a request which they had made on more than one occasion already. Blake Morgan responded by letter dated 21 August 2019, stating:

> 'We do not intend to repeat the contents of our previous letter, suffice to say that you have had sufficient disclosure and therefore our client will not consent to Taylor Wessing and/or FSPG disclosing further documents to you unless and until it becomes apparent that those documents are relevant to the issues between the parties in this case, something that would

> only occur during the normal disclosure process that takes place after pleadings have closed.
>
> We are therefore instructed to issue proceedings on Monday, 9 September 2019 without further notice to you, in the absence of any substantive response to our letter of 20 May 2019 by 4pm on Friday 6 September'.

261. As a consequence of the delay, missing documents, and the obstructive approach for some time adopted by the Applicant to requests for access to the documents in his possession or under his control, the Respondent has had to incur the cost of making applications herself, for third party disclosure, from FSPG and Artemis. She has also sought documents directly from Taylor Wessing.

262. Whilst the Applicant has since provided fuller (albeit not formal) disclosure of relevant documents in his possession, and whilst this belated cooperation, coupled with the Respondent's pursuit of third party disclosure applications, has enabled a partial reconstruction of what happened and has been useful to the Respondent in her defence, she still does not have a complete set of all relevant documents, including emails.

263. The delays and loss of documents have undoubtedly prejudiced the Respondent significantly in her defence of these proceedings. One example is the email from Mr Dodd by which he confirmed his consent to the Respondent keeping the Style Counsel name for her new business, which the Respondent referred to in her s.235 interview and which on a balance of probabilities I have found did exist.

264. Other gaps in the documentation were readily apparent in oral evidence. When taken to an invoice for a personal styling client, for example, Ms Harb commented 'normally what would be attached would have been a breakdown'. When taken at a later stage to an email from Ms Harb to Mr Upstone of Barclays Bank dated 8 August 2013 relating to the change of name of the bank account, Ms Harb asked, 'do you have any other emails in David [Upstone]?' – in context, there had clearly been a run of such emails but they were not in evidence. When taken to an SC1 invoice to GL in respect of fees for the 'introduction of the Ecclestone family', the Respondent readily responded 'there would have been notes attached to this.. there would be a trail. You're giving me the end invoice. .. There would be notes.. Rania kept notes on everything'. The Respondent also complained in oral testimony that she kept notes of meetings relating to SC1 and GL, but no longer had access to such notes.

265. As seen from the examples of exchanges in correspondence set out above, the Applicant has been less than helpful in the Respondent's efforts to reconstruct missing documentation from third party sources and, for a material length of time, was resistant to providing full access to such documents as he had in his own possession. Even when the Applicant did agree to provide access to documents in his possession, these were limited to what he considered to be 'relevant' documents; and he did not consider his obligations to extend to any GL documents in Mr Hinton's possession, although he and Mr Hinton were joint administrators of GL (letter dated 29 June 2020 from Blake Morgan to RPC).

266. Read as a whole, the correspondence in evidence exchanged between the parties on the issue of access to documents casts the Applicant and his solicitors in an extremely poor light. In the interests of brevity, I shall not refer to it all. Suffice it to state that salient aspects are summarised at paragraphs 42 to 75 of the Respondent's witness statement, the contents of which are supported by contemporaneous correspondence and which I accept as accurate. The Applicant's response at paragraphs 38 and 39 of his second witness statement does little to meet the criticisms raised.

267. At this point I remind myself of the guidance given by Arden LJ in Re Mumtaz Properties Ltd [2011] EWCA 109 at [14] to [17]:

> "14. In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its nonproduction, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence.
>
> 15. That was the predicament in this case. The liquidator could not show that Munir and Zafar were de facto directors from the company's books and papers because the directors had not handed over the necessary documents to the administrators. The judge held, in the context of Munir's denial that he was a de facto director despite the fact that he had acted as chairman of the meeting convened to pass a resolution for voluntary liquidation, that, had it been necessary to do so, he would have been entitled to draw adverse inferences against the respondents to the proceedings:
>
> '[26] It is accepted by the applicant [the liquidator] that he can only place this example before the court. However, as regards this, the explanation is quite simple. The company's books and records are not within the possession or control of the applicant despite his enquiries to ascertain the whereabouts of the books and records, and hence the applicant could only prepare his case on the papers he has in his possession. The respondents each asserted they did not have the books and records and that these were with either the accountant or Kiran Mistry. Both of these individuals, who were witnesses for the respondents, confirmed in cross-examination that any company documents they had, had been passed to the applicants and that they did not have possession of any of the missing books and records and these remained with the company. Therefore the books and records of the company must have remained with the company. The respondents have chosen not to deliver them up to the

> applicant not to disclose them within the proceedings. The court can draw adverse inferences against the respondents for this but does not need to do so as this single piece of documentary evidence is compelling and, indeed in my judgment, overwhelming'.
>
> 16. The approach of the judge in this case was to seek to test the evidence by reference to both the contemporary documentary evidence and its absence. In my judgement, this was an approach that he was entitled to take. The evidence of the liquidator established a prima facie case and, given that the books and records had been in the custody and control of the respondents to the proceedings, it was open to the judge to infer that the liquidator's case would have been borne out by those books and papers.
>
> 17. Put another way, it was not open to the respondents to the proceedings in the circumstances of this case to escape liability by asserting that, if the books and papers or other evidence had been available, they would have shown that they were not liable in the amount claimed by the liquidator. Moreover, persons who have conducted the affairs of limited companies with a high degree of informality, as in this case, cannot seek to avoid liability or to be judged by some lower standard than that which applies to other directors, simply because the necessary documentation is not available."

268. It will be seen from the passage from Mumtaz quoted above that the judge at first instance had clear evidence, had he considered it necessary, from which to infer that the directors had chosen not to hand over to the liquidators the books and records of the company. The directors had said that the books and records were either with the accountant or with Kiran Mistry, but both of these individuals had given evidence (which appears to have been accepted by the trial judge) that any company documentation they had, they had passed to the liquidators, that they didn't have possession of the missing company books and records and that these remained with the respondents. It was in that context that Arden LJ said (with emphasis added):

> '*if* the judge is *satisfied* that certain contemporaneous documentation is likely to have existed were the oral evidence correct, *and that the party adducing oral evidence is responsible for its nonproduction*, *then* the documentation may be conspicuous by its absence and the judge *may* be able to draw inferences from its absence.

269. In this case, I am satisfied that the Respondent is not responsible for the non-production of the books and records of SC1, SC2 or GL, or any other contemporaneous company documentation such as email correspondence, which might otherwise shed light on the issues raised by this application. On the evidence it

is clear that significant paper and electronic records relating to GL, SC1 and SC2 have been lost, destroyed or disposed of on the Applicant and Mr Hinton's watch as administrators of GL. The Respondent is not in any way responsible for this and in my judgment should not suffer by it. It is clear that, since being informed in 2019 that data is missing, she has made every effort to seek to reconstruct the missing records from third party sources and has openly shared with the Applicant the fruits of her efforts (see by way of example letter dated 28 September 2020 from RPC to Blake Morgan). Where there remain gaps in the records in evidence, these should not be held against her.

270. In this regard I also remind myself that the absence of documentary evidence does not necessarily lead to a default position of liability: see In re Wolverton Investments Ltd (unrep 18 May 2015), Chief Registrar Baister at para 59-60, citing Re Idessa UK Ltd [2012] 1 BCLC 80 at paras 24-28. The court must look at the facts quite closely and in the round.

271. With these considerations in mind, I turn to consider the Applicant's case.

The Applicant's case: Overview

272. The Applicant's case as presented in the original Application Notice and first statement of Mr Reynolds was a misfeasance claim under s.212 IA 1986, based solely on what was described as a transfer of the business and assets of SC1 to SC2 on or about 31 January 2013 for no consideration.

273. The original Application Notice was a short document. It did not set out any facts, seeking simply the following declarations and orders:

> '(1) that Caroline Stanbury ('the Respondent') as a director of CSB123 Limited (in liquidation) ('the Company') is guilty of misfeasance and/or breach of duty and/or breach of fiduciary duty pursuant to section 212 of the Insolvency Act 1986 ('the Act') in procuring and/or allowing the business and assets of the Company to be transferred from no consideration to a company connected to the Respondent (Style Counsel 2') [on] or around 31 January 2013 causing a loss to the Company of £1,400,000;
>
> (2) pursuant to the Declaration in Paragraph 1, that the Respondent does repay, restore or account to the Applicant the sum of £1,400,000 or such other sum as the Court shall think fit;
>
> (3) Further that all necessary accounts and enquiries be taken and made, for ascertaining what some or sums the Respondent is liable to contribute to the assets of the Company by way of compensation for such misfeasance and/or breach of duty and/or breach of fiduciary duty as aforesaid and for payment of the said sum /s to the Applicant;

> (4) Further, or in the alternative, a declaration that the transfer of the Company's business and assets to Style Counsel 2 constituted an unlawful distribution of capital;
>
> (5) An order pursuant to the Declaration in Paragraph 4 that the Respondent pay the Applicant the sum of £1,400,000 or such other sum as the Court thinks fit;
>
> (6) Interest at the rate of 8% from 31 January 2013 to the date of payment or at such rate or rates and for such period as the Court thinks just;
>
> (7) Further, that the Respondent does pay to the Applicant, the costs of and occasioned by this Application; and
>
> (8) Any such order or relief as the Court thinks fit.'

274. The original Application Notice was supported by the first witness statement of Mr Reynolds. This too focussed on the alleged transfer of the business and assets of SC1 to SC2 on or about 31 January 2013 for no consideration. Save for a reference (at paragraphs 51 to 53) to monies standing in the Barclays bank account, the 'business and assets' of SC1 alleged to have been wrongly transferred to SC2 were not identified or particularised in any meaningful way. See by way of example Reynolds (1) at [43]-[47]. [57], [71], [75]-[76], [83], [92], [95], [97]. No Points of Claim were produced at this stage; they were directed later.

275. The Application Notice was amended on 17 June 2020. In its amended form, it sought the following declarations and orders

> '(1) that Caroline Stanbury ('the Respondent') as a director of CSB123 Limited (in liquidation) ('the Company') is guilty of misfeasance and/or breach of duty and/or breach of fiduciary duty pursuant to section 212 of the Insolvency Act 1986 ('the Act') in:
>
> (i) procuring and/or allowing the business and assets of the Company to be transferred for no consideration to a company connected to the Respondent (Style Counsel 2') on or around 31 January 2013 causing a loss to the Company of £1,400,000; and/or
>
> (ii) ignoring the separate legal personality of the Company and the fact that it had interests which were separate from her own personal interests; and/or
>
> (iii) effecting a share restructuring involving the Company in or about November 2012 with the aim of running down and/or terminating the carrying on of the Company's business so that it was no longer a going concern, and so that the said business

could then be carried on by Style Counsel 2 and/or a connected company, Gift Library.Com Limited, for her own personal benefit; and/or

(iv) not considering the interests of or promoting the success of the Company following the said November 2012 share restructuring.

(2) pursuant to the Declaration in Paragraph 1 that the Respondent does repay, restore or account to the Applicant the sum of £1,400,000 or such other sum as the Court shall think fit;

(3) Further that all necessary accounts and enquiries be taken and made, for ascertaining what some or sums the Respondent is liable to contribute to the assets of the Company by way of compensation for such misfeasance and/or breach of duty and/or breach of fiduciary duty as aforesaid and for payment of the said sum /s to the Applicant;

(4) Further, or in the alternative, a declaration that the transfer of the Company's business and assets to Style Counsel 2 constituted an unlawful distribution of capital ;

(5) An order pursuant to the Declaration in Paragraph 4 that the Respondent pay the Applicant the sum of £1,400,000 or such other sum as the Court thinks fit;

(6) Interest at the rate of 8% from 31 January 2013 to the date of payment or at such rate or rates and for such period as the Court thinks just;

(7) Further, that the Respondent does pay to the Applicant, the costs of and occasioned by this Application; and

(8) Any such order or relief as the Court thinks fit'

276. It will be noted that the Amended Application Notice dated 17 June 2020 introduces a reference to GL, at para 1(iii).

277. Points of Claim, also dated 17 June 2020, were served at the same time as the Amended Application Notice. The Points of Claim again refer to s.212 IA 1986, alleging breach of directors' duties under ss171-175 CA 2006 and/or breach of fiduciary duty to account for SC1 property in the Respondent's hands or under her control as a trustee and/or unlawful distribution of capital. The Points of Claim are largely premised on what is described as a transfer of the business and assets of SC1 to SC2 on or about 31 January 2013 for no consideration.

278. At paragraph 32, the Points of Claim provide as follows:

> '…on 31 January 2013 [SC2] was incorporated and immediately swapped names with [SC1], and the business and assets of [SC1] were transferred for no consideration to [SC2] which then began to trade the business previously carried out by [SC1] ("the Unlawful Transfer").'

279. Again, very little effort is made in the Points of Claim to define the 'business and assets' of SC1 alleged to have been transferred for no consideration to SC2.

280. The duties relied upon are pleaded at paragraph 53 of the Points of Claim. This provides as follows:

> '53 As a director of the Company the Respondent owed the following general statutory and/or fiduciary and/or common law duties to the Company:
>
> 53.1 to act in accordance with the Company's constitution and only exercise powers for the purposes which they were conferred (Companies Act 2006 ("CA 2006"), section 171);
>
> 53.2 to act in the way she considered, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to the likely consequences of any decision in the long term (CA 2006, section 172(1));
>
> 53.3 to exercise independent judgment (CA 2006, section 173(1));
>
> 53.4 to exercise reasonable care, skill and diligence (CA 2006, section 174);
>
> 53.5 to avoid a situation in which she had, or could have had, a direct or indirect interest that conflicted, or possibly might have conflicted, with the interests of the Company (CA 2006, section 175(1)); and
>
> 53.6 to account for property belonging to the Company which is in her hands or under her control as a trustee and to apply that property only for proper Company purposes'.

281. The breaches of such duties relied upon are set out at 54 to 56 of the Points of Claim. These provide as follows:

> '54. In breach of each and all of the said duties the Respondent procured or allowed the Unlawful Transfer for no consideration

to Style Counsel 2 and/or Gift Library being companies connected with her.

55. Further or alternatively, in procuring or allowing the Company to make the Unlawful Transfer to Style Counsel 2 the Respondent breached her duties to the Company in that:

55.1 she exercised her powers for the purpose of effecting a transfer of the Company's business and assets for nil consideration to enable Style Counsel 2 to carry on the business of the Company seamlessly and for her own personal benefit, which was not for the purposes for which those powers were conferred;

55.2 she failed to have regard to the interests of the Company;

55.2.1 no intelligent and honest person in the position of the Respondent could have reasonably believed that acting as aforesaid was in the interests of the Company;

55.2.2 the Unlawful Transfer was not in fact in the interests of and did nothing to promote the success of the Company;

55.2.3 she treated the business and assets of the Company as her own and failed to have any regard to the fact that the Company, Gift Library and Style Counsel 2 were separate legal personalities;

55.2.4 she implemented the November 2012 Share Restructure and/or effected the Unlawful Transfer with the aim of running down and/or terminating the carrying on of the Company's business so that it was no longer a going concern, and so that the said Business could then be carried on by Style Counsel 2 for her own personal benefit;

55.2.5 there was no reason or justification for the Respondent to procure or allow the Unlawful Transfer if all that she wanted to implement was the November 2012 Share Restructure;

55.2.6 in not considering or promoting the success of the Company following the November 2012 Share Restructure;

55.2.7 in taking the clients of the Company for Style Counsel 2; and

55.2.8 in effecting an unlawful distribution of capital to herself in procuring or allowing the Company to effect the Unlawful Transfer.

55.3 she failed to exercise her own independent judgment and/or deferred to the judgment of her father Anthony Stanbury

on the wisdom of procuring or allowing the Company to make the Unlawful Transfer for no consideration when she knew that herself and her father and/or her family members would profit from the transfer of business and assets to Style Counsel 2 and her father could not offer independent advice;

55.4 she was negligent in:

55.4.1 failing to obtain the market value of the business and assets of the Company from Style Counsel 2;

55.4.2 failing to hold a board meeting to consider the contemplated transfer of business and assets of the Company;

55.4.3 failing to consider the effect on the Company of the transfer of the Business for no consideration; and/or

55.4.4 jeopardising the success of the Company without any reasonable basis for doing so; and/or

55.4.5 failing to take any or any independent legal advice in respect of her duties as a director;

55.4.6 failing to obtain any independent legal advice for the Company in respect of the contemplated transfer of the Business for no consideration;

55.4.7 failed to ensure compliance with Article 7 of the New Articles of Association and/or Article 15 of the Model Articles;

55.4.8 failed to obtain any lawful authority for the transfer of the whole of the business and assets of the Company to Style Counsel 2 for nil consideration;

55.4.9 failing to have regard to the separate legal personalities of the Company, Gift Library and Style Counsel 2; and

55.4.10 treating the business and assets of the Company as her own to do with what she wished.

55.5 she put herself in a position where her personal interests in extracting value from the Company conflicted with the interests of the Company, and/or failed to ensure compliance with Article 7 of the New Articles of Association and/or Article 15 of the Model Articles;

55.6 she preferred their own interests over those of the Company; and

55.7 she derived a personal benefit from her office as director.

> 56. Further the Respondent was in breach of her fiduciary duties as a director in:
>
> (1) acting in a negligent manner as aforesaid in procuring or allowing the Company to effect the Unlawful Transfer whilst at the same time benefiting herself and her family personally as shareholders of Style Counsel 2;
>
> (2) instead of promoting the success of the Company by continuing the Business by the Company, she deliberately decided to carry out the November 2012 Share Restructure, incorporate a new company (Style Counsel 2) and effect the Unlawful Transfer for the benefit of herself.'

282. The consequences of such alleged breaches are addressed at paragraphs 57 to 59. These provide as follows:

> '57. Had the Respondent not acted in breach of the said duties the Company would not have effected the Unlawful Transfer and the Company would have had monies available for the payment of its creditors, the costs and expenses of the liquidation and to make a substantial return to Gift Library as its sole shareholder.
>
> 58. Further Gift Library would have been in the position to pay its creditors in its liquidation and the Respondent and her family would not have received the business and assets of the Company in Style Counsel 2.
>
> Loss
>
> 59. As a consequence of the said breaches of duty the Respondent is liable to pay compensation in the sum of £1,400,000 or such sum as the Court may assess'.

283. No other particulars of causation were pleaded in the POC. Save for an earlier reference to the FSPG valuation having been undertaken and referred to in the board minutes of GL and the filed accounts for GL (at cost) for the year ending 31 January 2014 (paras 28, 25, 49 POC) nothing that could even arguably count as particulars of loss was pleaded in the POC either. These omissions are relevant to the allegations based on s.174.

284. The allegation of unlawful return of capital is addressed at paragraphs 60 to 64. After quoting selective passages from the transcript of the Respondent's s.235 interview at paragraph 60, paragraphs 61 to 63 provide as follows:

> ’61. At the time of the Unlawful Transfer, the Respondent and her family held all the issued share capital of Style Counsel 2, and the sole shareholder of the Company was Gift Library, in which the Respondent and her family held shares.
>
> 62. The Unlawful Transfer was in substance a dressed up return of capital in favour of the Respondent and was ultra vires and void (‘the Unlawful Distribution’).
>
> 63. The Respondent is liable to repay the value of the Unlawful Distribution to the Applicant.’

285. Paragraph 64 goes onto to seek compound or simple interest. Paragraph 65 reserves the Applicant’s right to amend the Points of Claim following any further disclosure from Artemis (I pause here to note that the Points of Claim were not amended at any time thereafter).

286. The Points of Claim then conclude with a Prayer for Relief which seeks the following:

> ‘(1) A Declaration that the Respondent was guilty of breach of directors’ duties as detailed in Paragraphs 54 to 56 above.
>
> (2) A Declaration that the Respondent was the recipient of an unlawful return of capital pursuant to the Unlawful Transfer.
>
> (3) An Order that the Respondent do pay £1,400,000 pursuant to the Declarations in Paragraphs (1) and/or (2) of the Prayer above or such other sum as the Court thinks fit.
>
> (4) An Order that all necessary accounts and enquiries may be taken and made for ascertaining what sums each of the Respondent is liable to pay the Applicant in respect of the breaches of duty and unlawful return of capital pursuant to the Declaration/s and/or Order in Paragraphs (1) to (3) of the Prayer above.
>
> (5) [interest]
>
> (6) [costs]
>
> (7) [further or other relief]’

287. It will be noted that the alleged ‘Unlawful Transfer’, as defined at paragraph 32 of the Points of Claim (and quoted at paragraph 278 above), features in a number of allegations throughout the POC, such as paras 55.1, 55.2.1, 55.2.2, 55.2.4, 55.2.5, 55.2.7, 55.2.8, 55.3, 55.4, 56, 57, 61 and 62, where, in context (leaving aside the definition at paragraph 32), it is clear that the ‘Unlawful Transfer’ referred to is the

alleged transfer of the business and assets of SC1 to SC2 on or about 31 January 2013 for no consideration.

288. It will also be noted however that, at paragraph 54 POC, it is alleged (with emphasis added) that in breach of the duties pleaded at paragraph 53, the Respondent 'procured or allowed the Unlawful Transfer for no consideration to [SC2] *and/or [GL]* being companies connected with her.'

289. Unsurprisingly, this was picked up by the Respondent's legal team. At paragraphs 5 and 6 of the Amended Defence, the Applicant was called upon to state, in terms, what he alleged was transferred to SC2 for nil consideration, and what he alleged was transferred to GL for nil consideration. It was also noted (at para 6 of the Amended Defence) that the POC were self-contradictory in certain respects; paragraph 57 of the POC asserting that GL would have received a substantial distribution were it not for the alleged transfer, whilst paragraph 54 asserted that GL was the recipient of the transfer.

290. The Applicant responded to paragraphs 5 and 6 of the Amended Defence at paragraphs 6 and 7 of his Amended Reply. At paragraph 6(3), the Applicant asserted that it was for the Respondent to explain '*which of [SC2] and [GL] received what*' from [SC1's] business and assets, adding at paragraph 6(4):

> 'so far as the Applicant understands… in the event that the Respondent is believed, the styling business was transferred to [SC2] and the handbag and jewellery business was transferred to [GL]'.

291. By Paragraph 8(2) of the Amended Reply, it is pleaded that Paragraph 4 of the Amended Application Notice (which seeks 'a declaration that the transfer of [SC1's] business and assets to [SC2] constituted an unlawful distribution of capital') is '*intended*' to refer to any transfer to GL as well as SC2.

292. Paragraph 8(3) of the Amended Reply goes on to state that, for the purposes of the unlawful distribution of capital allegation, 'the said capital in respect of [GL] refers to *whatever part of the business and assets of [SC1] the Court determines was transferred to [GL]*' [emphasis added].

293. This is an extremely lazy and unhelpful way of conducting litigation. A respondent to a claim is entitled to know the case they have to meet.

294. Moreover, no adequate explanation was given for the very late introduction (17 June 2020) of allegations relating to assets of SC1 said to have been wrongly transferred to GL. The suggestion that the Applicant was unaware of the post-restructuring arrangements for handbag and jewellery sales until some way after issue of these proceedings is unsustainable on the evidence. The Applicant was exchanging correspondence with the Respondent on this subject in 2015 (RPC to Reynolds dated 14 September 2015, Reynolds to RPC dated 9 October 2015). It was also explored at some length in the s.235 interviews conducted by the Applicant's counsel in March 2019, prior to issue of these proceedings.

295. The prejudice caused by the delay in introducing claims relating to assets of SC1 alleged to have been wrongly transferred to GL is exacerbated by (1) the substantial loss of documentation from GL's premises addressed above; and (2) the Applicant's resistance, over a material period, to the Respondent's entirely reasonable attempts to get full access to the records relating to GL in the Applicant's possession or under his control; and (3) the obstructive approach adopted by the Applicant to the Respondent's attempts to reconstruct missing records from third party sources.

296. In this regard it will be recalled that, in July 2019, the Applicant's solicitors blocked inspection by the Respondent's solicitors of numerous boxes of documents relating to GL on the basis that the documents in them were 'solely documents which belong to [GL] .. and are not wholly relevant to the claim brought on behalf of [SC1]': (letter from Blake Morgan to RPC dated 25 July 2019).

297. By letter of 24 March 2020, following RPC's request for further documents from Blake Morgan relating to GL, Blake Morgan responded:

> 'It appears that your client has been trying to obtain documents in order to put together some sort of a defence to the claim that has very clearly been set out against her. This is not the purpose of disclosure under the Civil Procedure Rules. Either your client has a defence to the claim that has been clearly set out against her, or she does not. It is not for our client to disclose documents to assist your client to put together her defence…'

298. At a directions hearing on 1 April 2020, the Applicant, acting by Mr Groves of Counsel, actively (and successfully) opposed an application made by the Respondent to ICC Judge Burton for the Applicant to provide the Respondent with access to the complete inventory of GL assets compiled in or around February 2015 and stock records for GL, on the basis that the documents were not relevant to these proceedings.

299. At the same directions hearing on 1 April 2020, directions for expert evidence were given for a valuation of SC1 on (i) 22 October 2012 (the date of the FSPG valuation, upon which the Applicant relied) and (ii) 31 January 2013 *'being the date the Applicant alleges the loss was sustained by [SC1]*': para 9(a) of the Order of ICCJ Burton dated 1 April 2020. No alternative valuation date or directions on expert evidence were sought by the Applicant in respect assets of SC1 alleged to have been wrongly transferred *to GL*.

300. Even by the time of serving his Amended Reply (29 July 2020), the Applicant pleaded (at paragraph 5) 'It is not clear to the Applicant how documentation on the server of [GL] is relevant to [SC1's] claim against the Respondent'.

301. I will return to the overall impact of such considerations in due course.

The Executive Services Agreement dated 24 September 2008 and The Shareholders Agreement dated 21 November 2012

302. In the run-up to trial, the Applicant attempted to expand his case yet further. After exchange of expert reports and less than a month before trial, the Applicant's

solicitors sought to raise a new argument, contending that (1) a shareholders' agreement dated 21 November 2012 between GL, the Respondent and other shareholders of GL and (2) an executive services agreement dated 24 September 2008 between GL and the Respondent, required the Respondent, as a matter of contract, to continue working for SC1 and that this, in turn, undermined Mr Hobby's valuation report, which was premised on the Respondent being free to leave SC1 at any time (letter from Blake Morgan dated 6 April 2021).

303. The allegation of a contractual obligation to work for SC1 forms no part of the Applicant's pleaded case; indeed the Amended Reply tacitly acknowledges that the Respondent was *not* under a contractual obligation: see by way of example paragraph 30 of the Amended Reply, responding to paragraph 35 of the Amended Defence. Moreover, valuation reports had already been exchanged. Even Mr Slack's report acknowledged that the Respondent was not contractually required to work for SC1.

304. In an effort to assist, Mr Hobby briefly addressed the issue in a supplemental report, pointing out that, (all other matters aside, taking the 2008 and 2012 agreements at face value), the basis of his valuation was an arm's length sale by GL, a scenario in which SC1 would in any event cease to be a subsidiary of GL.

305. By closing submissions, however, Mr Groves sought to develop the point yet further, in a manner not heralded at all in his skeleton argument (still less pleaded) to the effect that anyone buying the shares of SC1 would take the benefit of restrictive covenants and notice periods in the 2008 Agreement. This is ultimately a bad point; SC1 would still cease to be an 'Associated Company' or part of the 'Group' within the meaning of clause 1.1 of the 2008 Agreement on a sale by GL and so its new owners could not claim the benefit of provisions in the 2008 Agreement designed for the benefit of an 'Associated Company'. The notice and restrictive covenant provisions sought to be relied upon would no longer bite.

306. More importantly, however, in my judgment, the Applicant cannot be permitted to introduce new points of this nature at such a late stage. To allow the Applicant to expand his case to include an allegation that under the 2008 Agreement, following the November 2012 restructuring the Respondent was contractually obliged to continue to work for and promote the best interests of SC1 would be deeply unjust, particularly considered against the missing documentation and significant delays already addressed.

307. There was no application to amend the Points of Claim in this regard. Had an application been made before me, it would have been refused, on the grounds that it would have necessitated an adjournment of the trial. The 2008 Agreement raises a raft of considerations, both legal and factual, which have not been addressed in the pleadings, the witness statements, the expert evidence, the skeleton arguments, or the agreed authorities bundle.

308. It is clear from the correspondence in evidence that at least one other version of an Executive Services Agreement between GL and the Respondent was drafted in 2012, in the run-up to the November 2012 restructuring. There is reference to it in an email from Mr Hutchinson of Macfarlanes to Mr Dodd dated 13 November 2012, which is included in the main trial bundles. The draft attached to that email (unhelpfully

omitted from the main trial bundles, but introduced by way of supplemental bundles at the insistence of the Respondent, along with numerous other documents left out of the main trial bundles) is clearly at a travelling draft stage and does not contain a figure for salary. Mr Hutchinson's email itself states that 'there is no salary specified' in the draft and asks for instructions from Mr Dodd in relation to the service agreement. Mr Dodd's reply to the email is not in evidence.

309. A later email dated 14 November 2012 from Mr Roberts of Taylor Wessing to the Respondent and Mr Stanbury proposes that the Respondent 'stick with the current (imperfect) document she has rather than draft a new one/heavily amend the existing one', but the documents referred to in the email were not attached to it. Whilst Mr Groves invited the court to proceed on the basis that Mr Roberts was at this stage recommending that the Respondent should stay with the 2008 Agreement, Mr Roberts' email of 14 November 2012 also provides that 'presently her contract states that the salary (£150k pa) is only paid as and when approved by the board'; when the 2008 Agreement provided for a salary of £50,000, not £150,000. It is possible, therefore, that when referring to the 'current (imperfect) document', Mr Roberts was referring to a a different document, possibly a later incarnation of the travelling draft attached to Mr Hutchinson's email of 13 November 2012, rather than the 2008 agreement. In short, the position is unclear.

310. Mr Groves attempted in cross-examination to plug the gap by pressing both the Respondent and her father to concede that no new executive services agreement was entered in 2012. It was clear to me however that neither the Respondent nor Mr Stanbury could actually remember. In my judgment very little weight can be given to their evidence on this issue.

311. Moreover, even if the 2008 Agreement did remain in place after the November 2012 restructuring, its 'reach' after that point would need to be the subject of detailed factual and legal inquiry. The court would need to consider (1) points of construction, such as what is meant in context by 'for the time being' as used in clause 1.1 (2) the doctrine of purview (3) the impact of the subscription and shareholders agreement entered into by GL, the Respondent and others on 21 November 2012 as part of the November 2012 restructuring, and in particular whether clauses 10.1 and 13.1, taken together with the 'entire agreement' clause at 21.1 had the effect of discharging, varying or waiving provisions in the 2008 agreement; and (4) whether any consents, waivers or variations were granted or agreed with the directors of GL (including past directors, such as Mr Morein and Ms Ashkenazi) pursuant or in relation to a variety of clauses in the 2008 Agreement at any time from 2008 onwards.

312. For all of these reasons, I have concluded that the Applicant should not be permitted to proceed with an unpleaded case that under the 2008 Agreement, following the November 2012 restructuring the Respondent was contractually obliged to continue to work for and promote the best interests of SC1.

313. In case I am wrong in that conclusion, however, I would add that on the evidence before me, I am in any event satisfied that the January arrangements agreed between Mr Dodd, the Respondent and Mr Stanbury (who together comprised the board of GL) in January 2013 operated so as to release the Respondent from any obligations under the 2008 Agreement remaining by that time that would otherwise have (1)

required the Applicant to (i) continue to provide her personal styling services through SC1 or promote its best interests or (ii) give any period of notice, whether 6 months or otherwise; or (2) restricted or precluded her from carrying on her personal styling business from January 2013 onwards for her own personal benefit, whether through SC2 or otherwise. I so find. For the sake of completeness, I further conclude that as a matter of construction, the 2012 Agreement did not (1) require the Applicant to (i) continue to provide her personal styling services through SC1 or promote its best interests or (ii) give any period of notice, whether 6 months or otherwise; or (2) restrict or preclude her from carrying on her personal styling business from January 2013 onwards for her own personal benefit, whether through SC2 or otherwise. Moreover, even if the 2012 Agreement had imposed such obligations, (1) SC1 was not a party to the 2012 Agreement and third party rights are excluded by cl. 25 and (2) I am satisfied that the January arrangements agreed between Mr Dodd, the Respondent and Mr Stanbury (who together comprised the board of GL) in January 2013 would operate so as to release the Respondent from any such obligations. I so find.

314. For all these reasons, I shall proceed on the basis that at no material time was the Respondent contractually obliged to work for SC1.

The Respondent's case: overview

315. The Respondent denies any wrongdoing and maintains that the Applicant's case is wholly without merit. She further maintains that the Applicant's delay and his conduct of the case against her generally has been disgraceful.

316. In broad summary, the Respondent's case is that

(1) It is the Applicant's application and therefore the burden of proof is on him. The Applicant has failed to set out precisely what business and assets of SC1 he alleges were transferred, where they went, and when. This was a point raised repeatedly in the Respondent's Points of Defence. As put in the Respondent's skeleton argument, there was no 'gold bar' worth £1.4 million that was transferred from SC1 to SC2 and/or GL.

(2) The Applicant's reliance on the FSPG valuation is misplaced. This is a one page document prepared for a limited purpose. It does not identify the business and assets of SC1. Mr Slack's report does not identify the business and assets of SC1 either.

(3) There was no transfer of the business of SC1 to SC2 and/or GL for nil consideration. All relevant value lay in the personal goodwill of the Respondent, which was an asset belonging to her and not SC1. The Respondent could do as she wished with her own personal goodwill.

(4) If there was a transfer of any assets of SC1, such transfer was not for nil consideration as alleged but was part of a lawful transaction, approved by GL and entered into in reliance upon professional advice and assistance from Taylor Wessing and FSPG.

(5) The Respondent did not profit from her position as director of SC1. The Respondent did not acquire her skills, reputation, clients or connections, as a result of

her position as director of SC1, or as a result of the share restructuring and the sale of her SC1 shares to GL.

(6) There were no breaches of any duties for which the Respondent could be held liable.

(7) The Application is time-barred or ought otherwise to fail on the basis of laches.

(8) If the Respondent is liable, she should be granted relief under section 1157 CA 2006 given the circumstances of the case.

Ownership of the personal styling business

317. As will be seen from the foregoing summary, a central plank of the Respondent's defence is that there was no goodwill in SC1, only 'personal goodwill' vested in the Respondent, by virtue of her skill-set, her reputation for personal styling, her clients and her exceptional connections.

318. I turn then, to consider the issue of goodwill.

319. Goodwill is addressed by Lord Macnaghten in Inland Revenue Commissioners v Muller and Co's Margarine [1901] AC 217 at 223-4 as follows:

> 'What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom ….'

320. Campbell and Johnson on the Valuation of Business Interests provides the following guidance on personal goodwill:

> 'Personal goodwill is goodwill that accrues to a specific person. It arises from his or her personal characteristics and attributes as evidenced by particular abilities, particular physical characteristics, good name and reputation.'

321. In Whiteman Smith Motor Co v Chaplin [1934] 2 KB 35, Scrutton LJ at 42 drew a memorable distinction between 'cat, rat and dog' goodwill:

> 'The cat prefers the old home to the person who keeps it, and stays in the old home though the person who has kept the house leaves. … The dog represents that part of the customers who follow the person rather than the place … There remains a class of customer who may neither follow the place nor the person, but drift away elsewhere. They …. have been called 'the rat' for no particular reason except to keep the epigram in the animal kingdom.'

322. In the Scottish case of Reid v Reid 1938 SLT 415 (at 416-417), the court recognised that there was generally likely to be little goodwill in the business of those with a highly personal profession, such as surgeons, artists or advocates. In such cases, the

goodwill is personal to the individual. At 417, Lord Keith makes reference to the valuation case of Drummond v Assessor for Leith (1886, 13 R 540), in which Lord Fraser referred to cases of

> 'personal goodwill where the profits of the business result almost entirely from confidence placed in the personal skill of the party employed, as in the case of surgeons… in regard to whom the goodwill is really worth nothing.'

323. The HMRC Capital Gains Tax Manual (CG68010 Goodwill) recognises that personal goodwill falls to be treated differently from other forms of goodwill on the transfer of a business. Whilst confirming (with emphasis added) that 'When a business is disposed of as a going concern any goodwill *attributable to the business* will be transferred to the new proprietor', it goes on to state:

> 'Any goodwill *attributable to the personal skills of the proprietor*, for example, the personal skills of a chef or a hairdresser, will not be transferred to the new proprietor'.

324. Similarly, in Simons Taxes at Chapter 18 (Inheritance Tax/Part 18 Valuation), lists as one of the factors to be considered on valuation 'is the goodwill personal to the vendor?'

325. At paragraph 4.19 of Mr Hobby's report is a helpful passage from 'The Valuation of Business Interests' by Ian Campbell and Howard Johnson, at p52. This provides as follows:

> 'Personal goodwill is a form of goodwill that accrues to a specific person. It arises from his or her personal characteristics and attributes as evidenced by particular abilities, physical characteristics, good name and reputation…. Personal goodwill that is measured solely in economic terms expires at the time the person who enjoys it loses interest in the business, retires as a result of either personal choice, age, or disability, or dies. While personal goodwill may be all or in part secured through management and noncompetition contracts in the near term, it generally is accepted both in an open market context and by the Courts in a notional market context that personal goodwill is not transferable, and hence that:
>
> . Unless adequately secured by contracts that ensure and secure its near-term benefits, in an open market context little if any commercial value attaches to it; and
>
> . As a general rule it is not included when determining 'fair market value' in a notional market context.'

326. The extent to which a business involves personal goodwill involves a qualitative assessment of the degree to which a company depends on an individual to exist, operate, perform and prosper.

327. Whilst not a comprehensive list, this assessment will generally include consideration of the following factors:

(1) whether the business attaches to an individual (i.e. their abilities, characteristics, name or reputation) or a company (i.e. its brand name, location or resources);

(2) whether the business would remain with the company in the event that the individual ceased to be employed by the company;

(3) whether customers engage with and enlist the services specifically of the individual, or contact and enlist the services of the company first, with the individual contact/relationship remaining a secondary issue; and

(d) whether the individual's name or the company name would have any bearing on the customer's desire to carry out business with the individual.

328. As put by Mr Hobby at paragraphs 4.21 and 4.22 of his report:

> '4.21 Personal goodwill is therefore an intangible value that arises from the efforts or unique reputation of a business owner or other individual, the value of which is only associated with that individual and not …the business itself. It is not an intangible asset of the business, but is instead an asset attributable to the individual… Therefore, personal goodwill should not form part of the purchase price paid for a business and, as such, should not be included on the acquiring company's balance sheet (as Accounting Goodwill or otherwise) following an acquisition'.

329. Goodwill generated by a sole trader who then sets up a company is not automatically transferred to the company. In this regard Counsel for the Respondent referred me to the case of Sofra Bakery Limited [2013] EWHC 1499 (Ch). In this case Mr Ucar had come to London from Turkey in 1989 aged 16. In 1994, he started a business making and supplying Turkish bread which involved (in his words) 'knocking on the doors' of the Turkish community in the area of North London where he lived. Between 1994 and 2003, his business as a sole trader flourished. Over the nine-year period from its inception, the business built up a valuable customer base and brand which comprised goodwill belonging to its owner, Mr Ucar. In March 2003, on the advice of his accountant, Mr Ucar set up a company and started trading through that company. There was no express transfer or assignment of goodwill at the time that the company was set up and no payment to Mr Ucar for goodwill. Mr Ucar was appointed sole director and Mrs Ucar was appointed company secretary. They were the only shareholders.

330. Six months after its incorporation, the company started a pitta bread business in addition to the Turkish bread business. The pitta bread business did not flourish. The company's turnover and operating profit steadily declined and, by the year ended 31

March 2007, the company made an operating loss of £39,224. Mr Ucar decided to sell up. In October 2007, the Turkish bread and pitta business was sold to an unrelated company called Sofra Pitta Bakery Limited ('the Buyer') for £480,000 pursuant to a written contract dated 8 October 2007 made between the Buyer, the company and Mr Ucar. Under the terms of the contract, goodwill was valued at £476,000, with the remaining assets valued at £4000.

331. The purchase price was paid to solicitors acting for the company and Mr Ucar. On Mr Ucar's instructions, the solicitors paid £438,608 of the purchase price to Mr Ucar rather than to the company.

332. When the company subsequently went into liquidation in 2008, its liquidators challenged those payments to Mr Ucar as a transaction at an undervalue under s.238 IA 1986 and alleged that Mr Ucar was guilty of breach of fiduciary duty/misfeasance under s.212 IA 1986 in causing the transaction at an undervalue. Mr Ucar defended the application on the grounds that the monies did not belong to the company. His case was that they represented payment for goodwill which he, not the company, owned and thus the monies received belonged to him.

333. At first instance, the district judge found against Mr Ucar. Allowing Mr Ucar's appeal, Mr Andrew Sutcliffe QC, sitting as a judge of the High Court, concluded (at [77]) that 'there was as a matter of law an implied licence granted by Mr Ucar to the Company enabling the Company to make use of the goodwill which Mr Ucar had built up over the previous 9 years in his sole trader business'. He concluded that on the evidence which had been accepted (or at least not rejected) by the trial judge, the trial judge had been wrong to find that the payment of £438,608 had been a transaction at an undervalue and to hold Mr Ucar liable in misfeasance in consequence thereof. There was goodwill personal to Mr Ucar which was his to sell (paras [77], [78], [85] and [88]).

334. With these considerations in mind, I turn to the evidence. In doing so, I remind myself that the question whether the goodwill from the personal styling business belonged to the Respondent or SC1 is a question of fact: Condliffe v Sheingold [2007] EWCA Civ 1043 per Arden LJ at 10.

335. It is common ground that the Respondent started her personal styling business as a sole trader. On the evidence before me, it is clear that she did not acquire her skills in personal styling, her global fashion house connections, or her select group of personal styling clients through the incorporation of SC1 or her directorship of it. The Respondent had these skills, connections and clients already, before SC1 was incorporated.

336. Clients came to the Respondent personally, because of her personal talent, her reputation and her connections. They wanted to be styled by her and her alone. This is clear from the written and oral evidence of the Respondent and Ms Harb, which in this regard I accept. It is supported by the written evidence of Petra Ecclestone and Dorothee de Pauw, as addressed below.

337. By her witness statement, the Respondent (at [14]) stated as follows:

> '…I couldn't employ anyone to style with me as it was my particular eye for fashion that my clients liked and were willing to pay for, and it was a very personal relationship, albeit from time to time I was assisted by a junior stylist for a handful of my clients on the express understanding that everything was subject to my personal approval' .

338. As put by Ms Rania Harb, whose evidence I accept:

> 'They [the Respondent's personal styling clients] were very particular, very busy clients with very exacting standards… They didn't want to use anyone else as they trusted her to know what they wanted and what looked good; they didn't want to waste time speaking to someone else when the advice that mattered to them was Caroline's.'

339. Dorothee de Pauw filed a witness statement to similar effect. Whilst I did not have the benefit of hearing her in cross examination, which I take into account in determining the weight that can be attached to the statement, her evidence is consistent with that of the Respondent and Ms Harb, which was tested in cross-examination. Ms de Pauw's evidence, which I accept, was as follows:

> '[5] Asking Caroline to act as my stylist and shopper seemed an easy extension of our relationship, as we had already been friends for a while and I admired her personal taste and style and was happy for her to create looks that I would also find stylish. I also trusted her, which was important to me; on occasion, she would attend my home and I even agreed for her to use my credit card to purchase items for me when needed.
>
> [6] Caroline always impressed me with her knowledge and awareness of the things I would like and so I was able to trust her to provide what I wanted. She would sometimes send me pictures of items she had seen when she was out and about that she felt I would like, or even just buy me something that she had spotted and bring it back. She would also bring me things that she had limited supplies of and thought would suit me, and was able to get me things very quickly and packaged as part of a look e.g. she would send me not only a dress but a handbag and shoes to match and it would come delivered to my door. We both knew that she had useful contacts, which meant I could get hold of hard to get exclusive items. Her service was excellent and prompt … and she understood exactly what I was looking for and what I needed….
>
> [7] I did not deal with anyone else from Caroline's company. I only wanted to deal with Caroline for the reasons set out above. I do not even know if she had any other stylists who worked with her. I would not have dealt with them if there were any.'

340. I also refer to the witness statement filed by Ms Petra Ecclestone. Again, whilst I did not have the benefit of hearing Ms Ecclestone in cross examination, which I take into account in determining the weight that can be attached to the statement, her evidence is consistent with that of the Respondent and Ms Harb, which was tested in cross-examination. Ms Ecclestone's evidence, which I accept, was as follows:

> '[4] Initially, Caroline and I knew each other only socially, but after we had been friends for some time I began to use her personal styling and personal shopping services…. I purchased clothes, handbags and accessories to her services and she would also help me by sourcing items I had seen elsewhere and wanted but couldn't find.
>
> [5] Caroline always had a natural understanding of my fashion tastes and interests and I liked working with her because of that fact. I do not know if any other stylists worked with Caroline but I would not have dealt with anyone besides Caroline. Caroline was also able to get me things very quickly and packaged as part of a look. Caroline also had many useful contacts which meant I could get hard to get or exclusive items….'

341. Mr Groves' attempts to undermine the importance of the Respondent's role, by pointing to some invoices in evidence showing work done by individuals other than the Respondent herself, were entirely unsuccessful.

342. During the course of cross-examination, for example, Mr Groves referred Ms Harb to several names which featured in some of the invoices (Sarah Harris, Jane Blight, Lucinda Bodie), putting to her that these individuals were 'trusted and very competent stylists'. Ms Harb's ready response (which I accept) was: 'They weren't styling, but yes.' Referring to Lucinda Bodie, she explained that this was 'her first job' and that she was 'a closet stylist; she would be in the closet putting clothes together that went together.' Ms Harb recognised the work done on several invoices shown to her as 'closet styles' or collating the photos for a 'look book'. The sums charged for these services were relatively modest.

343. Other invoices referring to Sarah Harris (who was a close friend of the Respondent and worked for Vogue) were also explored. One such invoice related to a fashion show in Paris. Ms Harb explained that 'Paris would not send pictures'. She explained that Sarah would send pictures back, adding 'we'd do a mood board – we would say, buy this, this and this; she'd buy and bill us'. Another series of invoices relating to Sarah Harris were also considered. Ms Harb explained that Ms Harris was 'running around for us doing 'looks'', which the Respondent could then use with her personal styling clients.

344. I also take into account Mr Hobby's analysis of the relatively low proportion of total revenue represented by the ad hoc help enlisted by the Respondent in her personal styling work. At paragraph 4.25(b)(iv) of his report, for example, he notes:

> 'The extent to which the business used stylists, other than the Respondent, can be seen by the relatively small direct expense

> 'Labour re-styling', which totalled £11,306 for the 12 months ended September 2012. For context, this equates to 1% of total revenue over the same period, being £1,054,787….'

345. The Applicant sought to rely on a letter dated 27 August 2015 from the Respondent to the in-house lawyer for Mountain Berg Limited, in which, when asked what proportion of her time she had spent on GL work compared with personal styling in the run-up to GL's administration, she had answered 'I would estimate 98% on Gift Library, 2% on SC2. SC2 requires barely any of my time. We hire independent stylists that take on all of the work, the company only bills the client.' Leaving aside the fact that this response related to SC2, on the evidence overall, I am satisfied that the statement 'We hire independent stylists that take on all of the work' was not accurate. Having observed the Respondent in cross examination, it is clear that as a creative, she often speaks in 'absolutes'. This was a letter, not a statute or a pleading, and the focus of the enquiry was on the proportion of time spent on personal styling compared with GL, rather than who carried out the personal styling work. Given the state of relations between the Respondent and Mr Ross by the time of the letter, I consider it legitimate to conclude that the Respondent's focus in her response was on confirming her commitment to GL in the run up to its entry into administration. From her oral testimony I am satisfied that her reference to 'all of the work' was in context a reference to all of the 'runner' work. The Respondent could (and did) delegate the 'runner' work, but the personal styling work itself was dependent on her.

346. On the evidence overall, it was clear (and I so find) that, whilst the Respondent made use of other stylists or 'runners' for specific tasks from time to time, the Respondent herself was the styling business. As Ms Harb put it, the Respondent had to approve and sign off on everything herself, or her clients would not have been satisfied: Harb at [37]. There was no business without the Respondent.

347. The Applicant also maintained that the name 'Style Counsel' had intrinsic value and was important to the styling business. It is correct to state that the Respondent had been involved with several companies with 'Style' in the name. I was taken to no evidence to suggest, however, that SC1 had any media coverage or market presence or used any promotional materials. The Respondent confirmed that she did not even mention SC1 in three series of 'Ladies of London', although she did use her television appearances in that series as a means of promoting GL. The evidence of the Respondent and of Ms Harb, which in the absence of any evidence to the contrary I accept, was that SC1 did not have any media coverage or marketing presence; it had no email domain name, it had no bags or even a business card, just a blue logo on the invoice. As Ms Harb put it in cross examination, the company 'could have been called "Bugs Bunny" for all it mattered; the styling clients were 'high end clients', who dealt only with 'Caroline'.

348. Ms de Pauw gave supporting evidence. Her evidence, which in this regard I accept, was as follows.

> '[8] I have never referred to Caroline's business as Style Counsel. I don't believe I ever knew that she had a limited company of that name. She never used that name with me either. As far as I was concerned, I simply bought items from

> Caroline and would have referred to her as Caroline only. I did however know that she had a company called Gift Library and I would have referred to that name if I was purchasing gifts from that company.
>
> [9] I would not have known that she raised invoices under the name Style Counsel. I would never have seen the invoices or indeed any receipts. Caroline's people would send my assistant or accountant invoices and they would simply arrange for them to be paid; they would know the invoice was for Caroline because it came from her people. I might have seen them very briefly for signing off, but would not have looked at them in a detail.'

349. Ms Ecclestone gave evidence to similar effect, which I accept.

350. On the evidence overall, I am satisfied that the name 'Style Counsel' had no intrinsic value to the Respondent's styling business. The adoption of the name 'Style Counsel' for SC2 was a matter of administrative convenience only. I so find.

351. The incorporation of SC1 made no difference to the Respondent's personal styling clients; they simply continued to instruct her. The evidence of Ms Ecclestone and Ms de Pauw, which in this regard I accept, is that they did not even know that SC1 existed. They (or their staff) may have received invoices from SC1 but they would not have noticed or cared. SC1 was immaterial to them. They were only interested in being styled by the Respondent and were loyal to her.

352. On the evidence that I have heard and read, I am satisfied that the goodwill generated by the Respondent's styling business was at all material times 'dog' goodwill, generated by the Respondent personally, both before and after incorporation of SC1. I so find.

353. The 'handbag and jewellery business', as it was termed at trial, was ultimately no more than a selection of sales opportunities to 'source' high-end bags and jewellery for the Respondent's styling clients from time to time at their request and to sell the same to such clients at an uplift. There was no stock. This 'business' had no independent life of its own; it was dependent on the Respondent's styling clients and formed part of the Respondent's personal (or 'dog') goodwill. I so find.

354. Although inherent in my previous finding, I also find that at the time of the November 2012 restructuring and as at January 2013, the 'handbag and jewellery business' remained part of the Respondent's personal (or 'dog') goodwill. It was not an asset of SC1. I so find.

355. The styling clients requesting this handbag and jewellery sourcing service were not contacting SC1 for the service; they knew nothing of SC1's existence. They were contacting the Respondent as they knew that, in addition to her own personal collection of luxury bags and jewellery, she had an extensive network of connections across the globe and could track down a desired item for a styling client if she did not have it to sell herself.

356. Even after sales of handbags and jewellery generated by the 'handbag and jewellery business' started to be put through GL rather than SC1, ultimately it was still the Respondent, with the assistance of Ms Harb, sourcing the bags and jewellery. This is clear from the email correspondence in evidence. Instead of contacting FSPG for an SC1 invoice to be drawn up, Ms Harb would simply request a GL invoice from the accountants dealing with GL's day to day accounting, Brookmans.

357. The elite nature of the 'handbag and jewellery business' is reflected in the bespoke invoicing system set up by GL in January 2013 for sales of luxury bags and jewellery to the Respondent's personal styling clients. The invoice numbering adopted by GL for such sales reflects the names of these clients and starts from '1' in each case. An invoice dated 7 January 2013 to Petra Stunt in respect of a Matte Black Crocodile Kelly bag sold for £49,000, for example, bears the invoice number 'PS01'. Subsequent invoices to Ms Stunt follow the same pattern, PS02, PS03. Similarly, an invoice dated 21 January 2013 to Tamara Ecclestone in respect of a Hermes Kelly 35cm Blue Lin Togo with Palladium, sold for £13,800, bears the invoice number 'TE01'. An invoice dated 19 March 2013 to Dorothee De Pauw, in respect of a Lorraine Schwartz bracelet sold for £13,000 and other jewellery, bears the invoice number 'DP01'. The highly specific invoice numbering suggests that a separate record was kept by GL of sales to these clients.

358. It was the Respondent who had a personal collection of Hermes handbags and the global connections required to track down a desired high-end bag or item of jewellery that she did not own herself. At paragraph 93 of her witness statement, the Respondent described the matter as follows:

> 'When I was styling clients in the United Kingdom I had my own extensive personal collection of Hermes handbags. When I invest in high-end clothes and accessories, I have never been attached to material things. If someone tells me that they like my earrings and want to buy them, I have no problem taking them off and selling them. That is what would happen with my Hermes handbags. I would be shopping with a client and they would tell me how much they loved the handbag I was carrying. I would have no qualms about giving it to them and sold a number of Hermes handbags that way. When clients wanted a Birkin or Kelly bag that I didn't have, I was often able to source the desired combination of design and colour through my extensive network of connections. For example, if I identified that the handbag my client wanted was available in Los Angeles, I would call one of my friends who lived there and ask her to buy it for me. I have friends all over the world who would happily do this, and I would give them a percentage of the uplift that I made on the sale. I also had a private contact who sold a number of Hermes handbags, so I sourced various products through her over the years …'

359. I accept the Respondent's evidence on this issue. Ms Ecclestone and Ms De Pauw gave supporting evidence, both referring to the Respondent's ability to source 'hard to get' or 'exclusive' items for them.

360. Whilst, over time, the Respondent could delegate some tasks involved in the 'handbag and jewellery business' to Ms Harb, such as giving Ms Harb some telephone numbers to call on her behalf, ultimately the clients requiring a given bag or item of jewellery to be sourced came to the Respondent. Some of the clients would not even speak to Ms Harb on the telephone and the Respondent would have to take the call herself.

361. Turning then to the factors listed at paragraph 327 above (which whilst not comprehensive are a useful guide):

(1) *whether the business (in this context the personal styling business and the bags and jewellery sourcing business) attaches to an individual (i.e. their abilities, characteristics, name or reputation) or a company (i.e. its brand name, location or resources*);

On the evidence which I have heard and read, I am satisfied that the business attached to the Respondent, her abilities, characteristics, name and reputation;

(2) *whether the business would remain with the company in the event that the individual ceased to be employed by the company*;

On the evidence which I have heard and read, I am satisfied that the business would not remain with SC1 in the event that the Respondent ceased to be employed by it. I am fortified in this conclusion by the agreement of both experts in their joint statement that without the Respondent, SC1 had no business. I am further fortified in my conclusions by what occurred when the Respondent stopped providing her services through SC1 and started providing them through SC2;

(3) *whether customers engage with and enlist the services specifically of the individual, or contact and enlist the services of the company first, with the individual contact/relationship remaining a secondary issue*;

On the evidence which I have heard and read, I am satisfied that the personal styling clients engaged with and enlisted the services of the Respondent rather than SC1;

(d) *whether the individual's name or the company name would have any bearing on the customer's desire to carry out business with the individual*:

On the evidence which I have heard and read, I am satisfied that the company's name was entirely irrelevant to the personal styling clients, it was only the name of the Respondent that mattered.

362. For all these reasons, on the evidence that I have heard and read, I am satisfied that the goodwill generated by the Respondent's styling business and the Respondent's bag and jewellery sourcing business was at all material times personal or 'dog' goodwill, generated by the Respondent personally, both before and after incorporation of SC1.

363. The Applicant did not plead how, on his case, the valuable personal goodwill generated by the Respondent over many years as a sole trader came to be vested in SC1. In the Points of Claim, the period leading up to incorporation of SC1 is simply ignored and 'goodwill' is not mentioned at all.

364. In the Amended Points of Reply, there are assertions to the effect that 'the goodwill attaching to the business carried on by the Company was the goodwill of the Company' (see by way of example para 15, 28(1), 61, and 71). The only positive ground put forward in the Amended Points of Reply in support of this contention, however, is an allegation (at para 28(1), repeated at 61) that 'It was the understanding of John Dodd of Artemis that the main asset of [SC1] was "Caroline Stanbury herself" evidencing that any personal goodwill of the Respondent was the main asset of [SC1]..' Mr Dodd did not give evidence, but even if he had, it is unclear to me how the Applicant could make out a case simply on John Dodd's alleged belief.

365. It formed no part of the Applicant's pleaded case that the Respondent had expressly assigned her personal (or 'dog') goodwill to SC1, whether at the time of its incorporation or at any time thereafter. I was taken to no evidence supporting the conclusion that she had done so. On the evidence which I have heard and read, I consider it legitimate to conclude that there was no express assignment.

366. It formed no part of the Applicant's pleaded case that there was an implied or informal assignment of the Respondent's personal goodwill to SC1 either, whether at the time of SC1's incorporation or at any time thereafter, although this did not stop Mr Groves from seeking to argue, in closing, that an implied or informal assignment had taken place.

367. In closing, Mr Groves sought to distinguish Sofra on the basis that in that case, it was found that Mr Ucar had discussed with his accountant whether to assign his personal goodwill to the company at the time that it was set up and had decided not to. I accept that there was no evidence before me of a specific discussion on whether or not to assign the goodwill to SC1; in fairness to the Respondent, it was not a point raised by the Applicant in his pleadings: understandably she was not able to recall, on the spot in cross-examination, what discussions she may have had with FSPG on this subject over eleven years ago.

368. I do note, however, that at paragraph 80 of her witness statement, the Respondent gave evidence that she was advised by FSPG to set up SC1 'for financial management/tax reasons only' and that 'the intention was that I would continue to carry out my styling on the same basis; my clients were simply employing me, Caroline Stanbury, because they knew me and trusted my personal fashion sense'. This evidence, which I accept, is not readily compatible with an assignment having taken place on the incorporation of SC1.

369. Mr Groves submitted that in the absence of evidence that the Respondent had expressly decided with her accountants that she would retain her personal goodwill for her own personal benefit at the time of incorporating SC1, she should be treated as having impliedly or informally assigned it to SC1. Mr Trollope QC disagreed. He submitted that the suggestion that if someone sets up a company, any personal goodwill which they have is automatically transferred to the company 'by some sort

of legal osmosis' was a nonsense. He contended that all that Sofra demonstrates is that in the absence of agreement to transfer goodwill, the goodwill remained with Mr Ucar. He maintained that Sofra supports his position that some action or agreement is required for a transfer of personal goodwill; it was not automatic.

370. I reject Mr Groves submission that in the absence of evidence that the Respondent had expressly decided with her accountants that she would retain her personal goodwill for her own personal benefit at the time of incorporating SC1, she should automatically be treated as having impliedly or informally assigned it to SC1 at the time of incorporation. Assignment of goodwill was not pleaded; it is little wonder that the Respondent did not address it directly in her evidence in response to these proceedings. Pleadings aside, in my judgment the absence of evidence of a conscious, express decision not to assign is only one of many factors to be taken into account. The court must look at the evidence as a whole.

371. Another factor to take into account is the nature of the goodwill in issue. As I have found, in this case, it is personal (or 'dog') goodwill. (This contrasts with cases such as Condliffe, which involved 'cat' goodwill).

372. Whilst it is common ground between the parties that personal ('dog') goodwill is in principle capable of assignment, given the nature of the goodwill involved, it is clear that the court must examine all the circumstances of the case with particular care before concluding that an implied or informal assignment has occurred.

373. In this regard it is in my judgment significant that there was no contract between the Respondent and SC1, whether as at the date of incorporation or at any material time thereafter, obliging the Respondent to work for SC1 or precluding her from working elsewhere. Absent such obligations and restrictions, it is difficult to see how an assignment of personal goodwill could readily be implied.

374. I also take into account the lack of evidence of any payment by SC1 to the Respondent in respect of goodwill; given SC1's impressive figures in its first year of trading, with no market presence and only the Respondent and one employee, it is in my judgment legitimate to conclude that the personal (or 'dog') goodwill owned by the Respondent at the date of incorporation of SC1 was of a significantly high value; I so find. From the accounts in evidence, it is clear that SC1 had no or minimal assets at its incorporation; it could not have afforded to pay the Respondent for such valuable goodwill at its inception, even if she had wished to sell it. In addition, no debt is shown in SC1's accounts in respect of sums due for purchased goodwill. No connected party transaction is declared in SC1's accounts in respect of the purchase of goodwill either.

375. I also take into account how protective the Respondent was of her name and reputation. Whilst hearsay, which affects the weight that I should attach to it on a stand-alone basis, Ms Harb gave evidence (at paragraph 39 of her witness statement) of her understanding 'from conversations during my employment' that the reason why SC1 was called 'Style Counsel' rather than a variant on the Respondent's own name 'was to ensure that [the Respondent] did not lose the right to make use of her own name in a commercial setting'. This evidence, whilst hearsay, is consistent with the actions which the Respondent took during the 2012 restructuring to ensure that she

retained the rights to her name. Paragraph 8.4 of the (professionally prepared) Disclosure Letter dated 21 November 2012 from GL and the Respondent to Artemis provides that 'The name "Caroline Stanbury" … is legally and beneficially vested in [the Respondent].'

376. I accept that, on its incorporation, SC1 was able to 'hit the ground running' by *using* the Respondent's goodwill; according to its accounts, in SC1's first year of trading, (to 30 September 2011), it had a turnover of £1.3m and profit before taxation of £243,711. It also declared and paid tax on these profits. These matters, of themselves, however, do not lead inexorably to the conclusion that an implied assignment of goodwill had occurred; on the facts of this case, it is (at the very least) equally consistent, as a matter of law, with an implied or informal licence (as was found in the case of Sofra).

377. In this regard, I remind myself that (pleading points aside) the Applicant bears the burden of proof on this issue. If the Applicant wishes to rely upon an assignment, it is for him to prove that it is *more likely than not* that the personal goodwill generated by the Respondent in her sole trader business was assigned to SC1. Where (as here) other explanations (such as an implied or informal licence) are (at the very least) equally likely, the Applicant fails to discharge that burden.

378. In this regard I note that the Respondent had a long-standing 'informal licence' arrangement in relation to the use of her name and her image in GL's promotional material, for which no fee was paid: see Disclosure Letter dated 21 November 2012 at paragraph 8.4. There is, therefore, on the evidence, at least one other example of an informal licence arrangement entered into by the Respondent.

379. Mr Groves' attempts to seize upon the words used by the Respondent and her advisers in given communications, such as a reference in January 2013 correspondence to the 'Style Counsel transfer', or references to a 'transactional structure', in my judgment do not take matters very far. It is clear in context that such language is simply used as shorthand in given communications. The parties to such correspondence were not considering the issue of ownership of the personal goodwill at the time. The Respondent has made clear at all material times that she considers the personal styling business (and the handbag sourcing business) to be her business.

380. As previously noted, the Applicant did not plead assignment. For the sake of completeness, however, I confirm that, even if the pleading point is left to one side, on the evidence which I have heard and read, the Applicant has failed to satisfy me on a balance of probabilities that there was an assignment by the Respondent to SC1 of her personal goodwill, whether express, implied or informal, whether at the time of incorporation of SC1 or at any time thereafter.

381. Quite the contrary; on the evidence which I have heard and read, I am satisfied that there was no express, implied or informal assignment by the Respondent to SC1 of her personal (or 'dog') goodwill, whether at the time of SC1's incorporation or at any time thereafter. I so find.

382. I would add that I was taken to no evidence to establish on a balance of probabilities that the Respondent took on any new styling clients after the date of incorporation of SC1. The Applicant did not plead that she had done so. In cross-examination, Mr

Groves did not put to the Respondent that she had done so. Given the select and long-standing nature of the Respondent's client base, it would not be legitimate to proceed on an assumption that the Respondent took on more clients after incorporation of SC1. The Respondent's evidence (at paragraph 14 of her witness statement) was that she never publicised or marketed her personal styling business, as she 'did not want nor have time for any more clients'. Even putting to one side the fact that the point was not pleaded or put, the burden of proof would be on the Applicant on this issue. Again, for the sake of completeness, I confirm that on the evidence which I have heard and read, the Applicant has failed to satisfy me on a balance of probabilities that the Respondent did take on any new personal styling clients after the date of incorporation of SC1.

383. Moreover even if she had, on the evidence before me I am satisfied that any increase in the value of personal goodwill after incorporation of SC1 would be solely attributable to the efforts of the Respondent and would not be attributable to SC1. As I have found, SC1 had no market presence at all. Personal styling clients came to the Respondent and not SC1. The Respondent generated value through her own services. She even used her own American Express credit card to effect purchases as and when necessary.

384. I am fortified in these conclusions by the matters agreed by the experts. In their joint statement, the experts agree that without the Respondent, SC1 had no business.

FSPG Valuation

385. At the heart of the Applicant's case that SC1 had a value of £1.4 million is the FSPG Valuation dated 22 October 2012. I turn next to consider it.

386. The FSPG Valuation calculates a 'Weighted Sustainable Future Profit' which it then multiplies by a Price Earnings Ratio ('P/E ratio'), before applying a percentage deduction. This results in a 'Valuation of trade' which is then rounded to 'Say' £1.4 million.

387. Mr Groves argued that contemporaneous valuations are the 'truest guide', referring me to In re Bliss (decd) [2001] 1 WLR 1973, 1981:

> 'Of course, in the nature of things, someone who is valuing in retrospect cannot help knowing that the inferences as to the future which he attributes to the hypothetical vendor and purchaser have been justified by events, and inevitably the uncertainties which usually affect the mind, and hence the value, tend to be resolved. For this reason contemporaneous comparable valuations and, where possible, a contemporaneous valuation of the subject of the truest guide to its value'.

388. Naturally I take such considerations into account. The FSPG Valuation, however, is a single page document with no supporting narrative. It does not include any supporting documentation and is not a full valuation report. On the evidence which I have heard and read, I am satisfied that it was prepared for a very limited purpose: to work out dilution (see paragraphs 83 to 86 above). In my judgment very little weight

can be placed upon it in determining the value of SC1, whether as at 22 October 2012 or at any other date.

389. The FSPG Valuation does not indicate what the business and assets of the Company are said to be at the date of valuation. It does not take account of or refer to 'personal goodwill'. It adopts the market approach to valuation, implicitly assuming either that the business is a going concern without the Respondent's continued involvement or that the Respondent will continue to be involved indefinitely, despite not being contracted to do so. The FSPG Valuation fails fully to recognise SC1's dependency on the Respondent; the only acknowledgement FSPG makes to the extent to which SC1 is dependent on the Respondent is its inclusion of an all-encompassing deduction of 50%, addressed further below.

390. The FSPG valuation assumes that the business is in a steady state i.e. has been operating for several years at a relatively consistent level, to justify use of its reported earnings in a multiple of earnings calculation to calculate how it is expected to perform in the future. At the First Valuation date (22 October 2012), however, SC1 had been in business for just two years (since its incorporation on 7 September 2010).

391. The FSPG Valuation relies on profit after tax as its measure of earnings to which it applies a P/E Ratio multiple. No explanation is given why other more conventional measures of earnings, such as Earnings Before Interest Tax Depreciation and Amortisation ('EBITDA') have not been used.

392. The FSPG Valuation calculates 'Sustainable Future Profit' as a weighted average of profit after tax for the year ended 30 September 2011 and the estimated profit after tax for the 12 months ended 30 September 2012, weighted 2:1 respectively (ie more weighting is given to the preceding year – 2011 – than the most recent year, 2012). Yet in the year ended 30 September 2011, SC1 achieved average monthly sales of £114,500, whilst this reduced to average monthly sales of £100,700 for the nine months ended June 2012.

393. The earnings multiple applied in the FSPG valuation is also entirely inappropriate. It is based on the P/E Ratio for Personal Goods of 19.87x, as reported in the Financial Times on the valuation date. Companies listed under the personal goods sector include companies such as Burberry, Superdry and Unilever; these are hardly comparable to SC1.

394. A deduction of 50% is then applied for (variously), 'non-listed, dependence on C Stanbury, dependence on key customers plus premium for control'. The discount appears arbitrary on the face of it. There is no information that breaks the 50% discount down by those three factors; the amount attributable to each factor is not stated. Given that SC1's ability to continue as a going concern was wholly, i.e. 100%, dependent on the Respondent's skill-set, personal relationships with clients and connections, a deduction of 50% is significantly understated, leaving aside the fact that the 50% deduction, on FSPG's calculations, also encompasses other factors, such as 'dependence on key customers'.

395. Despite all of these shortcomings, Mr Groves urged the court to give the FSPG Valuation 'substantial evidential weight', arguing:

(1) it is produced by professional accountants who were familiar with SC1, GL and the Respondent;

(2) the Respondent (together with her father) instructed its production;

(3) the Respondent 'was aware of it and used it to ensure the Artemis investment was made';

(4) it is 'reliable and credible and not based on false assumptions';

(5) the Respondent 'signed off the accounts of GL directly relying on the [FSPG] Valuation';

(6) the Respondent 'did not raise any issue with the accuracy of the [FSPG] Valuation until she realised that proceedings might be issued against her'; and

(7) the Respondent 'used the [FSPG] Valuation in later business dealings'.

396. With regard to (1), (2) and (3), on the evidence I have heard and read, I am satisfied that the FSPG valuation was produced for the limited purposes addressed at paragraphs 83 to 86 of this judgment. Artemis had already decided upon the amount which it was to invest several months prior to production of the FSPG valuation. Mr Dodd himself stated in correspondence that the value of SC1 was not a driver for the Artemis investment.

397. With regard to (4); this is simply assertion. For the reasons already explored, the FSPG Valuation cannot be treated as an accurate or reliable guide to the value of SC1 as at 22 October 2012. I am fortified in this conclusion by the detailed critique of the FSPG Valuation set out in Mr Hobby's report, which I accept. Indeed, even Mr Slack could not defend in their entirety the premises and calculations on which the FSPG valuation was based, although he found his way to a very similar valuation figure.

398. With regard to (5), the accounts of GL which were signed by the Respondent were professionally prepared accounts and included reference to the value of SC1 at 'cost'.

399. With regard to (6), I repeat paragraph 396 above. Given the limited function of the FSPG Valuation, no issue as to its accuracy arose until the Applicant tried to rely upon it.

400. With regard to (7), whilst I accept that later investors may have had sight of the FSPG Valuation, along with numerous other documents, during due diligence which they undertook, on the evidence before me, the Applicant has failed to satisfy me on a balance of probabilities that the Respondent actively used the FSPG valuation for the purposes of 'wooing' investors or influencing the amount that they wished to invest. Quite the contrary; on the evidence which I have heard and read, I am satisfied that she did not. Moreover, even if she had, that would not lead inexorably to the conclusion that the value of SC1 at 22 October 2012 was £1.4 million.

401. For all these reasons, in my judgment very little weight can be placed upon the FSPG Valuation in determining the value of SC1, whether as at 22 October 2012 or at any other date. I am fortified in my conclusion by the conclusions reached by Mr Hobby in his report.

The Experts

402. Having considered the FSPG valuation, I turn next to the expert evidence adduced by the parties in these proceedings. Mr Slack's report is dated 6 November 2020 and was produced for the Applicant. Mr Hobby's report is dated 6 November 2020 and was produced for the Respondent. The experts were required to value SC1 at two dates: (1) 22 October 2012 (the First Valuation), being the date of the FSPG valuation; and (2) 31 January 2013 (the Second Valuation), being the date that, at the time expert evidence was directed on 1 April 2020), the Applicant alleged that loss was sustained.

Mr Slack's report

403. Mr Slack is a forensic accountant, valuation and arbitration expert who has been preparing expert witness and valuation reports for over 20 years. He is a CPA qualified accountant and a member of RICS. Before joining Griffins, he was a principal in a listed US consultancy firm.

404. Mr Slack's report was of a very poor quality. I address some of its key shortcomings below.

405. Mr Slack struggled to defend his report in the witness box. When asked whether his report was 'accurate and complete', he stressed that it was a valuation done 'at a high level ', adding 'I didn't go into extensive detail given my instructions and budget.'

406. In the opening paragraphs of his report, Mr Slack confirmed (at para 1.6.2) that

> 'Due to time restrictions and in the interests of proportionality and an upcoming mediation between the parties, the valuation/s have been done at a 'high-level'. This means that there has not been an in-depth analysis of various valuation metrics and evaluation model/s are not detailed or comprehensive.'

407. In re-examination, Mr Slack explained that, at the time that he was instructed to value SC1, he was told that the Applicant wanted to mediate and didn't want to spend a lot of money.

408. After exchange of expert's reports, Mr Slack produced 16 further documents, not referred to at all in his report, seeking to shore up its conclusions.

409. For the purposes of his report, Mr Slack adopts the market approach, which treats SC1 as a going concern. His report is prepared on the basis that, whilst the Respondent 'was not contractually bound to work indefinitely for [SC1]' the Respondent (who was 37 at the First Valuation Date) 'would … have continued to be involved in [SC1] up to the date of her retirement, if not for this dispute'; and that 'by the date of her retirement,….. [SC1] would have established a succession plan so it would remain a going concern': (para 1.8).

410. In preparing his valuations, Mr Slack used the operating profit shown in the financial accounts for SC1 (prorated) to estimate future maintainable operating profit (the multiplicand). At para 2.1.3, he explained 'For high-level valuations, I use a multiple range of between 4x-8x EBITDA.' He decided that SC1 'should attract a 5x multiple' (para 2.1.4). He then applied an operating profit multiple of 5x to arrive at a value for SC1 of £1.38m as at 22 October 2012 and £1.42m as at 31 January 2013: (para 5.1).

411. Whilst 'sharing' some of the Respondent's concerns in respect of the FSPG valuation (paras 4.1 and 4.2), he concluded that FSPG had 'arrived at a reasonable value nevertheless' (para 5.3.1).

412. In cross examination, Mr Slack accepted that when valuing a private company, earnings multiples are best suited for sectors that have relatively stable earnings and that, if historical earnings are not stable, they will not be a good basis for future projections. He struggled to explain how 2 years' trading in a company of the size of SC1 provided a sound basis for projected earnings in the future. He said that his understanding was that the Respondent had been operating the business for a number of years, but admitted that he had not looked at any of her prior earnings figures as a sole trader and knew nothing about them.

413. Mr Slack had no persuasive explanation for using a multiple of 5x either. He repeated that it was a 'high level' valuation and the FSPG valuation of £1.4m was a 'clear indicator'. When it was put to him that when choosing a multiplier and calculating value, it was unacceptable to look at someone else's valuation and do a reverse calculation, he responded 'that's one way of approaching it'.

414. Mr Slack was pressed to justify the 5x multiplier, particularly given SC1's high dependence on the Respondent. He and Mr Hobby had agreed in their joint statement that, without the Respondent, SC1 would have no business. Mr Slack had acknowledged in his report that the Respondent 'was not contractually bound to work indefinitely for [SC1]'. Yet for the purposes of his report, Mr Slack had proceeded on the basis that the Respondent (who was in her forties) would work for SC1 until retirement (para 1.8). When challenged in cross examination, he claimed that the 5x multiplier reflected the risk that she would leave.

415. When asked why he had not used comparables when preparing his report and considering the multiple to apply, he said that he didn't consider it 'proportionate' and that he 'had a feel' for the multiple. Whilst accepting that, in a 'detailed valuation', it is a common or useful practice to use comparables, he said that 'because of the nature of my instructions, my experience, and the fact that the company sold for £1.4m, I felt that a multiple of 5 was appropriate.'

416. After exchange of expert reports, however, Mr Slack did produce 'comparables'. The 'comparables' which he produced bore no resemblance to SC1. They included (1) CVS Group plc, a nationwide veterinary practice, established for over 20 years, with an annual revenue of over £100m, (2) Dignity plc, a FTSE 250 company owning 600 funeral locations with an annual revenue of over £200m; and (3) John Swan & Sons plc, livestock auctioneers established for over 100 years. When asked in cross examination what the point was of producing these examples, Mr Slack replied that the companies in question were all 'specialist retailers', adding that 'if SC1 was

listed', this was the sector that SC1 would end up in. This was clearly not an adequate justification for use of such 'comparables'.

417. When asked whether any of the examples produced had cash flows, growth potential and risk similar to SC1, Mr Slack said that he believed the 'risk' to be 'similar'. This was a manifestly untenable position for him to adopt.

418. When asked why he had applied no keyman discount (para 1.8), he answered 'because I considered that a multiple of 5 was appropriate.' This was not an adequate explanation.

419. Mr Slack had made no adjustment in operating profit for salary either. He accepted that he was valuing on the basis of a sale to an arms length purchaser and assumed continued engagement of the Respondent, but took no account of the fact that in each of the two years he had used as the basis for his calculations, the majority of the Respondent's remuneration was paid by way of dividend, not salary. The figures were stark; and even FSPG's one page valuation had allowed a deduction of a notional salary of 89k for the Respondent. When pressed to justify his failure to adjust for salary, he eventually responded: 'because the 1.4m should be treated as capitalised wages. She got 10 to 15 years wages in advance'. As Mr Trollope remarked at the time, this was 'utter and total nonsense'. It was at this stage that I reminded Mr Slack that he was under oath and should not treat the giving of evidence in court as a game. He apologised.

420. Overall, Mr Slack's report was an unimpressive, results-driven piece of work. His attempts to defend it in oral testimony were entirely unpersuasive. In my judgement, very little weight can be placed on Mr Slack's written and oral expert evidence. His failure to address personal goodwill when considering the method of valuation to adopt, his assumption that the Respondent would work for SC1 for the rest of her working life, his unjustified use of a 5x multiplier, his rearguard use of entirely inappropriate 'comparables', his failure to deduct a notional salary and his attempts in cross examination to justify that failure, have led me to conclude that his evidence is not a reliable guide to the value of SC1 as at either valuation date.

Mr Hobby's report

421. Mr Hobby qualified as a chartered accountant in 2000. He is a fellow of the Institute of Chartered Accountants in England and Wales and a partner in the London office of BTVK Advisory LLP, which trades as Baker Tilly US. He has specialised in claim evaluation and the financial analysis of claims on behalf of both claimants and defendants for the past 16 years.

422. For the purposes of valuing the equity value of the SC1, Mr Hobby adopted Fair Market Value ('FMV') as the basis of value. He defined FMV as the highest price available in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act, expressed in money or money's worth.

423. For the First Valuation date, he based his valuation calculation on SC1's financial performance and position for the nine months ending 30 June 2012, being the latest available record of SC1's accounting affairs prior to the First Valuation date.

424. For the Second Valuation date, he based his valuation calculation on SC1's financial performance and position for the 16 months ended 31 January 2013, on the assumption that this information would have been available on 31 January 2013.

425. At section 4 of his report, he set out the three main approaches that could be used to calculate a business's valuation; these being assets approach, market approach and income approach. In determining the approach to adopt in relation to SC1, he correctly considered the impact of personal goodwill, stating at 4.21 and 4.22:

> "'4.21 Personal goodwill is therefore an intangible value that arises from the efforts or unique reputation of a business owner or other individual, the value of which is only associated with that individual and not to the business itself. It is not an intangible asset of the business, but is instead an asset attributable to the individual, not the company. Therefore, personal goodwill should not form part of the purchase price paid for a business and, as such, should not be included on the acquiring company's balance sheet (as Accounting Goodwill or otherwise) following an acquisition."
>
> 4.22 In valuation, the exclusion of any benefit to the business attributable to personal goodwill in the valuation of a business is analogous to the application of 'key person discount'. A 'key person discount' recognises the dependence on a single key person or a few key people. "…The actual death or potential loss of such a person, whether by death, disability, or resignation, entails risk of adverse consequences. Such consequences can include a variety of losses, as suggested by that key person's unique attributes …. Some of the key person attributes that may be lost include: Relationships with suppliers; Relationships with customers …." ['Business Valuation : Discounts and Premiums' (2nd ed) Shannon P. Pratt]'

426. At paragraphs 4.24 to 4.26 of his report, Mr Hobby sets out his reasons for choosing the asset approach to valuing the company:

> '4.24 As discussed at paragraphs 4.05 to 4.12 above, there are three main approaches that could be used to calculate a business' valuation – asset approach, market approach and income approach.
>
> 4.25 I consider each of these below for the purposes of valuing [SC1] at the Valuation Dates:
>
> (a) Asset approach
>
> (i) As [SC1] had a positive balance sheet as at both 30 June 2012 and 31 January 2013, the latest available record of [SC1's] accounting affairs at the Valuation dates, the asset

approach provides a basis on which to calculate the 'minimum' equity value of [SC1], as a going concern.

(ii) Given my understanding that (a) [SC1's] ongoing business was dependent on the Respondent's personal relationships and unique connections; and (b) the Respondent was not contractually obligated to continue to work for [SC1], I do not consider it suitable to value [SC1] on a going concern basis, as without the Respondent's guaranteed continued involvement, there would be no ongoing business. Therefore, the asset approach can also be used to value [SC1] on a break-up basis.

(b) Market approach

(i) Although [SC1] appears to have generated profits before tax of £235,929 for the nine months ended 30 June 2012 and of £404,440 for the 16 months ended 31 January 2013, I understand that this was only achieved with the benefit of the Respondent's personal relationships and unique connections….'

[Having examined the evidence in support of that, he continued]:

'(viii) I consider that the Respondent's personal relationships and unique connections [are] representative of personal goodwill, as defined above at paragraph 4.19.

(ix) The fashion expertise, client connections and fashion house relationships were those of the Respondent and not of [SC1]. The contribution that the Respondent makes to the business is not something that can be replaced by [SC1] appointing a new managing director or employee, which highlights the extent to which the business depends on the personal goodwill attached to the Respondent.

(x) Without these key attributes, [SC1] is not a going concern. To value [SC1] on a going concern basis attaching any value to these key attributes, which are the Respondent's and not [SC1's], would represent an overstatement in the value of [SC1].

(xi) Given that (a) [SC1's] ability to continue as a going concern is dependent on the Respondent's personal relationships and unique connections; (b) the Respondent is not contractually obligated to continue to work for [SC1]; (c) the Respondent's personal relationships and unique connections are representative of personal goodwill; and (d) personal goodwill is generally not included in the calculation of fair market value in an open market context, I do not consider it appropriate to

> value [SC1] on a going concern basis and so do not consider the market approach to be suitable in this case.
>
> (c) Income approach – notwithstanding my view that it is not appropriate to value [SC1] on a going concern basis, there is no forecast and/or cash flow information for [SC1], so the income approach is not a viable alternative in this case. However, even if sufficient forecast cash flow information were available to me, I do not consider it appropriate to value [SC1] on a going concern basis and so do not consider the income approach (which implicitly assumes [SC1] to be a going concern) to be suitable in this case.
>
> 4.26 In conclusion, I consider the asset approach to be the most appropriate basis for valuing [SC1]'.

427. In the light of my earlier findings on goodwill and having considered the expert reports and underlying evidence with some care, I am satisfied that Mr Hobby was correct to apply the asset approach on a break-up basis in this case. The market approach is clearly inappropriate as it assumes that SC1 is a going concern and in a steady state. SC1 was not a going concern without the Respondent's continued involvement and she was not obliged, contractually or otherwise, to continue to work through SC1. Moreover as noted by Mr Hobby, SC1 was not in a steady state; as at the valuation dates, it had only been active for two years.

428. Applying the asset approach, Mr Hobby's valuations (based on net asset value at the relevant dates, less £5000 estimated closure costs) are as follows:

(1) First Valuation: £75,743

(2) Second Valuation: £3,230

429. In each case, these valuations are based on the latest available record of SC1's accounting affairs prior to the valuation date in question (paras 4.03 and 4.04; see too paras 4.27 to 4.33).

430. I accept Mr Hobby's calculation of and conclusions on the value of SC1 as at each of the two valuation dates.

431. I find that as at 22 October 2012, the value of SC1 was £75,743. This included the value of certain assets, such as artwork, which later formed the subject of a dividend (see paragraph 78-80 above and Mr Hobby's report at paragraphs 3.12 to 3.16).

432. I further find that the value of SC1 at 31 January 2013 was £3,230.

Mr Hobby's Supplemental Report

433. As previously addressed, after exchange of expert reports and less than a month before trial, the Applicant's solicitors sought to raise a new argument, contending that

a shareholders' agreement dated 21 November 2012 and an executive services agreement dated 24 September 2008 required the Respondent to 'continue to work for and promote the best interests of [SC1]' (letter from Blake Morgan dated 6 April 2021). The Applicant maintained that the 2008 and the 2012 Agreements required the Respondent, as a matter of contract, to continue working for SC1 and that this, in turn, undermined Mr Hobby's valuation report, which was premised on the Respondent being free to leave SC1 at any time.

434. I have already addressed (at paragraphs 302-314 above) the reasons why in my judgment the Applicant should not be permitted to run this unpleaded point. For the sake of completeness however, I set out Mr Hobby's conclusions on its impact on valuation, taking the 2008 and 2012 Agreements at face value for such purpose.

435. As noted by Mr Hobby, the experts were tasked with conducting an independent valuation of SC1 on an open market basis involving a third party buyer (ie not GL/Artemis) at the Valuation Dates.

436. In relation to the First Valuation Date, Mr Hobby noted that, as at that date (1) SC1 was not a 'Group' company for the purposes of the 2008 Agreement and (2) the 2012 Agreement did not yet exist.

437. In relation to both Valuation Dates, Mr Hobby also highlighted the ultimate fallacy behind the contention that either the 2008 or the 2012 Agreement (taken at face value for this purpose) was in any way relevant to the valuation exercise with which he and Mr Slack had been tasked.

438. Given that any alternative third party buyer would only be buying SC1, the 2008 Agreement would cease to be relevant from the point at which the buyer acquired SC1, as at that time, SC1 would cease to be a subsidiary of GL and no longer an Associated Company under the 2008 Agreement. It followed that any contractual obligation to work for SC1 under the 2008 Agreement would cease. Consequently, for the purposes of the valuation process, there was no certainty that the Respondent would continue to work for SC1.

439. Similar considerations arose in respect of the 2012 Agreement. Even assuming for the purposes of argument that the obligations of the Respondent under Clause 10 extended to SC1 as a subsidiary of GL (which as a matter of construction I have found that they did not), those obligations would cease on SC1 ceasing to be a subsidiary.

440. It followed that neither the 2008 Agreement nor the 2012 Agreement, even if taken at face value, caused Mr Hobby to change his calculations at either the First or the Second Valuation Date (see para 2.08 of the Supplemental Report). For the purposes of the valuation process, there remained no certainty that the Respondent would continue to work for SC1. The Applicant had no real answer to his indomitable logic.

441. I accept Mr Hobby's conclusions on this issue.

Insolvency

442. Before moving onto the caselaw and legal submissions, I should deal briefly with the issue of solvency.

443. By his Amended Reply, the Applicant alleged that SC1 was insolvent.

444. I remind myself that the burden of proof is on the Applicant on this issue.

445. On the evidence which I have heard and read, the Applicant has failed to satisfy me on a balance of probabilities that SC1 was insolvent at any material time. He adduced no evidence of insolvency.

446. Professionally drawn accounts for the years ending 30 September 2011, 31 January 2013 and 31 January 2014 filed at Companies House show SC1 to be balance sheet solvent throughout. The filed accounts for the year ending 31 January 2014 confirm that SC1 ceased trading in April 2013. It had no creditors other than a modest outstanding inter-company balance in favour of SC2, which has not been pursued.

447. The Disclosure Letter described both GL and CS1 to be 'struggling' financially as at November 2012 but I find that this was an error. It is correct that GL had cashflow problems in the run-up to the November 2012 restructuring but there was no evidence that SC1 itself was 'struggling'. The business model of SC1 involved minimal overheads. It had no premises, only one employee (Ms Harb) and did not carry stock; items were purchased on request and in general there was a quick turnaround for payment. Ms Harb gave evidence that she would like to see the payment for an item coming in before arranging delivery of an item to a client.

448. At the time that it ceased trading in April 2013, SC1 had no external creditors and one modest inter-company balance in favour of SC2 (which has never been pursued). SC2 arranged payment of SC1's corporation tax. There is no evidence to establish on a balance of probabilities that SC1 generated (passively or otherwise) any further liabilities to external creditors after cesser of trading which remain unpaid and I consider it legitimate to conclude that it did not.

449. Mr Groves argued that there might still be sums due to HMRC. He referred to the fact that VAT returns were filed for SC1 after April 2013, suggesting that there might be an outstanding liability for VAT. There was no evidence to support this contention. Indeed, there was evidence to counter it. The Applicant's own receipts and payments account, as attached to his progress report for the year 17 May 2018 to 16 May 2019, confirms a VAT refund of £2,254.08 – which was no doubt generated by the very returns upon which Mr Groves sought to rely to suggest an outstanding liability.

450. It is telling that the Applicant's SIP 9 records, covering the entire period of his role as liquidator of SC1 from 2017 to 2021, show an overall total of 0.1 hours of time spent on creditors. It was accepted by Mr Groves that the Applicant had made no enquiries about creditors. The Applicant has not even made routine enquiries of HMRC, which is unusual for an office-holder. In my judgment, the reason for this is clear. On the evidence which I have heard and read, I am satisfied that the Applicant has not asked the question because he cannot face the answer: there is nothing outstanding from SC1 to HMRC.

451. Mr Groves also argued that testing the solvency or insolvency of a company involves making proper allowance for its contingent and prospective liabilities, including 'the costs and expenses of the liquidation' (skeleton argument, paras 60 and 61). In this regard he relied upon BNY Corporate Trustee Services Ltd v Eurosail-UK 2007-3BL

[2013] 1 WLR 1408. I accept that the court must make proper allowance for contingent and prospective liabilities when considering the solvency of a company.

452. In considering cashflow insolvency, however, the court is not limited to considering a company's own cash resources. There are numerous authorities on what the Court can have regard to in this context when determining the financial resources available to a company: see The Law of Company Liquidation, McPherson & Keay, 4th ed (2018) at 3-031 to 3-034. In Hall v Poolman [2007] NSWSC 1330 [64], for example, the court considered the group of companies test, stating that the test of solvency is 'first and last, a question of fact and the Court approaches that question as a matter of commercial reality'. It is clear on the evidence before me (and I so find) that the commercial reality in this case was that SC1 had the support of SC2. It would be entirely artificial to ignore that fact when considering cashflow solvency.

453. Moreover, it is clear from BNY that, whilst only the assets of the company itself may be taken into account when considering balance sheet insolvency, the question whether or not balance sheet insolvency is established requires close examination of the circumstances of the particular case. In Evans v Jones [2016] EWCA Civ 660, in considering the balance sheet test, Lewison LJ said:

> 'One of the lessons that emerges clearly from the Eurosail case is that the statutory test in section 123 must not be mechanistically applied, but must be applied in a way that has regard to commercial reality.'

454. In the circumstances of this case, all that was required after SC1 ceased trading in April 2013 was for SC1, in the words of Taylor Wessing, to 'sit dormant under GL' and, at the appropriate time, (assuming that no later project was found for SC1), for the voluntary striking off procedure under s.1004 CA 2006 to be undertaken. It is clear from the correspondence exchanged between Artemis and GL in December 2014 that an administrative dissolution was envisaged at that time. In my judgment, it is unreal to suggest that in determining the solvency or insolvency of SC1 at any material time, allowance should be made for the time costs and conditional fee liabilities run up by the Applicant in pursuing this litigation. To adopt a phrase employed by Lewison LJ in Evans v Jones at [22], such costs and liabilities were an 'unknown unknown'.

455. Overall, for the reasons given, the Applicant has failed to satisfy me that SC1 was insolvent at any material time.

456. Whilst strictly unnecessary, given that the burden of proof is on the Applicant on this issue, I would add that, on the evidence which I have heard and read, I am satisfied on a balance of probabilities that SC1 was at all material times solvent, up to and including the date of its dissolution. I so find.

457. I now turn to consider the caselaw to which I was referred.

Directors' Duties: caselaw

458. It was common ground that as a director of SC1 the Respondent owed it the Companies Act duties pleaded in the Points of Claim (ss.171 to 175 CA 2006).

459. Mr Groves maintained (at paragraph 53 of his skeleton argument) that 'in procuring or allowing the transfer of the Businesses', the Respondent 'misappropriated assets of the Company and was in wholesale breach of each and every one of the directors' duties pleaded and the duties codified in ss170-181 CA 2006'. I pause briefly to note that the Companies Act duties pleaded were ss.171 to 175.

460. He submitted that no interest of SC1 was served, nor was its success promoted in any manner, by what he described as 'the Handbag Business' being 'given' to GL and/or what he described as 'the Styling Business' being 'given' to SC2.

461. In relation to s.171 and s.172 CA 2006, Mr Groves referred me to Colin Gwyer & Associates v London Wharf (Limehouse) Ltd [2003] BCLC 153 at [73]-[76] per Leslie Kosmin QC:

> '[73] Where directors failed to have regard to the separate interests of their company but act instead in the interests of what they perceived to be, for example, the interests of the group of companies of which the company is a member, the courts will apply a different test. In Charterbridge Corp Ltd v Lloyds Bank Ltd [1969] 2 ALL ER 1185 at 1194….Pennycuick J held that the proper test in the absence of actual separate consideration of the interests of the company, is whether an intelligent and honest man in the position of a director of the company concerned could, in the whole of the existing circumstances, have reasonably believed that the transaction was for the benefit of the company. The effect is therefore to substitute an objective test for the normal subjective one.
>
> [74] The tests referred to above apply when the company is solvent and a going concern. Where a company is insolvent or doubtful solvency or on the verge of insolvency and it is the creditors' money which is at risk the directors, when carrying out their duty to the company, must consider the interests of the creditors as paramount and take those into account when exercising their discretion….
>
> [75] As Lord Greene MR stated in Re Smith & Fawcett Ltd directors must exercise their powers for proper purposes and not for any collateral purpose. This is another aspect of their fiduciary duties. If the directors can be shown to have exercised a power conferred by the articles for a purpose other than that for which it was given their conduct is open to challenge. It is no defence for them simply to respond by asserting that they believed in good faith that their conduct was in the interests of the company. While the court will not substitute its own view is that of the board, where on an

objective review of the situation it finds that the alleged requirement was, for example, not urgent or critical it may have reason to doubt or discount the directors' assertions that they acted solely for that purpose. This principle was laid down by the Privy Council in Howard Smith Ltd v Ampol Petroleum Ltd [1974] 1 All ER 1126…

[76] The mere fact that a decision taken by directors in good faith in the interests of the company also promotes their own interests does not invalidate the exercise of their discretion. However, any course in which the decision is challenged should examine the directors' conduct with particular care: see Gore-Browne on Companies (44th edn, 1986) para 27.3. Mr Fisher has reminded me of the statement by Lord Wilberforce in Howard Smith Ltd v Ampol Petroleum Ltd [1974] 1 All ER 1126 at 1131… where he said:

'Their Lordships except that such a matter as the raising of finance is one of management, within the responsibility of the directors: they accept that it would be wrong for the court to substitute its opinion for that of the management, or indeed to question the correctness of the management's decision, on such a question, if bona fide arrived at. There is no appeal or merits from management decisions to courts of law: nor will courts assume to act as a kind of supervisory board over decisions within them powers of management honestly arrived at .'

However, it is important to note that immediately after this passage Lord Wilberforce points out … at 1131-1132…:

'But accepting all of this, when a dispute arises whether directors of a company made a particular decision for one purpose or for another, or whether, there being more than one purpose, one or another purpose was the substantial or primary purpose, the courts, in their Lordships opinion, is entitled to look at the situation objectively in order to estimate how critical or pressing, or substantial or , per contra, insubstantial and alleged requirement may have been. If it finds that a particular requirement, though real, was not urgent, or critical, at the relevant time, it may have reason to doubt, or discount, the assertions of individuals that they acted solely in order to deal with it, particularly when the action they took was unusual or even extreme.'

The court is therefore required to examine in detail the allegations made against [the defendants] that they did not act in the best interests of the company and that they acted for improper purposes.'

462. In relation to s.172, Mr Groves also referred me to Item Software (UK) Ltd v Fassihi and others [2004] EWCA Civ 1244 at [44] per Arden LJ. This was a case in which Mr Fassihi, a director of Item, had secretly approached a major client of Item with his own proposals, which involved establishing his own company, RAMS, to take over the contract between Item and the client. Certain of Items claims failed before the judge at first instance, but Item succeeded on an allegation that Mr Fassihi was in breach of duty in failing to disclose to Item his own wrongdoing. At Paragraph 54(c) of his judgment at first instance, Nicholas Strauss QC (sitting as a Deputy High Court judge) had said:

> '….The director owes fiduciary duties to the company and for the reasons given by Glidewell J in Horcal Ltd v Gatland [1983] BCLC 60 it is difficult to see how a director who was making a profit by appropriating the company's contracts for his own benefit would not be under a duty to disclose what he had done, not least as part of his duty to account for the profits. To hold otherwise seems to me, as it did to Glidewell J, inconsistent with the decision of the House of Lords in Regal (Hastings) Ltd v Gulliver [1942] 1 All ER 378… Nor in my view does a duty on a company director to disclose his own dishonesty impose an intolerable or unattainable standard of conduct.'

463. On appeal, one of the issues before the court was whether the judge was correct in law to hold that Mr Fassihi was in breach of his duties as a director of Item in failing to disclose his own misconduct at the time it occurred.

464. Whilst Mr Groves referred me specifically to para [44] of Arden LJ's judgment, I think a better starting point is paragraph [38]:

> '[38] What is it that distinguishes the position of a director from that of an employee ? It is, of course, the fact, as the judge said, that a director is subject to fiduciary duties and obligations. One of those obligations is, as the judge points out, the liability to account for secret profits. The judge relied on this duty in support of his conclusion that the holding in Bell v Lever that there was no duty to account did not in any event apply to a director … Mr Quiney too relies on this line of authority. These authorities go to show that the fact that a director was acting otherwise than as a director in making a secret profit is no answer to a claim by the company to recover the profits. Thus in Bhullar v Bhullar [2003] 2 BCLC 241, this Court held that directors of the company were liable for profits resulting from the acquisition of a property neighbouring that of their company even though they had obtained this information not as directors but as passers-by. Likewise, in Industrial Development Consultants Ltd v Cooley [1972] 1 WLR 44, a director was liable to accounts for the profits which he made from exploiting a commercial opportunity, offered by

a customer of the company, of which he became aware before resigning on the grounds of alleged ill-health.

[39] In the Bhullar case and Cooley case, the consequence of the failure to disclose was that the director came under a liability to account…. Both the Bhullar case and the Cooley case speak of the director owing a duty to disclose. Thus in the Bhullar case, Jonathan Parker LJ, with whom Brooke and Schiemann LJJ agreed, held that "the existence of the opportunity was information which it was relevant for the company to know, and it follows that [the directors] were under a duty to communicate it to the company" (at page 256). This followed the holding of Roskill J in the Cooley case, where Roskill J held that "Information which came to [the director] while he was managing director and which was of concern to [the company] and was relevant for [the company] to know, was information which it was his duty to pass on to [the company] because between himself and [the company] a fiduciary relationship existed…." (at page 451).

[40] However, the Bhullar and Cooley cases do not suggest that the duty to disclose them referred to is some new and separate duty imposed on a fiduciary, breach of which would give rise to potential liability to pay compensation. It may be in those cases the court spoke of a duty to disclose simply to explain why in those cases the information obtained in a private capacity gave rise to a liability to account for secret profits. In addition, it is often said that a fiduciary must disclose a conflict of interest and duty because that is a shorthand way of stating the mechanism by which he can avoid any liability to account for secret profits. It would be odd, however, if there was a separate duty to disclose information and it only arose when the courts was considering whether a director had come under a liability to account for secret profits….

[41] For my part, I do not consider that it is correct to infer from the cases to which I have referred that a fiduciary owes a separate and independent duty to disclose his own misconduct to his principal or more generally information of relevance and concern to it. So to hold would lead to a proliferation of duties and arguments about their breadth. I prefer to base my conclusion in this case on the fundamental duty to which a director is subject, that is the duty to act in what he in good faith considers to be the best interests of his company. This duty of loyalty is the "time-honoured" rule: per Goulding J in Mutual Life Insurance Co of New York v Rank Organisation Ltd [1985] BCLC 11,21. The duty is expressed in these very general terms, but that is one of its strengths: it focuses on principle not on the particular words which judges or the legislature have used in any particular case or context. It is

> dynamic and capable of application in cases where it has not previously been applied but the principle or rationale of the rule applies. It reflects the flexible quality of the doctrines of equity. As Lord Templeman once put it "Equity is not a computer. Equity acts on conscience…" (Winkworth v Edward Baron Development Co Ltd [1986] 1 WLR 1512, 1516)….
>
> [44] The only reason that I can see that it could be said that the duty of loyalty does not require a fiduciary to disclose his own misconduct is that it has never been applied to this situation before. As I have explained, that is not a good objection to the application of the fiduciary principle. "Equity refuses to confine within the bounds of classified transactions its precept of a loyalty that is undivided and unselfish" (per Cardozo J in Meinhard v Salmon 164 NE 545, 548 (US). Furthermore, on the facts of this case, there is no basis on which Mr Fassihi could reasonably have come to the conclusion that it was not in the interests of Item to know of this breach of duty. In my judgment, he could not fulfil his duty of loyalty in this case except by telling Item about his setting up of RAMS, and his plan to acquire the Isograph contract for himself.'

465. In the present case, Mr Groves submitted that the Respondent gave no thought to the interests of SC1 and that accordingly, the objective test was engaged. He contended that the Court should ask itself whether an intelligent and honest person in the position of the Respondent could reasonably have believed that 'transferring the Company's undertaking would be for the benefit of the Company' (skeleton argument, para 57).

466. Mr Groves further submitted that 'the disposal of the Company's undertaking', as he put it (at paragraph 61 of his skeleton argument), engaged the Respondent's duty to have regard to the interests of the creditors as a whole. In this regard reference was made to s172(3) CA 2006, Re HLC Environmental Projects Ltd [2013] EWHC 2876 (Ch) at [88] per John Randall QC and (on the need to make proper allowance for contingent and prospective liabilities, such as liquidation costs) Re BNY Corporate Trustee Services Ltd v Eurosail-UK 2007-3BL plc and others [2013] 1 WLR 1408. Pausing there, on the evidence which I have heard and read, SC1 was not insolvent, or likely to become insolvent, at any material time. It follows that section 172(3) was not engaged in this case.

467. In relation to s 174, Mr Groves referred me to Lexi Holdings plc v Luqman [2007] EWHC 2652. This was a decision of Briggs J in a case which went on to appeal, but Mr Groves maintains that the passages relied upon at [219] and [224] were not the subject of criticism in the higher courts. In these passages of his judgment, Briggs J was addressing the position of a 'non-active' director who (in broad terms) had failed to spot that another director was defrauding the company. At [219], Briggs J said this:

> 'Notwithstanding Mr Chaisty's submissions to the contrary, it is in my judgement now firmly established as a matter of law

> that no company director may simply leave the management of the company's affairs to his or her colleagues, or to other delegates, without committing a breach of duty. The reason for this is because, although the law permits and to an extent encourages delegation by directors of their functions, every act of delegation gives rise to a concomitant obligation to supervise the delegate. I have in mind in particular the analysis of Jonathan Parker J in re Barings plc and Others (No 5) [1999] 1 BCLC 433 at 486 to 489, basing himself on the decision of the Courts of Appeal in re Westmid Packing Services Ltd [1998] 2 BCLC 646, and on an earlier judgement of Sir Richard Scott VC in an earlier part of the Barings disqualification proceedings, cited at page 487F to H.'

468. At paragraph [224], Briggs J continued:

> 'In the present case, Monuza has sought to justify her complete inactivity upon the basis not only of her trust in her brother Shaid, but also on the basis that Shaid was apparently monitored in his activities by three other directors, all of whom, unlike her, were experienced professionals. In my judgement, while such reliance may reasonably greatly have reduced the obligations of a nonprofessional non-executive director to appraise herself of the affairs of a company, and to supervise her colleagues, it cannot reduce them to vanishing point, so as to justify complete inactivity. In my judgement the defence that complete inactivity was a sufficient discharge of her fiduciary and common law duties fails the reality test. That conclusion also disposes of Monuza's attempts to rely on s.727. Complete inactivity as a director is by definition unreasonable'.

469. I note that Briggs J went on (at [225]) to state:

> '225. The real issue in relation to Monuza is the question of causation. It is not suggested that the Claimant can establish beyond the possibility of a real defence that she was aware of improper practices by her brother to an extent sufficient to affix her with liability as someone who authorised or permitted his misconduct.'

470. Mr Groves also referred me to the case of Daniels v Daniels [1978] 2 WLR 73 per Templeman J, a case involving the scope of the exceptions to the rule in Foss v Harbottle. I was not greatly assisted by this authority. Mr Groves relied upon it in support of the contention that the Respondent was not just negligent in causing a loss to SC1, but also in serious breach of her duties in knowingly promoting a benefit to herself.

471. Turning next to s 175, Mr Groves maintained that the Respondent 'was in an impossible conflict of interest and duty in taking the Styling Business (and transferring the Handbag Business away) when it was her duty to preserve the

Company's assets and promote its success' (para 64 skeleton argument). He maintained that there was no attempt at compliance with the Company's constitution, referring me to Arts 4 to 8 of SC1's articles and that, in any event, the Respondent 'effected a misappropriation of assets and an unlawful return of capital which could not be authorised.'

472. Given the missing documentation in this case and the passage of time, in my judgment the Applicant is in no position to say that there was no attempt at compliance with SC1's constitution.

473. Mr Groves also referred me to the well-known Privy Council case of Cook v Deeks [1916] AC 554. In this case, three directors of a railway construction company obtained a contract in their own names, to the exclusion of the company. By their votes as holders of 75% of the issued shares in the company, they subsequently passed a resolution at a general meeting declaring that the company had no interest in the contract. It was held that the benefit of the contract belonged in equity to the company, and the directors could not validly use their voting power to vest it in themselves. At page 563, Lord Buckmaster LC, giving the judgment of their Lordships, put the matter thus:

> 'It is quite right to point out the importance of avoiding the establishment of rules as to directors' duties which would impose upon them burden so heavy and responsibilities so great that men of good position would hesitate to accept the office. But, on the other hand, men who assume the complete control of the company's business must remember that they are not at liberty to sacrifice the interests which they are bound to protect, and, while ostensibly acting for the company, divert in their own favour business which should properly belong to the company they represent.
>
> Their Lordships think that, in the circumstances, the defendants … were guilty of a distinct breach of duty in the course they took to secure the contract, and that they cannot retain the benefits of such contract for themselves, but must be regarded as holding it on behalf of the company.
>
> There remains the more difficult consideration of whether this position can be made regular by resolutions of the company controlled by the votes of these three defendants. ..
>
> In their Lordships' opinion the Supreme Court has insufficiently recognised the distinction between two classes of case and has applied the principles applicable to the case of a director selling to his company property which was in equity as well as at law his own, and which he could dispose of as he thought fit, to the case of a director dealing with property which, though his own at law, in equity belonged to his company. The cases of North-West Transportation Co v Beatty [12 App Cas 589] and Burland v Earle [1902 AC 83] both

> belonged to the former class. In each, directors had sold to the company property in which the company had no interest at law or in equity…. It would be quite another thing if the director had originally acquired the property which he sold to his company under circumstances which made it in equity the property of the company..
>
> If, as their Lordships find on the facts, the contract in question was entered into under such circumstances that the directors could not retain the benefits of it for themselves, then it belongs in equity to the company and ought to have been dealt with as an assets of the company. Even supposing it be not uultra vires of a company to make a present to its directors, it appears quite certain that directors holding a majority of votes would not be permitted to make a present to themselves. This would be to allow a majority to oppress the minority.'

474. On the facts of Cook v Deeks, Lord Buckmaster had earlier noted that, 'so far as railway construction was concerned the whole of [the director defendants'] reputation for the efficient conduct of their business had been gained by them while acting as directors of the [company].' (page 559). It had also been noted that the director defendants had undertaken all negotiations for the new contract while still acting as managers of the company, 'in reality on their own behalf, but in exactly the same manner as they had always acted for the company'(pp559-560); it was not until completion of all negotiations for the contract, including price, that the representatives of the Canadian Pacific Railway Company were told that this contract was in any way different from the others that had been negotiated in the same manner on behalf of the company (p560). Only after securing the contract for themselves did the defendants inform their fellow director, the plaintiff, of what had happened. As put by Lord Buckmaster, 'He protested without result', which then led to the minority shareholder proceedings being brought.

475. Mr Groves went on to remind me of the case of Regal v Hastings [1967] 2 A C 134. This case concerned a board of directors acting together, honestly, to make use for their own profit, as well as that of their company, of a successful corporate opportunity which the company could not have seized without the financial support and personal participation of its directors. They subscribed for shares in a subsidiary company formed by their own company. They were held liable to account for their profit. It was irrelevant that, for the very reason that it would not have been able to go ahead by itself, the company suffered no loss, or that the directors had been acting honestly (as the courts below had found).

476. Mr Groves placed particular reliance upon the case of Industrial Development Consultants Ltd v Cooley [1972] 1 WLR 443. In this case an architect was retained as managing director of the plaintiff, which offered construction services to large industrial enterprises. The defendant's duties included procuring new business for the plaintiffs, particularly in connection with the gas industry. The plaintiffs were interested in a project by the Eastern Gas Board to construct four depots, and unsuccessful negotiations took place between the defendant, on behalf of the plaintiffs, and the board. The deputy chairman of the board then approached the

defendant for advice in his private capacity about the affairs of the board. When they met, the defendant realised that if he could quickly obtain his release from the plaintiffs, he would have a good chance of obtaining for himself a valuable contract from the board. At the meeting, the defendant acquired knowledge and information not possessed by the plaintiffs, which the plaintiffs would have wished to possess. Shortly thereafter, the defendant feigned ill-health and obtained his release from the plaintiffs. The plaintiffs would not have agreed to release him if they had known the full facts about the board's projects or the meeting. The defendant was subsequently given the contract by the board as a result of work which, unknown to the plaintiffs, he had done while still the plaintiff's managing director. The plaintiffs claimed that the defendant was accountable to them for the whole of his benefits under the contract and for all remuneration and fees which he had received or would receive under it.

477. The defendant argued that he was approached by the board not as managing director of the plaintiffs but in a private capacity. He argued that the information he received at the meeting was not received qua managing director of the plaintiffs, but in a purely private capacity; and that he did not get the subsequent contract by virtue of his position as managing director of the plaintiffs. He further argued that the plaintiffs would not have got the work in any case, because of the board's objections in principle to the manner in which the plaintiffs operated.

478. Roskill J rejected such arguments. In an extempore judgment, Roskill J concluded (at p451) that the defendant had 'one capacity and one capacity only in which he was carrying on business' at the time that he was approached by the board. Roskill J continued: 'Information which came to him while he was managing director and which was of concern to the plaintiffs and was relevant to the plaintiffs to know, was information which it was his duty to pass on to the plaintiffs because between himself and the plaintiffs a fiduciary relationship existed'. The defendant had 'embarked upon a deliberate policy and course of conduct which put his personal interest as a potential contracting party with the Eastern Gas Board in direct conflict with his pre-existing and continuing duty as managing director of the plaintiffs'.

479. It was held that it was an overriding principle of equity that a man would not be allowed to place himself in a position in which his fiduciary duty and his interests conflicted, that the information which came to him at the meeting with the board had come to him at a time when he was still the plaintiff's managing director and was information which it was his duty to pass on to the plaintiffs. It was further held that when he began his course of dealing with the gas board, he embarked upon a deliberate policy and course of conduct which put his personal interest as a potential contracting party with the board in direct conflict with his pre-existing and continuing duty as managing director of the plaintiffs, thereby rendering him accountable to the plaintiffs.

480. During the course of his judgment, Roskill J referred to judgment of Lord Upjohn in Phipps v Boardman [1967] 2 AC 46. Although Lord Upjohn had there dissented, his statement of the principles at play had not been doubted. At p123, Lord Upjohn had said

> 'Rules of equity have to be applied to such a great diversity of circumstances that they can be stated only in the most general

> terms and applied with particular attention to the exact circumstances of each case. The relevant rule for the decision of this case is the fundamental rule of equity that a person in a fiduciary capacity must not make a profit out of his trust which is part of the wider role that a trustee must not place himself in a position where his duty and his interest may conflict … It is perhaps stated most highly against trustees or directors in the celebrated speech of Lord Cranworth LC in Aberdeen Railway v Blaikie (1854) 1 Macq 461, 471, where he said : "And it is a role of universal application, that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect. The phrase "possibly may conflict" requires consideration. In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict .'

481. In Cooley, Roskill J went on to cite Parker v MacKenna (1874) 10 Ch App 96 per James LJ at p124:

> 'I do not think it is necessary, but it appears to me very important, that we should concur in laying down again and again the general principle that in this court no agent in the course of his agency, in the matter of his agency, can be allowed to make any profits without the knowledge and consent of his principals; that that rule is an inflexible role, and must be applied inexorably by this court, which is not entitled, in my judgement, to receive evidence, or suggestion, or argument as to whether the principal did or did not suffer any injury in fact by reason of the dealing of the agent; for the safety of mankind requires that no agents shall be able to put his principal to the danger of such an enquiry as that'

482. In relation to the 'no profit' rule, Counsel for the Respondent referred me to Snell's Equity (34th ed) at 7-041, which provides:

> 'The second of the two major themes of fiduciary loyalty is the profit rule. The essence of the profit rule is that a fiduciary act in breach of fiduciary duty where he or she makes a profit by reason or in virtue of the fiduciary office or otherwise within the scope of that fiduciary office. A fiduciary is required 'to account for any benefit or gain obtained or received by reason of or by use of his fiduciary position or of opportunity or knowledge resulting from it'.

483. I was also referred to Lewin on Trusts (20th ed) at 45-032, which states:

> 'The rule in Keech v Sandford considered in the previous section is the foundation of a broad general rule concerning profits made by trustees and other fiduciaries from transactions with third parties. A constructive trust is raised by a court of equity, wherever a person, closed with a fiduciary character, without authority, gains some personal advantage by availing himself of his situation as trustee, whether directly or indirectly from the use of property subject to the trust or other fiduciary relationship, or in the course of the fiduciary relationship and by reason of his fiduciary position ….'

484. Turning to Regal, Counsel for the Respondent drew to my attention the following passage from Lord Macmillan's judgment:

> 'The sole ground on which it was sought to render them accountable was that, being directors of the plaintiff company and therefore in a fiduciary relation to its, they entered in the course of their management into a transaction in which they utilised the position and knowledge possessed by them in virtue of their office as directors, and that the transaction resulted in a profit to themselves …
>
> The plaintiff company has to establish two things: (i) that what the directors did was so related to the affairs of the company that it can properly be said to have been done in the course of their management and in utilisation of their opportunities and special knowledge as directors; and (ii) that what they did resulted in a profit to themselves'.

485. At 139C of Regal Viscount Sankey states:

> 'Imperial Hydropathic Hotel Co Blackpool v Hampson makes no exception to the general rule that a solicitor or director, if acting in a fiduciary capacity, is liable to account for the profits made by him from knowledge acquired when so acting'.

486. In the present case the Respondent maintains that she did not use her position as a director of SC1 (or the sale of her shares in SC1 to GL) to gain any benefit. She already had her reputation, connections, customers and knowledge of styling before SC1 was incorporated; she gained nothing as a result of her directorship of SC1.

487. Counsel for the Respondent further referred me to Boardman v Phipps [1967] 2 AC 46 at 105A-B:

> ‘The proposition of law involved in this case is that no person standing in a fiduciary position, when a demand is made upon him by the person to whom he stands in the fiduciary relationship to account for profits acquired by him by reason of his fiduciary position and by reason of the opportunity and the knowledge, or either, resulting from it, is entitled to defeat the claim upon any ground safe that he made profits with the knowledge and a sense of the other person .’

488. Counsel for the Respondent maintains that it is a matter of fact whether an individual has acquired information and opportunity by virtue of a fiduciary capacity such that one is liable to account. I accept that submission. Moreover, as noted by Lewison J in Ultraframe (UK) Ltd v Fielding [2005] EWHC 1638 at [1322], the ‘no profit’ rule ‘does not apply to *all* profits; it applies to *unauthorised* profits.’

489. Referring to the case of IDC v Cooley [1972] 1 WLR 443, Counsel for the Respondent submitted that this case concerned an architect working for the plaintiffs who acquired information which he failed to pass on to the plaintiffs to whom he owed a fiduciary duty. The Respondent contends that she did not acquire any information by virtue of her being a director of SC1 or by virtue of the sale of her shares in SC1 to GL and that, in any event, she was completely transparent with Mr Dodd (her fellow director at SC1) and with SC1’s 100% shareholder, GL, regarding the January arrangements, which were entered into with their knowledge and consent.

490. On the ‘no conflict’ rule, the Respondent relied heavily upon Sharma v Sharma [2014] BCC 73. This was an appeal against a decision that the director of a dental company was not in breach of her fiduciary or statutory duties in acquiring certain dental practices for her own benefit, rather than for the benefit of the company. The case was decided under s.175 CA 2006 (duty to avoid conflicts). The court found that the appellant shareholders, with full knowledge of the material facts, acquiesced in an arrangement whereby the director would be free to acquire some dental practices for the company and others for herself. Given the consents, the director was not liable. Counsel for the Respondent maintains that this is a similar situation. The Respondent acted with the informed consent of Mr Dodd (her fellow director at SC1) and with the informed consent of GL, the 100% shareholder of SC1. Whether GL and/or SC1 passed formal resolutions was unclear given the missing documentation, but there is, Counsel submits, evidence of consent, including the meeting notes of 8 January 2013 and the chain of emails later in January 2013 referred to previously in this judgment.

491. My attention was drawn in particular to the following passage from paragraph [52] of Sharma:

> ‘(i) A company director is in breach of his fiduciary or statutory duty if he exploits for his personal gain (a) opportunities which come to his attention through his role as director or (b) any other opportunities which he could and should exploit for the benefit of the company.
>
> (ii) If the shareholders with full knowledge of the relevant facts consents to the director exploiting those opportunities for his

> own personal gain, then that conduct is not a breach of the fiduciary or statutory duty…'

492. In Sharma, it was found that the appellants, with full knowledge of the material facts, acquiesced in an arrangement whereby a director would be free to acquire some dental practices for the company and others for herself. Counsel for the Respondent maintains that there are strong parallels with the facts of this case, submitting that Mr Dodd as co-director of SC1, and GL as 100% shareholder of SC1, clearly agreed to leave personal styling to the Respondent.

Caselaw: Unlawful return of capital

493. It was common ground that a limited company cannot lawfully return capital to its shareholders except by way of a reduction of capital approved by the court.

494. On the issue of unlawful return of capital, Mr Groves referred me to Progress Property Company Limited v Moorgarth Group Limited [2011] 1 WLR 1 and Aveling Barford Ltd v Perion Ltd [1989] BCLC 626.

495. In Progress Property, Lord Walker (at [1]) summarised the principle as follows:

> '(1) A limited company not in liquidation cannot lawfully return capital to its shareholders except by way of a reduction of capital approved by the court. Profits may be distributed to shareholders (normally by way of dividend) but only out of distributable profits computed in accordance with the complicated provisions of the Companies Act 2006 (replacing similar provisions in the Companies Act 1985). Whether a transaction amounts to an unlawful distribution of capital is not simply a matter of form. As Hoffmann J said in Aveling Barford Ltd v Perion Ltd [1989] BCLC 626, 631,
>
> 'Whether or not the transaction is a distribution to shareholders does not depend exclusively on what the parties choose to call it. The court looks at the substance rather than the outward appearance '
>
> Similarly Pennycuick J observed in Ridge Securities Ltd v Inland Revenue Commissioners [1964] 1 WLR 479, 495,
>
> 'A company can only lawfully deal with its assets in furtherance of its objects. The corporators may take assets out of the company by way of dividend, or, with the leave of the court, by way of reduction of capital, or in a winding up. They cannot take assets out of the company by way of voluntary distribution, however described, and if they attempt to do so, the distribution is ultra vires the company.'

496. At paragraph 15 of Progress, Lord Walker continued:

> ‘The rule is essentially a judge-made rule, almost as old as company law itself, derived from the fundamental principles embodied in the statutes by which Parliament has permitted companies to be incorporated with limited liability’.

497. At paragraph 16, he added:

> ‘Whether a transaction infringes the common law rule is a matter of substance, not form. The label attached to the transaction by the parties is not decisive.

498. It is clear from the authorities considered by Lord Walker in Progress that an unlawful distribution of capital may be found in a wide variety of circumstances, including cases in which the underlying transaction under challenge was a sale at a marked undervalue.

499. In Aveling Barford Ltd v Perion Ltd [1989] BCLC 626, for example, the plaintiff company sold property, valued by an independent valuer at £625,000, to the first defendant company, a company which was controlled by L, who also controlled the plaintiff company. The purchase price of the property was £350,000. Within a year of the transaction, the defendant sold the property for £1.5m. The plaintiff obtained judgment in default on the ground that the first defendant was a constructive trustee of the proceeds of sale of the property. The first defendant sought to have the judgement set aside. Dismissing the application, Hoffmann J held that, as L knew that the property was worth £650,000, it was a breach of L’s fiduciary duty to sell the property for £350,000 and, since the first defendant was aware of the facts constituting the breach, it was accountable as constructive trustee. The sale to the defendant was not a genuine exercise of the power of the plaintiff to sell its property. It was a sale at an undervalue for the purpose of enabling L, the sole beneficial owner of the plaintiff, to obtain an unauthorised return of capital and hence was ultra vires and unratifiable.

500. Addressing the argument that it was not open to the plaintiff company to challenge the sale because it was unanimously approved by the shareholders, Hoffmann J said (at 630-631):

> ‘The general rule is that any act which falls within the express or implied powers of a company confirmed by its memorandum of association, whether or not a breach of duty on the part of the directors, will be binding on the company if it is approved or subsequently ratified by the shareholders: see Rolled Steel Products (Holdings) Ltd v British Steel Corp [1984] BCLC 466 at 507… But this rule is subject to exceptions created by the general law and one such exception is that a company cannot without the leave of the court or the adoption of a special procedure return its capital to its shareholders. It follows that a transaction which amounts to an unauthorised return of capital is ultra vires and cannot be validated by shareholder ratification or approval.’

501. I was also referred to Prest v Prest [2013] 2 AC 415 at paras 1,2, 8,9, 16, 39-42 and 66. This case involved the issue of whether a judge in ancillary relief proceedings was entitled to order a husband to transfer to his wife properties vested in companies in which he was interested. Ultimately the Supreme Court held that, on the facts of that case, it could properly be inferred that the properties were held by the companies on trust for the husband. It followed that the judge at first instance was entitled to order their transfer to the wife. At paragraph 41, Lord Sumption confirmed:

> 'The sole shareholder or the whole body of shareholders may approve a foolish or negligent decision in the ordinary course of business, at least where the company is solvent: Multinational Gas and Petrochemical Co v Multinational Gas and Petrochemical Services Ltd [1983] Ch 258. But not even they can validly consent to their own appropriation of the company's assets for purposes which are not the company's: Belmont Finance Corpn Ltd v Williams Furniture Ltd [1979] Ch 250, 261….'

502. Mr Groves also referred me to Ultraframe (UK) Limited v Clayton (No 2) [2003] EWCA Civ 1805 at [39] per Waller LJ to similar effect. Reference was also made to a passage from McPherson and Keay, The Law of Company Liquidation (4th edn) at para 1-003-1-004.

503. After the conclusion of the trial at my invitation, Counsel lodged written submissions on the case of Burnden v Fielding [2019] EWHC 1566. In Burnden, after an impressive review of the authorities, Zacaroli J concluded that liability of directors in an unlawful distribution of capital context was fault-based, not strict, following the position in Dovey v Corey [1901] AC 477 (see paras 139, 147, 148, 154 and 157-159). By his written submissions, Mr Groves maintained his primary position, that liability was strict, but argued as a fall-back position that even if liability was fault based, the Respondent was still liable. By their written submissions on this issue, Mr Trollope QC and Ms Palser supported Zacaroli J's conclusions, submitting that liability was fault based and not strict.

504. For the purposes of this judgment, I shall respectfully follow the guidance given by Zacaroli J in Burnden v Fielding and proceed on the footing that the liability of directors in an unlawful distribution of capital context is fault-based, not strict.

Discussion

505. Counsel for the Respondent maintains that the Applicant has provided a 'textbook' list of a director's duties, but has failed to recognise that not every duty is owed at all times and for all acts. Each duty must be considered in context.

506. Whilst not an authority cited to me, I note that this theme was addressed by the Court of Appeal in the case of Foster Bryant Surveying Ltd v Bryant [2007] 2 BCLC 239 [2007] EWCA Civ 200. Foster was a case about the alleged breach of a director's fiduciary duties during a period of notice after he had resigned as a director but when his resignation had not yet taken effect. During the notice period, the company's major client had pressed the defendant to continue to play a role for that client after his departure from the company. At the client's suggestion, the defendant set up a

new company during his notice period, through which to provide services to the client. At first instance, the judge had found that there had been no breach of the defendant's fiduciary duties. On appeal, the company argued that the judge was wrong not to recognise that what the defendant did during his notice period between resignation and departure was a classic breach of fiduciary duty. The Court of Appeal dismissed the appeal.

507. Giving the main judgment of the court, Rix LJ (at [8]) noted with approval certain principles summarised by Mr Livesey QC sitting as a deputy judge of the High Court in Hunter Kane Limited v Watkins [2002] EWHC 186 (Ch), which in turn were largely drawn from the judgment of Lawrence Collins J in CMS Dolphin Limited v Simonet [2001] 2 BCLC 704. Among these were the following:

> 'A director's power to resign from office is not a fiduciary power. He is entitled to resign even if his resignation might have a disastrous effect on the business or reputation of the Company';
>
> and
>
> 'Acts done by the directors while the contract of employment subsists but which are preparatory to competition after it terminates are not necessarily in themselves a breach of the implied term as to loyalty and fidelity'.

508. At [54], Rix LJ noted the case of Cooley (upon which Mr Groves relied in this case), but went on to cite several other decisions which went against liability. These included (at [59]) Island Export Finance Ltd v Umunna [1986] BCLC 460, the case of a director who had resigned because of his dissatisfaction with his company, and not in order to appropriate for himself the business of the company, and subsequently obtained an order from a client of that company. There was held to be no breach of fiduciary duty.

509. At [60] Rix LJ went on to consider the case of Balston Limited v Headline Filters Limited [1990] FSR 385. In that case the defendant had resigned as director with immediate effect on 18 April. Despite preparatory steps to set up a company of his own in anticipation of competing activities, Falconer J held that there had been no maturing business opportunity which the defendant had resigned in order to acquire and no breach of fiduciary duty prior to the effective date of resignation as a director. At p412 Falconer J said this:

> 'In my judgment an intention by a director of a company to set up business in competition with the company after his directorship has ceased is not to be regarded as a conflicting interest within the context of the principle, having regard to the rules of public policy as to restraint of trade, nor is the taking of preliminary steps to investigate or forward that intention so long as there is no actual competitive activity, such as, for

> instance, competitive tendering or actual trading, while he remains a director'

510. At [63] Rix LJ went on to refer to a passage on the 'no conflict' rule in a judgment of Upjohn LJ (as he then was) in Boulting v Association of Cinematograph, Television and Allied Technicians [1963] 2 QB 606 at 637-638, where he said:

> 'However, a broad rule like this must be applied with common sense and with an appreciation of the sort of circumstances in which, over the last 200 years and more it has been applied and thrived. It must be applied realistically to a state of affairs which discloses a real conflict of duty and interest, and not to some theoretical or rhetorical conflict.'

511. At [70] Rix LJ also considered the case of Plus Group Ltd v Pyke, a case in which the company had sought over a period of many months, but without success, to force the defendant director to resign, following a bout of severe illness. The relationship between him and his partner in the company completely broke down, and he was deprived of any remuneration or information, but he steadfastly refused to resign. In this state, but while still a director, the defendant set up his own company and began competing with the claimant company, even to the extent of working for its major client. Both the trial court and the Court of Appeal held that there was no breach of fiduciary duty. Brooke LJ regarded the defendant as 'effectively expelled' from the company, adding (at [76])

> 'When he entered into business with Constructive in the autumn of 1997 he was not using any of the claimant's property for the purpose of that business. Nor was he making use of any confidential information which had come to him as a director of any of the companies.'

512. At [77] he concluded that the judge was right in holding that the defendant committed no breach of fiduciary duty. Jonathan Parker LJ agreed, saying:

> 'for all the influence [the defendant] had, he might as well have resigned as a director. Had [the defendant] resigned as a director in late 1996 or early 1997, his resignation would have done no more than reflect what in practice already happened'

Sedley LJ had some reservations but ultimately concurred.

513. In Foster at [76], having considered these and other authorities, Rix LJ continued:

> 'For my part .. I would find it difficult accurately to encapsulate the circumstances in which a retiring director may or may not be found to have breached his fiduciary duty. As has been frequently stated, the problem is highly fact sensitive. Perhaps

for this reason, appeals have been rare in themselves, and, of all the cases put before us, only Regal (Hastings) v Gulliver (not a case about a retiring director) demonstrates success on appeal. There is no doubt that the twin principles, that a director must act towards his company with honesty, good faith, and loyalty and must avoid any conflict of interest, are firmly in place, and are exacting requirements, exactingly enforced. Whether, however, it remains true to say, as James LJ did in Parker v McKenna (cited in Regal (Hastings) v Gulliver) that the principles are (always) 'inflexible' and must be applied 'inexorably' may be in doubt, at any rate in this context. Such an inflexible rule, so inexorably applied might be thought to have to carry all before it, in every circumstance. Nevertheless, the jurisprudence has shown that, while the principles remain unamended, their application in different circumstances has required care and sensitivity both to the facts and to other principles, such as that of personal freedom to compete, where that does not intrude on the misuse of the company's property whether in the form of business opportunities or trade secrets. For reasons such as these, there has been some flexibility, both in the reach and extent of the duties imposed and in the findings of liability or non-liability. The jurisprudence also demonstrates, to my mind, that in the present context of retiring directors, where the critical line between the defendant being or not being a director becomes hard to police, the courts have adopted pragmatic solutions based on a common sense and merits based approach.

[77] In my judgment, that is a sound approach, and one which reflects the equitable principles at the root of these issues. Where directors are firmly in place and dealing with their company's property, it is understandable that the courts are reluctant to enquire into question such as whether a conflict of interest has in fact caused loss. Even so, considerations that equitable principles should not be permitted to become instruments of inequity have been voiced: see for instance Murad v Al-Saraj [2005] EWCA Civ 959 at paras 82/84, 121/123, 156/158; and see the solutions discussed in Gower & Davies at 420/421. Where, however, directors retire, the circumstances in which they do so are so various, as the cases considered above illustrates, that the courts have developed merits based solutions. At one extreme (In Plus Group v Pyke) the defendant is director in name only. At the other extreme, the director has planned his resignation having in mind the destruction of his company or at least the exploitation of its property in the form of business opportunities in which he is currently involved (IDC, Canaero, Simonet, British Midland Tool). In the middle are more nuanced cases which go both ways ..'

514. On the facts of Foster, Rix LJ concluded:

> '[92] ….. [The defendant] was prepared to work for [the major client] in the future, which he could see might make competitive inroads into the company's work, but that by itself is not a basis of liability. He was not disloyal. … The submission that [the defendant] should in all honesty have pressed [the client] to deal exclusively with … the company seems to me to be unreal. It might in one sense be claimed that to agree to work for [the client] in the future put [the defendant] in a situation where there was a conflict of interest, or of duty and interest: but on examination that claim says no more than that he anticipated by this stage that after his resignation he would be working for [the client] - just as any retiring director might be preparing to compete in the future. There is simply nothing in any of the jurisprudence about retiring directors which comes anywhere close to these facts, or to imposing a liability to account on such a basis'.

515. At [93] he continued:

> 'For these purposes, I am prepared to assume (a) that there was no diminution of any of [the defendant's] fiduciary duties (b) that the innocence of his resignation, while a factor, is not a critical factor; and (c) that there may well have been some reassignment to [the defendant] of projects on which he had previously worked at the company. Even so, the judge's conclusion seems to me to be one to which he was entitled to come and to be an acceptable conclusion, in accordance with the authorities …'

516. Moses and Buxton LJJ concurred, both stressing that the question whether a fiduciary duty has been broken is fact-specific.

517. Mr Trollope QC addressed the fact-specific nature of the task before the Court in his closing submissions. He maintained that the Applicant had sought to construct legal arguments 'on a false narrative' to arrive at 'erroneous conclusions' regarding the conduct of the Respondent.

518. Fortified by the jurisprudence which I have considered in this judgment, I turn then, to consider the Applicant's pleaded case in the light of the facts found thus far.

Alleged wrongful transfer to GL

519. The Applicant did not specify in his Points of Claim the assets of SC1 which he alleged had been wrongfully transferred from SC1 to GL or when they were alleged to have been transferred. From his Amended Reply, however, it is tolerably clear that he alleged that the 'handbag and jewellery business' was transferred by SC1 to GL: see Amended Reply at para 6(4). In my judgment, he should be held to his case as

pleaded. There were attempts during trial to extend the scope of assets alleged to have been wrongly transferred to GL, to include, for example, the waiver of an invoice in November 2012 for commission relating to the introduction of the Ecclestone family to the GL catalogue (see paragraphs 72 and 75 above). On the evidence which I have heard and read, I am satisfied on the balance of probabilities that waiver of the invoice in question was in the ordinary course of business. More importantly however, in my judgment to allow the Applicant to pursue such items at random without pleading the same, or even giving notice ahead of trial, would be deeply unfair to the Respondent, who is entitled to know the case she has to meet. For present purposes therefore I shall proceed on the footing that the Applicant's allegation of an unlawful transfer of assets by SC1 to GL is confined to what was termed at trial the handbag and jewellery business.

520. In the light of my earlier findings, I conclude that there was no 'unlawful transfer' of what was termed at trial the 'handbag and jewellery business' from SC1 to GL, whether in November 2012, January 2013 or at any other time. As I have found, the 'handbag and jewellery business', as it was described, was ultimately no more than a selection of sales opportunities to 'source' high-end bags and jewellery for the Respondent's styling clients from time to time at their request and to sell the same to such clients at an uplift. This 'business' had no independent life of its own; it was dependent on the Respondent's styling clients and formed part of the Respondent's personal (or 'dog') goodwill. It was hers to do with as she wished.

521. Moreover even if I am wrong in that conclusion, and the handbag and jewellery sales opportunities were, by November 2021 or January 2013 maturing business opportunities of SC1, on the evidence before me, I am satisfied that the Respondent did not act in breach of her duties as a director of SC1 in agreeing, whether in November 2012 or January 2013, to future handbag and jewellery sales opportunities being channelled through GL rather than SC1.

522. At all material times, SC1 was solvent and the shareholders of SC1 (comprising the Respondent and her father prior to the restructuring, GL after the restructuring) both knew of and consented to future handbag and jewellery sales opportunities being put through GL rather than SC1. This was an entirely legitimate commercial arrangement between a parent and its 100% owned subsidiary, formally recorded in the Disclosure Letter.

523. I reject the submission that the arrangements agreed for any future sales opportunities relating to luxury bags and jewellery to be put through GL amounted an unlawful distribution of capital. These sales opportunities were not pre-existing corporate assets: Davies v Ford [2020] EWHC 686 (Ch) at [312] to [320]. I further reject the submission that such arrangements were ultra vires.

524. Even if I am wrong in these conclusions, however, such claims are statute-barred. The arrangements regarding future sales of luxury bags and jewellery were put in place in November 2012 or January 2013 at the latest. Either way, such claims are time-barred; the application was not issued until 9 September 2019, more than 6 years later.

525. I do not accept that these claims fall within Burnden Holdings v Fielding [2018] UKSC 14. This decision only applies to the disposal of pre-existing corporate assets

in limited circumstances and not to other breaches of duty, for which the time limit remains 6 years: see Davies v Ford [2020] EWHC 686 (Ch) at [312] – [319].

526. Even if the Applicant is not statute-barred in relation to these claims, I am satisfied that the claims should be barred under the doctrine of laches: Patel v Shah [2005] EWCA Civ 157 at 32; Re Loftus (deceased); Green v Gaul [2006] EWCA Civ 1124 at 41 and 42. The Applicant and his solicitors engaged with the Respondent on a highly sporadic basis over a number of years. The Applicant has provided the court with no satisfactory explanation for his woeful delay overall and still less for his delay in introducing any claim in respect of assets distributed to GL. The Respondent has been seriously prejudiced in defending this claim by the delay, the loss of documentation and by the obstructive approach adopted by the Applicant in allowing access to documents relating to GL in his possession.

527. I further take into account the fact that GL and its creditors have long since had the benefit of the arrangements regarding future sales of luxury bags and jewellery which were put in place by the end of January 2013. SC1 has no creditors other than SC2. To require the Respondent to compensate SC1 in respect of handbag and jewellery sales opportunities (or indeed any other benefits) transferred by SC1 to GL as SC1's 100% shareholder would therefore be to benefit GL twice over. In closing, Mr Groves accepted that he was 'on the back foot' in this regard.

528. There is no evidence that the Respondent benefited personally as a shareholder of GL from the arrangements. GL was not in a position to declare dividends over the material period.

529. I would add that even if all conclusions set out in paragraphs 520 to 528 are wrong, this is plainly a case for liability to be excused under s.1157 of the Companies Act 2006.

530. Section 1157 states:

> 'Power of court to grant relief in certain cases
>
> (1) If in proceedings for negligence, default, breach of duty or breach of trust against
>
> (a) An officer of a company, or
>
> (b) A person employed by a company as auditor (whether he is or is not an officer of the company),
>
> it appears to the court hearing the case that the officer or person is or may be liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit …'

531. In Coleman Taymar Ltd v Oakes [2001] 2 BCLC 749 it was stated (at [83]):

> 'Section 727 [the old section 1159] requires an essentially subjective approach": per Knox J in re Produce Marketing Consortium Ltd [1989] 3 All ER 1 at 6. In my view this subjective approach must be limited to the "honesty" element of "honestly and reasonably". I do not see how that reasonableness requirement can be a subjective requirement. Any reasonableness test must by its very nature be objective.'

532. I was also referred to the case of Northampton Regional Livestock Centre v Cowling and Lawrence [2014] EWHC 30 (QB) at 160:

> 'In the exercise of discretion under Section 1157 it is necessary to measure the severity of the breach as found as against broader tenets of honesty and reasonableness. It follows that if the primary finding can be categorised as 'egregious' or gross' then it is less likely to be forgivable, than if it is described as 'technical' or 'marginal' [167]

533. I accept that the onus is on the director to satisfy the Court of entitlement to relief under s.1157 CA 2006: Bairstow v Queens Moat Houses plc [2001] 2 BCLC 531 (CA) at [58] per Robert Walker LJ. In my judgment, on the evidence which I have heard and read, the Respondent has done so.

534. On the evidence which I have heard and read, I am satisfied that in making arrangements in November 2012 and/or January 2013 for future handbag and jewellery sales to be put through GL rather than SC1, the Respondent acted honestly and reasonably. I am further satisfied that having regard to all the circumstances of the case, she ought fairly to be excused. In reaching this conclusion, I take into account the matters addressed in paragraphs 522, 523, 526-528. I further take into account the matters addressed more fully below at paragraphs 580, 584(1)-(4),(9)-(13), 585 and 590. I would add that that, having regard to such matters, I would in any event decline to grant any relief under s.212 IA 1986 in the exercise of my discretion.

535. For all of these reasons, the Applicant's case, insofar as it relates to any alleged transfer of the business or assets of SC1 to GL, shall stand dismissed.

536. For the sake of completeness, I would add that any allegations of wrongdoing relating to effecting or implementing the November 2012 Share Restructure or the Respondent's motives in agreeing to the same are not made out on the evidence and are also dismissed.

Alleged wrongful transfer to SC2

537. I turn next to the allegation of a wrongful transfer of the business and assets of SC1 to SC2 in or about 31 January 2013.

538. In the light of my earlier findings, I conclude that there was no 'unlawful transfer' of what was termed at trial the 'styling business' or the 'handbag and jewellery business' from SC1 to SC2, whether in January 2013, April 2013, or at any other time. SC1 had no styling business or handbag and jewellery business of its own. It had no clients. All material value lay in the personal goodwill of the Respondent, which was hers to do with as she wished. As aptly put by Mr Trollope QC, the Applicant has proceeded on a 'false narrative'.

539. There was no contract between the Respondent and SC1, whether as at the date of incorporation of SC1 or at any material time thereafter, obliging the Respondent to work for SC1 or precluding her from working elsewhere. It was not a breach of the Respondent's duties as a director of SC1 for her to cease to work for SC1 or to start to work for SC2. She did so with the informed consent of Mr Dodd, her co-director at SC1 and with the informed consent of GL, the 100% shareholder of SC1: see paragraphs 131-153 above and Sharma v Sharma [2014] BCC 73.

540. At this point I remind myself of the principle quoted with approval by the Court of Appeal in Foster at [8]:

'A director's power to resign from office is not a fiduciary power. He is entitled to resign even if his resignation might have a disastrous effect on the business or reputation of the Company'

541. I also remind myself of the guidance of Rix LJ in Foster at [76]:

> 'There is no doubt that the twin principles, that a director must act towards his company with honesty, good faith, and loyalty and must avoid any conflict of interest, are firmly in place, and are exacting requirements….
>
> Nevertheless, the jurisprudence has shown that, while the principles remain unamended, their application in different circumstances has required care and sensitivity both to the facts and to other principles, such as that of personal freedom to compete, where that does not intrude on the misuse of the company's property whether in the form of business opportunities or trade secrets. For reasons such as these, there has been some flexibility, both in the reach and extent of the duties imposed and in the findings of liability or non-liability….'

542. By January 2013, it was no longer financially viable for the Respondent to continue her personal styling work through SC1 unless she could pay herself in dividends. A sale back of shares was considered but her professional advisers advised against it, recommending instead that she cease to work for SC1 and set up a new company.

The Respondent relied upon and acted on that advice. In my judgment it was reasonable of her to do so. This was not an act of disloyalty on her part.

543. SC1 was akin to a single purpose vehicle. It had no business without the Respondent. In January 2013, when the Respondent decided to cease to work for SC1, its purpose came to an end.

544. Given that its purpose had come to an end, it was an entirely appropriate and responsible use of the Respondent's powers as a director to instruct competent lawyers and accountants familiar with SC1 to carry out the steps required to tie up any loose ends required for SC1 to cease trading on a solvent basis and thereafter to sit as a dormant subsidiary under GL. In my judgment the Respondent used her powers as a director for a proper purpose in so doing. Whilst there is no evidence of the Respondent actively considering the interests of SC1 when she did so, in my judgment an intelligent and honest person in the position of a director of SC1 would have reasonably believed that these steps were for the benefit of SC1 in the circumstances of this case. SC1 had no business of its own or future income streams. SC1 could have been placed into (solvent) liquidation at that stage but the professional advice received and reasonably relied upon was that it should sit dormant under GL instead. There was commercial sense in taking this option. It left GL with the option of using SC1 for another project at a later date if it wished to do so. Failing that, the obvious next step would be a voluntary striking off under s1003 CA 2006 when the time was right.

545. I reject any suggestion that the Respondent failed to exercise independent judgment in relying on experienced professionals familiar with SC1 to advise on the appropriate steps to take and to implement the same. It was entirely responsible and reasonable for the Respondent to seek out and rely upon such advice.

546. As confirmed by Zacaroli J in Burnden Holdings (UK) Ltd v Fielding [2019] EWHC 1566 (Ch) at [158]:

> 'Directors are not required to be accountants and the comments of Lord Davey and Lord Halsbury LC in Dovey v Cory as to directors being entitled to rely on the judgment of others whom they appoint to carry out specialist financial roles within the company are as pertinent today as when they were made in 1901'

547. In my judgment the 'no profit' and 'no conflict' rules are not breached on the facts of this case. The Respondent did not acquire her skill-set, knowledge, clients or contacts through her directorship of SC1. She did not misuse company property in the form of business opportunities or trade secrets. She was candid with her co-director at SC1 and with GL, SC1's 100% shareholder and obtained their informed consent to the January arrangements. She did not cease to work for SC1 or set up SC2 in order to take SC1's business. She did not cease to work for SC1 or set up SC2 in order to compete with SC1's business. SC1 had no business or clients. The business and clients were hers. SC1 was a single purpose vehicle whose purpose had come to an end. It was to sit dormant under GL on the advice of professionals.

548. In this regard I respectfully adopt the guidance of Upjohn LJ (as he then was) in Boulting v Association of Cinematograph, Television and Allied Technicians [1963] 2 QB 606 at 637-638, where he said of the 'no conflict' rule:

> 'However, a broad rule like this must be applied with common sense and with an appreciation of the sort of circumstances in which, over the last 200 years and more it has been applied and thrived. It must be applied realistically to a state of affairs which discloses a real conflict of duty and interest, and not to some theoretical or rhetorical conflict.'

549. I accept that the Respondent remained a director of SC1. Her understanding however, on the advice of experienced legal professionals, was that SC1 was to sit dormant under GL. Its purpose had come to an end. Her position in such circumstances bore many parallels to that of a retiring director. Save for one or two 'run-off' invoices, the trading of SC1 and SC2 did not overlap.

550. Moreover even if the 'no profit' and 'no conflict' rules were in principle engaged, on the evidence which I have heard and read, I am satisfied that the January arrangements were implemented with the informed consent of Mr Dodd as co-director of SC1 and with the informed consent of GL: see paragraphs 131-153 above, Ultraframe (UK) Ltd v Fielding at [1322] and Sharma v Sharma [2014] BCC 73.

551. For the sake of completeness, I would add that the allegation (at 55.3 POC) that the Respondent failed to exercise independent judgment by 'deferring' to the judgment of her father Mr Stanbury was not made out on the evidence. Whilst Mr Stanbury would sometimes write a letter or attend a meeting on the Respondent's behalf, I am satisfied that this was having discussed the matter with the Respondent and that the Respondent remained in the driving seat, taking specialist legal and accounting advice as and when appropriate.

552. For all these reasons, I am satisfied that the Respondent did not act in breach of s.171, 172, 173 or 175 CA 2006 or any other fiduciary duties owed to SC1 in ceasing to work for SC1, instructing competent lawyers and accountants familiar with SC1 to carry out the steps required to tie up any loose ends required for SC1 to cease trading on a solvent basis and to sit as a dormant subsidiary under GL, setting up SC2, effecting the name-swap, or providing her personal styling services through SC2. For the sake of completeness, whilst s.177 was not pleaded, I would add that no breach of s.177 was established on the evidence: see s.177(2),(6)(a) and (b).

553. I am further satisfied that the Respondent was not in breach of s.174 CA 2006 in taking the steps outlined in paragraph 552 above. At all material times, the Respondent very properly sought out and acted on the advice of fully instructed experienced professionals. The passage of Briggs J's judgment at first instance in Lexi Holdings relied upon by the Applicant (quoted at paragraphs 467-8 above) was made in the context of an inactive director failing to spot the misdemeanours of a fellow director. Briggs J cannot have intended to suggest that anyone who hires an accountant or solicitor to advise them must 'supervise' their work. I refer to paragraph 546 above. To the extent that the Applicant's case is based on s.174, I

would add that causation and loss are not properly pleaded or, (pleadings aside), established on the evidence, in any event.

554. To the extent that the Applicant relies on any other grounds of alleged negligence at paragraph 55.4 of the Points of Claim, I conclude as follows:

(1) paragraph 55.4.1 is partly based on a false premise (that the styling business was an asset of SC1) and is not made out on the evidence; in addition, causation and loss are not established;

(2) the Applicant is not in a position to establish on a balance of probabilities the matters alleged in paragraphs 55.4.2 and 55.4.7 due to missing documentation and, in any event, causation and loss are not established;

(3) paragraph 55.4.3 is based on a false premise;

(4) paragraph 55.4.4 is not made out; the Respondent was under no duty to continue to work for SC1, the reason for her ceasing to work for SC1 was clear from the evidence and in any event, causation and loss are not established;

(5) 55.4.5 is not made out on the evidence and in any event, causation and loss are not established;

(6) paragraph 55.4.6 is based on a false premise and in any event, causation and loss are not established;

(7) paragraph 55.4.8 is partly based on a false premise and is not made out on the evidence; in any event, causation and loss are not established;

(8) paragraph 55.4.9 is under-particularised and in any event, causation and loss are not established;

(9) paragraph 55.4.10 is not made out on the evidence and in any event causation and loss are not established;

(10) paragraph 56(1) is based on a false premise and is wrong in law: negligence is not a breach of fiduciary duty: Ultraframe (UK) Limited v Fielding [2005] EWHC 1638 (Ch) at [1300] to [1302].

555. Mr Groves maintained that his case does not stop there. He contended that even if the Respondent was the owner of the goodwill of the business, there remained to be dealt with the assets of SC1, including trading income. This, he claimed, came within his compendiously pleaded allegation at paragraph 32 of the POC that the 'business *and assets*' of SC1 were transferred to SC2 for no consideration.

556. During the course of the trial, Mr Groves picked out several (unpleaded) figures at random from the accounting documentation in evidence, including figures drawn from draft accounts and working notes which had obviously been superceded by professionally prepared filed accounts, submitting that no adequate explanation had been provided for such figures and that, on the strength of Maroo, the Respondent was liable to account for the same.

557. In my judgment, this is no way to conduct litigation. The Respondent is entitled to know the case she has to meet. The Amended Points of Defence repeatedly called upon the Applicant to state what assets he alleged had been transferred to SC2 for no consideration; see by way of example paragraph 6, 33, 38(b), 44(c), 55(1)(a), 100(e), 113(b), 121. Very few particulars were given in the Amended Reply on this issue. It is not acceptable to raise given sums for the first time at trial, in the middle of cross-examining a lay witness. In my judgment the Applicant should not be permitted to proceed with a case based on such unpleaded figures.

558. I turn then, to the Applicant's case as pleaded. Paragraph 36 of the POC alleges that as at 31 January 2013, there was a balance of £16,491.41 in SC1's bank account although SC1's filed accounts for the year ending 31 January 2013 stated 'cash at bank' and 'in hand' of £63,066.

559. This point was dealt with by a witness statement of Mr Fenton of FSPG dated 2 March 2020. Whilst Mr Fenton was not called as a witness and I have not had the benefit of hearing him in cross-examination, his witness statement was contained in the agreed trial bundles and had exhibited to it documents relevant to this issue. Mr Fenton's evidence, which I accept, was that there was no discrepancy; the bank statement for the Barclays account showed an opening balance of £62,886.42 and credit card receipts of £46,394.98 which were received before 31 January 2013 but not cleared until that day, leaving a balance as per the bank statement of £16,491.44. He went on to produce evidence of the £180.25 balance held in FSPG's client account for SC1, exhibiting a bank reconciliation and a bank statement. He dealt with the issue raised down to the last penny.

560. By Paragraph 38 of the POC, the Applicant alleged that 'According to the filed accounts to 31 January 2014, the Company had no stock and no cash at bank'. It is not entirely clear what point the Applicant seeks to make in this regard. Apart from the very occasional item purchased ad hoc in the expectation that a particular styling client would like it, SC1 did not carry any stock. According to its filed accounts for the year ended 31 January 2013, SC1 had stock valued at £5229; on the balance of probabilities this is likely to have comprised one handbag. By the time of the filed accounts for the year ended 31 January 2014, SC1 had ceased trading. It is little wonder that it had no stock by then. It ceased to trade in April 2013 and did not habitually carry stock.

561. It is correct to state that cash at bank and in hand had moved from £63,066 (in reality £16,000 odd – see paragraph 559 above) as at 31 January 2013 to zero as at 31 January 2014.

562. To the extent that the Applicant was seeking to imply that, (in the words of paragraph 54 POC), the Respondent had 'procured or allowed' the transfer of monies owned by SC1 to SC2 for no consideration, however, the Applicant's case was not made out on the evidence. On the evidence which I have heard and read, I am not persuaded that there was any transfer of monies or other property owned by SC1 to SC2 'for no consideration'. Nor am I persuaded that the Respondent 'procured or allowed' any transfer of monies or other property owned by SC1 to SC2 for no consideration. FSPG prepared all invoices and dealt with any allocation issues arising. There was no evidence to establish on a balance of probabilities that the Respondent knew of any

transfer, or pattern of transfers, for nil consideration: Cohen v Selby [2002] BCC 82 at [24]; Lexi Holdings Plc v Luqman [2007] EWHC 2652 (Ch) per Briggs J at [225]; Madoff Securities International Limited (In Liquidation) v Raven [2013] EWHC 3147 per Popplewell J at [192].

563. To the extent that the Applicant sought to allege negligence rather than breach of fiduciary duty in this respect, he has not established such a case on the evidence. To make out a case of negligence or failure to supervise, leading to loss, the Applicant would need to identify and establish to the satisfaction of the court:

(1) what the Respondent knew, or ought to have known, had she performed her duties as a director;

(2) what steps the Respondent should have taken, consistently with her duties, in light of the knowledge that she had or should have had; and

(3) what would have happened if the Respondent had complied with her duties, and that, but for the breach, the transaction or loss complained of would not have occurred:

Cohen v Selby at [32]; Madoff Securities International Ltd (In Liquidation) v Raven [2013] EWHC 3147 (Comm) at [290] to [293]; Bishopsgate v Maxwell (No 2) [1994] 1 WLR 261 at 264c-f; Lexi Holdings Plc v Luqman No 2 [2009] BCC 716 per Sir Andrew Morritt C at [36], [38]-[54].

564. He has failed to do so. None of these matters were properly pleaded or addressed satisfactorily in submissions or in the evidence.

565. The remaining limb of the Applicant's case rests on Maroo; the Respondent's duty to account for property belonging to SC1 which is in her hands or under her control as a trustee and to apply that property only for proper company purposes (paragraph 53.6 POC).

566. I refer to paragraphs 2 to 8 and paragraphs 556 to 557 of this judgment. Save for the matters pleaded at paragraphs 36 and 38 of the POC, the Applicant does not by his POC plead particulars of any money or other property belonging to SC1 for which it is alleged the Respondent is liable to account qua trustee. There is some attempt to plead a position in paragraphs 19, 20, 26, 28(6), 40-44 of the Amended Reply, but the pleading is muddled and argumentative.

567. As will be recalled, professionally prepared accounts for SC1 for the years ending 31 January 2013 and 31 January 2014 were prepared and filed by FSPG, longstanding accountants closely involved in the day to day running of SC1. The accounts for the year ending 31 January 2014 confirm that trading ceased in April 2013. They also confirm cash at bank, as at 31 January 2014, as nil.

568. In relation to the accuracy of SC1's filed accounts for the years ending 31 January 2013 and 31 January 2014, Counsel for the Respondent referred me to Burnden Holdings (UK) Ltd v Fielding [2019] EWHC 1566 (Ch) at [201] and [202], where Zacaroli J, referring to opinions of Lord Hoffmann and Lady Arden, stated:

> '[201] …. The earlier opinions (which Mr Moore QC described as having "almost iconic status") concluded that in determining whether accounts satisfied the legal requirements that they show a true and fair view, the Courts relies heavily upon the ordinary practices of professional accountants and that compliance with generally accepted accounting principles would be prima facie evidence of satisfaction with the standard (and vice versa). The earlier opinions also concluded that reasonable businessmen and accountants differed over the degree of accuracy or comprehensiveness, and that there may be more than one view of a financial position, any of which could be described as true and fair.'

569. Counsel for the Respondent submits that there is nothing to suggest that any of the accounts prepared by FSPG for SC1 do not comply with the ordinary practices of professional accountants, and therefore it must reasonably be concluded that all the accounts show a 'true and fair view'. I accept that submission.

570. Mr Groves raised the issue of the Barclays bank account. This was touched on in the Points of Claim and in the Amended Reply, so to some extent at least, it is a pleaded point. It is correct to state that, when SC2 started trading in April 2013, it used the Barclays bank account that SC1 had previously used. As I have found, whilst unconventional, there was no dishonest intent behind this; it was used on the advice of FSPG as a matter of administrative convenience only, to enable continued use of the PDQ terminal employed for 90% of sales.

571. On the evidence which I have heard and read, I am satisfied on a balance of probabilities that all monies paid into the Barclays bank account and the FSPG client account from 1 February 2013 onwards which represented monies due to SC1 have been applied for proper purposes of SC1 and have been properly accounted for by FSPG in the filed accounts for SC1 for the year ending 31 January 2014, the inter-company account maintained by FSPG for both companies and the cessation accounts for SC2, which show the final inter-company balance as between SC1 and SC2. Whilst there were a small number of 'run-off' invoices for SC1 after April 2013, in reality there was no overlap between the trading periods of the two companies, and FSPG, as accountants heavily involved in invoicing, book-keeping, banking and tax returns for both companies, were more than up to the task of allocation as between the two.

572. I acknowledge that given the incomplete records before the court, on the evidence before the court, it is not possible to 'vouch' every figure in SC1's accounts for the year ending 31 January 2014, every figure in the inter-company account set up by FSPG, or the ultimate balance set out in the cessation accounts. There are undoubtedly gaps in the documentary evidence before me. I remind myself however that the Respondent has been greatly prejudiced by the loss of documentation in this case and also by the delay in bringing these proceedings, which has not only dimmed memories, but has also limited the extent to which records can be reconstructed from third party sources. I also remind myself that the absence of documentary evidence

does not necessarily lead to a default position of liability: see In re Wolverton Investments Ltd (unrep 18 May 2015), Chief Registrar Baister at para 59-60, citing Re Idessa UK Ltd [2012] 1 BCLC 80 at paras 24-28, partly quoted at paragraph 3 of this judgment. The court must look at the facts closely and in the round.

573. In this case it is clear that when implementing the January arrangements, FSPG opened an inter-company loan account for SC1 and SC2. The inter-company loan account was opened on 1 February 2013 and recorded assets and bank receipts to which SC1 was otherwise entitled, together with payments made by SC2 on SC1's behalf. On the evidence I am satisfied that this was a practical measure undertaken to ensure that all assets of SC1 and bank receipts due to it were properly accounted for. In the records maintained by FSPG, an inter-company loan balance in SC1's favour climbed steadily to a peak of £100,610 in June 2013, when a series of predictable payments made by SC2 on SC1's behalf in respect of accounting fees, VAT and corporation tax over the period June 2013 to November 2013 brought the balance back down and eventually resulted in a positive figure owed by SC1 to SC2 in November 2013. Whilst the accounting documentation in evidence is incomplete, this pattern strongly supports the conclusion that FSPG were assiduous in accounting for SC1's assets and banking receipts. As Mr Trollope put it in closing, the Applicant's suggestion that SC2 got off to a 'flying start' because of what it obtained from SC1 is contradicted by the accounting evidence available; in reality, SC2 started off life in debt as a result of the inter-company account very properly set up by FSPG when implementing the January arrangements.

574. I also take into account Ms Harb's evidence. Ms Harb's evidence, which in this regard I accept, was that if a cash withdrawal was made from the Barclay's account, FSPG, who monitored the Barclay's account, would email her, highlighting the cash withdrawal and requiring full information as to its purpose. If a GL meal was paid for on an SC1 credit card, Ms Harb would be called in to sort out FSPG's allocation queries with them. This suggests a consistent pattern of diligence on the part of FSPG on issues of allocation between companies.

575. I also take into account Mr Fenton's witness statement, with its ready explanation, to the penny, of what had been perceived by the Applicant to be a disparity between cash at bank and in hand according to the accounts for the year ending 31 January 2013 and the bank balances appearing in the bank statements.

576. I further take into account the fact that Mr Hinton retained FSPG to prepare cessation accounts for SC2 for the period ended 30 October 2014. These accounts were in conventional form and declared as a related party transaction a sum of £52,100 owed by SC1 to SC2 as at 30 October 2014.

577. Taking all such matters into account, on a balance of probabilities I am satisfied that all money and other property received by SC2 from SC1 over the period 1 February 2013 onwards has been properly accounted for and applied for proper purposes of SC1, including the payment of SC1's tax liabilities. I am further satisfied on a balance of probabilities that as at the date of SC2's entry into MVL, there was an inter-company balance owed by SC1 to SC2 of £52,100.

578. I am also satisfied that the assets set out in the statement of assets and liabilities of SC2 prepared by FSPG for SC2's MVL were assets belonging to SC2 and not SC1. The Applicant sought to suggest that such assets belonged to SC1 but proffered no persuasive explanation of how SC1 could begin to have generated such sums itself, when it had ceased to trade in April 2013. The Applicant simply posed the question, how could SC2 have done so well from a standing start. In my judgment, the Applicant would have benefited from pausing to ask himself the same question of SC1's first year of trading; see paragraph 376. The answer is clear: the Respondent's personal (or 'dog') goodwill.

579. Overall, on the evidence which I have heard and read, the alleged breaches of director's duties relied upon by the Applicant and pleaded at paragraphs 54 to 56 POC are not made out. For the sake of completeness, (although inherent in a number of my earlier findings), I would add that on the evidence that I have heard and read, the Applicant has not made out his case on unlawful distribution of capital either.

Laches

580. To the extent that the Applicant pursues the Respondent as a trustee, I am satisfied that his claims should in any event be barred under the doctrine of laches: Patel v Shah [2005] EWCA Civ 157 at 32; Re Loftus (deceased); Green v Gaul [2006] EWCA Civ 1124 at 41 and 42. The Applicant and his solicitors engaged with the Respondent on a highly sporadic basis over a number of years. The Applicant has provided the court with no satisfactory explanation for his delay in bringing these proceedings. Key events happened over 8 years ago. Memories of all the relevant witnesses have faded given the considerable lapse of time, placing an unreasonably high burden on the Respondent in defending the Application. The Respondent has been seriously prejudiced in defending this claim by the delay, the loss of documentation and by the obstructive approach adopted by the Applicant in allowing access to documents recovered from GL's premises in his possession. It was not until 4 November 2019 that the Applicant informed the Respondent that all of the data served on GL's servers had been lost. He had known since 2016. The data lost included data relating to SC1 and SC2. Had the Applicant informed the Respondent of the lost data at an earlier stage, the Respondent would have had a far better chance of reconstructing the missing data from third party sources. As it was, the Applicant even obstructed and delayed the Respondent's attempts to reconstruct missing documentation from third party sources. Her ability to account on a line by line basis for payments or transactions which took place so many years ago has been seriously prejudiced by such conduct. This has been compounded by the Applicant's failure to plead his case clearly and fairly. In this regard I repeat paragraphs 556 and 557 of this judgment. Overall, I am satisfied that the circumstances of this case render it unconscionable for the court to grant the Applicant any relief.

Limitation

581. To the extent that the Applicant pursues the Respondent otherwise than as trustee, in my judgment his application is statute-barred by virtue of section 2 of the Limitation Act 1980 (claims in tort) and section 36 LA (claims analogous to claims in tort) which applies to breach of duty claims: Re Eurocruit Europe Ltd [2007] BCC 916. The Application was issued on 9 September 2019 and amended on 17 June 2020 to raise

new allegations. The Application was therefore issued more than six years after the cause of action accrued (and also amended more than six years after the course of action accrued), whether one treats the cause of action as accruing on 31 January 2013 (the time of incorporation of SC2), or April 2013 (cesser of trading of SC1 and commencement of trading of SC2), or a range of other possible dates in between.

582. The Applicant sought to rely upon s.21(1)(b) Limitation Act 1980 and Burnden Holdings v Fielding [2018] UKSC 14. The case of Burnden Holdings v Fielding [2018] UKSC 14, however, only applies to the disposal of pre-existing corporate assets in limited circumstances and not to other breaches of duty, for which the time limit remains six years: see Davies v Ford [2020] EWHC 686 (Ch) at 312-319. The reality in this case is that there were no pre-existing corporate assets which were transferred for nil consideration or otherwise misappropriated. The Respondent owned the goodwill and, as I have found, all SC1 property transferred has been properly accounted for and applied for proper purposes of SC1, including the payment of SC1's tax liabilities.

Section 1157 defence

583. Even leaving aside my earlier conclusions, in my judgment this would in any event be a plain case for s.1157 relief.

584. I refer to paragraphs 530 to 533 of this judgment. On the evidence which I have heard and read, I am satisfied that the Respondent has at all material times acted honestly and reasonably. I am further satisfied that having regard to all of the circumstances of the case, she ought fairly to be excused. In this regard I take into account in particular the following factors, drawn from the Respondent's pleaded case but all made out on the evidence:

(1) The Respondent reasonably relied at all material times on Taylor Wessing, a leading City law firm, to advise and assist her on all material matters relating to GL, SC1 and SC2.

(2) Taylor Wessing were at all material times aware of the proposed arrangements for GL, SC1 and SC2 and at no time advised the Respondent that she could not structure the shareholdings in the way they were structured nor that she could not swap names and carry on a styling business through SC2 rather than through SC1.

(3) At no time did Taylor Wessing advise the Respondent that any material action taken by her with respect to any of GL, SC1 or SC2 might constitute misfeasance, or breach of duty, or breach of fiduciary duty.

(4) The Respondent reasonably relied at all material times upon FSPG and specifically upon Mr Ian Fenton of FSPG to advise her on all financial matters relating to GL, SC1 and SC2. FSPG not only prepared accounts for the companies, it was also heavily involved on a day-to-day basis in all the book-keeping and financial administrative matters for both SC1 and SC2, including the preparation of invoices.

(5) The Respondent reasonably relied upon FSPG to produce and maintain reliable and accurate accounting records for SC1 and SC2.

(6) The Respondent reasonably relied upon FSPG to produce and maintain management and annual accounts for GL, SC1 and SC2.

(7) The Respondent reasonably relied upon FSPG to ensure that Annual Returns and accounts for each of SC1 and SC2 were filed at Companies House on time each year.

(8) FSPG (with the concurrence of Taylor Wessing) advised the Respondent to set up SC2, to swap company names and to retain SC1's bank account for SC2. The Respondent reasonably relied and acted on such advice.

(9) At no material time did the Respondent disregard any material advice which she was given by Taylor Wessing, FSPG or Ian Fenton.

(10) The Respondent was at all material times a fashion stylist: she is neither a lawyer nor an accountant. She reasonably relied on her solicitors and her accountants for all legal and financial matters. None of them told her at any point that she was failing in her duties as a director or in any other way doing anything wrong.

(11) The Respondent regularly used her own personal funds to ensure the success of SC1, such as buying items for clients when SC1 did not have the funds itself to make a particular purchase. She did not take a high salary from SC1. In the year ending 31 January 2013, for example, she took a salary of £7,000. In the year ending 31 January 2014, her salary was nil.

(12) The November 2012 restructuring and the January arrangements were effected with the informed consent of John Dodd, GL and (through John Dodd) Artemis.

(13) SC2 went into members voluntary liquidation. The liquidator of SC2 at no time raised any concerns in the liquidation about the transfer of any assets from SC1 to SC2. All assets transferred were properly accounted for by FSPG and applied for proper purposes of SC1. The liquidator of SC2 authorised and effected the distributions in the MVL. FSPG drew up the cessation accounts in October 2014 for SC2 at the Liquidator's request. FSPG also prepared the figures required for the declaration of solvency. The Respondent reasonably relied upon FSPG to prepare accurate figures for this purpose, having regard to their close day to day involvement with both SC1 and SC2.

585. In considering whether relief should be granted under s.1157, I also take into account the matters summarised in paragraphs 556, 557, and 580 of this judgment. The Applicant contended that it would be wrong to relieve the Respondent in circumstances where she has:

(1) 'personally benefitted';

(2) 'completely abdicated her duty to promote the success of [SC1] and instead took its assets to benefit herself/family';

(3) 'not filed any accounts for [SC1] after the year end 31 January 2014 and let it be struck off';

(4)'not obtained any legal advice for [SC1] in giving away its undertaking;

(5) 'not acted in dealing with [SC1's] assets with the care and skill as she would with her own'

(6) 'if and insofar as advice was given by professional advisers, the Respondent was under a duty to exercise independent judgment after she considered the same and she was not entitled to abdicate her duties to them' ; and

(7) 'personally benefitted from her breach of duties whilst leaving [SC1] insolvent': Amended Reply, paras 13(1) and (5), cross-applied by para [70].

586. With regard to (1) and (7) (allegations of 'personal benefit' and insolvency), at all material times, the goodwill was personal (or 'dog') goodwill and belonged to the Respondent. It was not an asset of SC1. Any assets of SC1, such as cash at bank, have been applied for proper purposes of SC1 and properly accounted for in the professionally drawn filed accounts for SC1, the inter-company accounts maintained by FSPG for SC1 and SC2 and the cessation accounts for SC2. In my judgment the Respondent has not acted in breach of her duties as a director of SC1. The Applicant has not made out his case that SC1 was at any material time insolvent either.

587. With regard to (2), for reasons previously explored, these allegations are not made out on the evidence.

588. With regard to (3), as I have found, SC1 ceased to trade in April 2013. It filed accounts for the year ending 31 January 2014. The Respondent's understanding, on the advice of her accountants and solicitors, was that SC1 was to sit dormant under GL. On the evidence which I have heard and read, I am satisfied that at all material times the Respondent reasonably relied upon FSPG to ensure that Companies House filings for SC1 were made on time. She was not aware that FSPG had not done so and was not told of the striking off warning letter.

589. With regard to (4) and (6), as I have found, the Respondent did not 'give away' SC1's undertaking. Moreover it is clear from the evidence that at all material times, the Respondent did seek legal and accounting advice from Taylor Wessing and FSPG in relation to the affairs of SC1, even if Taylor Wessing were not formally instructed to act on behalf of SC1. I reject the submission that the Respondent's reliance on professional advice from Taylor Wessing and FSPG constituted an abdication of her duties as a director. Quite the contrary: it was entirely responsible and reasonable for the Respondent to seek out and rely upon such advice. With regard to (5), this is not made out on the evidence. Paragraph 584 is repeated.

590. I would add that that, having regard to the matters addressed in this judgment and in particular those summarised in paragraphs 556, 557, 580, 584 and 586-589, I would in any event decline to grant any relief under s.212 IA 1986 in the exercise of my discretion.

Conclusion

591. For all of these reasons, I shall dismiss this application.

592. In conclusion I would add that in my judgment, the Respondent has acted reasonably, responsibly and with the greatest integrity as a director of SC1. She assiduously

sought and relied upon the advice and assistance of experienced lawyers and accountants at all material times. It is most regrettable that she and her family have been put through the stress of these proceedings.

593. I shall hear submissions on costs on the handing down of judgment.

ICC Judge Barber

23 September 2021