Neutral Citation Number: [2022] EWHC 3139 (Ch)

Claim Number: BL-2020-001098

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES COURT
IN THE MATTER OF UMBRELLA CARE LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

8th December 2022

Before :

MR JUSTICE EDWIN JOHNSON

- -

Between :

UMBRELLA CARE LIMITED (in liquidation)	**Claimant**
and	
(1) KHAIR UN NISA **(2) USMAN KHALID RAJA** **(3) EMIL CERVENAK** **(4) DYNAMIC INT LIMITED** **(5) UNIVERSAL REAL ESTATE (PVT) LIMITED** **(6) UNIVERSAL TOTAL CARE LIMITED** **(7) FIRST INTERNATIONAL HOLDINGS LIMITED** **(a company incorporated in the United Arab Emirates)** **(8) FI HOLDINGS LIMITED** **(a company incorporated in the British Virgin Isles)**	**Defendants**

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Christopher Brockman and Anna Lintner (instructed by **Wedlake Bell LLP**) for the Claimant

Usman Khalid Raja (Second Defendant) in person

Hearing dates: 2nd and 3rd November 2022

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JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10.30am on Thursday 8th December 2022 by circulation to the parties and their representatives by email and release to The National Archives.

Mr Justice Edwin Johnson:

Introduction

1. This is my judgment on the issues, principally relating to quantum, which remain outstanding in this action. In terms of liability, the bulk of the issues in the action have been dealt with in a judgment which I delivered on an application for summary judgment made by the Claimant.

2. I will refer to this earlier judgment, which was handed down on 21st January 2022, as **"the First Judgment"**. I will refer to specific paragraphs in the First Judgment as [J1], for paragraph 1, and so on. I will refer to the order which I made, consequential upon the First Judgment, as **"the First Order"**. I will refer to the application for summary judgment, which was heard on 24th and 25th November 2021 and on which the First Judgment was handed down, as **"the Application"**.

3. At this hearing Christopher Brockman and Anna Lintner appeared for the Claimant. Of the eight remaining Defendants in this action, only the Second Defendant, Mr Raja, appeared at this hearing. Mr Raja appeared in person. I permitted Mr Raja to address me on behalf of all the remaining Defendants, so far as he had authority to do so, with the exception (as I understood the position) of the Third and Eighth Defendants, whom Mr Raja did not seek to represent. I also had the benefit of written skeleton arguments from the Claimant's counsel, and from Mr Raja. Mr Raja's skeleton argument was expressed to be submitted on behalf of himself and the First, Second, Fourth, Fifth, Sixth and Seventh Defendants.

4. The Claimant is a company in liquidation. As in the First Judgment, it is convenient to refer to the Claimant as **"the Company"**. The joint liquidators of the Company are Louise Brittain and Stephen Grant.

Relevant background

5. The background to this action is set out in detail in the First Judgment. The following summary of the background is sufficient to set the scene for what I have to decide in this judgment.

6. The Company's case is that it has been involved in what it refers to as a large scale labour supply fraud. It is alleged that the Defendants, against whom summary judgment was sought, acted dishonestly and in concert to defraud HMRC (**"the Revenue"**) of PAYE tax (**"PAYE"**) and national insurance contributions (**"NIC"**), and VAT. The Company's case is that the PAYE and NIC were deducted from employees' wages, and that payments of VAT were received from customers, but that no, or only minimal accounting was then made to the Revenue for any of these funds. Instead, so it is alleged, the relevant funds

were removed from the Company and then either ended up in the hands of other parties or were used to buy properties in the names of certain of the Defendants.

7. The figures involved are substantial. In its final proof of debt in the liquidation, which had been filed by the time of the hearing of the Application (**"the First Hearing"**), the Revenue claimed to be owed £36,418,026.45 in unpaid PAYE, NIC, and VAT. The previous figure assessed by the Revenue for unpaid PAYE, NIC, and VAT, was £26,797,492.74. The debt on which the petition for the provisional liquidation of the Company was based was the figure then claimed by the Revenue as unpaid VAT, together with interest thereon and a small amount of PAYE which had been declared but not paid by the Company, in the total sum of £5,200,810. In the final proof of debt the sum claimed by way of unpaid VAT (including surcharges and interest) had increased to £14,492,661.85.

8. The Revenue has now filed an updated proof of debt in the liquidation. The sum now claimed is £35,170,471.98, comprising what is said to be a PAYE debt of £21,812,923.35 and a VAT debt of £13,357,548.63.

9. According to evidence from the Revenue, as at 15th July 2020 the Revenue had received, in the period since May 2017, PAYE returns from the Company totalling £344,182.86 and payments in this respect of £165,648.33. In terms of VAT, and according to the same evidence, the Company was registered for VAT on 27th March 2017. In the period from April 2017 to April 2020, according to the Company's evidence, the VAT returns submitted by the Company showed sales of £186,136 and VAT payable of £24,691.

10. The Company's case was that the missing funds had been wrongfully and dishonestly abstracted from the Company by its directors, and that at least some of those funds could be traced into the hands of the Defendants to the action, who were liable to account for the same.

11. There were originally fifteen Defendants to the action, but the claims against the Ninth to Fifteenth Defendants were settled by way of consent orders, prior to the First Hearing.

<u>The parties</u>

12. The Company was incorporated on 9th March 2017. The director of the Company, from the date of its incorporation until 10th September 2019 was the First Defendant, Mrs Khair Un Nisa (**"Mrs Nisa"**). Mrs Nisa and Mr. Raja are wife and husband. Mrs Nisa was replaced as sole director of the Company on 10th September 2019 by the Third Defendant, Emil Cervenak **("Mr. Cervenak"**). Mr. Cervenak resigned as a director on 15th February 2020. On 15th February 2020 Mrs Nisa was re-appointed as director and, on 24th February 2020 Mr. Raja was appointed as a director. Mr. Raja subsequently filed a notice of termination on 27th January 2021, which stated that his directorship had terminated on the same day as his appointment; that is to say 24th February 2020. On the basis of this notice of termination therefore, Mr. Raja was a director of the Company only for a single day. Also on 27th January 2021 a notice of termination was filed which stated that Mrs Nisa's directorship had terminated on the same day as her re-appointment; namely 15th February 2020. On the basis of this notice of termination therefore, Mrs Nisa's second period as a director of the Company lasted only a single day.

13. The Company went into provisional liquidation on 29th July 2020, on the application of the Revenue. The Company went into liquidation on 4th November 2020. The Company's sole shareholder, from incorporation until 10th September 2019, was Mrs Nisa. Her shareholding in the Company was transferred to Mr. Cervenak on 10th September 2019. The Company's case was that Mr. Raja and Mrs Nisa were de facto directors of the Company, even at those times when they were not de jure directors of the Company. For the purposes of the Application however, the Company only pursued its case that Mr. Raja was a de facto director of the Company.

14. In the First Judgment I decided that Mr Raja was a de facto director of the Company for the entirety of the Relevant Period. The Relevant Period was defined in the First Judgment to mean the period running from February 2017 to the provisional liquidation of the Company in July 2020. I will use the same expression, to mean the same period, in this judgment. The effect of my decision is that Mr Raja was a director of the Company, either on a de jure or a de facto basis, from the date of its incorporation to the date of its provisional liquidation.

15. The Fourth Defendant, Dynamic Int Limited (**"Dynamic"**), was incorporated on 12th September 2016. Mrs Nisa was a director of Dynamic from 12th September 2016 to 10th September 2019, and was then re-appointed as a director from 15th February 2020. On 25th February 2021 a notice was filed at Companies House stating that her appointment as director had terminated on 1st April 2017. Mr. Cervenak was a director of Dynamic from 10th September 2019 to 15th February 2020.

16. As matters stood, at the hearing of the Application, Dynamic had no de jure directors. The Company's case was that Mr. Raja was the de facto director of Dynamic at all times from its incorporation, and remained the de facto director of Dynamic. In the First Judgment I decided that Mr Raja was the de facto director of Dynamic for the entirety of the Relevant Period.

17. The Fifth Defendant, Universal Real Estate (PVT) Limited (**"Universal Real"**) was incorporated on 9th July 2018. Mrs Nisa was appointed as a director of Universal Real from 9th July 2018, but resigned the same day. Mrs Nisa was re-appointed as a director on 15th February 2020. Mr. Raja was appointed as a director on 9th July 2018 and resigned on 15th February 2020. The Company's case was that Mr. Raja was a de facto director of Universal Real at those times when he was not a de jure director. In the First Judgment I decided that Mr Raja was the de facto director of Universal Real at those times when he was not a de jure director.

18. The Sixth Defendant, Universal Total Care Limited (**"Universal Total"**), was incorporated on 14th December 2018. Mrs Nisa was appointed a director of Universal Total from 14th December 2018, and has remained a director since then. Mr. Raja was a director of Universal Total from 14th December 2018 to 31st March 2019, and again from 13th May 2019 to 15th February 2020. The Company's case was that Mr. Raja was a de facto director of Universal Total at those times when he was not a de jure director. In the First Judgment I decided that Mr Raja was the de facto director of Universal Total at those times when he was not a de jure director.

19. The Seventh Defendant is a company incorporated in the United Arab Emirates, of which Mr Raja is the sole director. The Seventh Defendant was joined as a Defendant to this

action because it appeared to be claiming an interest in various properties which had been purchased using funds derived from the Company. In the event no such claim has been asserted by the Seventh Defendant and the relevant issues of ownership of the relevant properties have been determined by the First Judgment. In these circumstances the Company only seeks an order against the Seventh Defendant dismissing the claim against the Seventh Defendant, with no order as to costs. There was no objection by Mr Raja at the hearing to the making of this order. Mr Raja's skeleton argument for this hearing did raise a point on the Seventh Defendant being out of the jurisdiction, and asked for *"an order for any claims to be out of jurisdiction"* (italics have been added to quotations in this judgment). I did not understand this point, but in any event I can see no ground of objection to the order sought by the Company in respect of the Seventh Defendant.

20. The Eighth Defendant is a company registered in the BVI, which is owned by Mr Raja. The Eighth Defendant was originally registered as the owner of the shares in the Tenth Defendant to the action (Hayre Investment (Heathrow) Limited). Mr Raja confirmed that the shares should have been registered in the name of the Ninth Defendant (Luminous World Limited), and they were transferred to the Company as part of the settlement with the Ninth Defendant. In these circumstances the Company only seeks an order against the Eighth Defendant dismissing the claim against the Eighth Defendant, with no order as to costs. I did not understand Mr Raja to be seeking to represent the Eighth Defendant at this hearing, but in any event there was no objection by Mr Raja to the making of this order.

The relevant findings in the First Judgment

21. It was not in dispute, at the First Hearing, that substantial funds had been removed from the Company. As in the First Judgment I will use the expression **"the UCL Funds"** to refer to the funds which were removed from the Company; being both the funds which could be identified as having been removed from the Company, and those which were alleged to have been removed, but could not be identified. As in the First Judgment, the expression also includes, as the context may require, reference to a part or parts of the UCL Funds.

22. In terms of the movement of the UCL Funds which could be identified, the evidence disclosed that substantial funds were paid out from the Company as follows:
    (1) Mrs Nisa - £41,204.04.
    (2) Dynamic - £16,032,303.17, together with a further sum of £2,187,418 coming indirectly to Dynamic from the Company and a sum of £125,751.83 coming to Dynamic as rent from properties purchased using funds removed from the Company.
    (3) Universal Real - £1,933,430.22.

23. Dynamic then caused substantial sums to be paid on to various other parties, including Mrs Nisa, Mr Raja, Universal Real and Universal Total, using the funds which it had received from the Company. The relevant sums paid out by Dynamic are recorded in [J53]. The evidence also disclosed that a series of properties had been acquired in the names of Mrs Nisa, Mr Raja, Universal Real and Universal Total, using the UCL Funds. The movement of the UCL Funds from the Company or Dynamic into the relevant properties (**"the Properties"**) was set out in a series of flow charts exhibited to Ms Brittain's evidence at the First Hearing. The evidence in question comprised a first

witness statement of Ms Brittain, dated 24th August 2021, together with three substantial exhibits.

24. At the First Hearing there was no challenge to the evidence of Ms Brittain as to the movement of the UCL Funds, so far as Ms Brittain's evidence identified the movement of the UCL Funds. I was therefore able to proceed at the First Hearing on the basis that the movement of the UCL Funds was as set out in Ms Brittain's evidence. The position in relation to this evidence has not changed, and I can proceed on the same basis in this judgment; namely that, as I find, the movement of the UCL Funds was as set out in the evidence of Ms Brittain in her first witness statement. In relation to the movement of the UCL Funds I also made the following findings in the First Judgment, at [J132]:
    (1) The removal of the UCL Funds from the Company was not part of a legitimate investment strategy either on behalf of the Company or for the benefit of the Company.
    (2) There was no good or legitimate reason for the removal of the UCL Funds from the Company.

25. Turning to the Defendants, I found that Mrs Nisa was in breach of the duties which she owed to the Company, as a director, in relation to the removal of the UCL Funds from the Company. I found that Mrs Nisa was in breach of her duties in the manner alleged in paragraphs 66 and 68 of the Company's Amended Particulars of Claim. On this basis I found that Mrs Nisa was liable to the Company for damages and/or equitable compensation for breach of her duties as a director of the Company, with such damages and/or equitable compensation to be subject to a separate assessment.

26. Turning to Mr Raja, I also found that he was in breach of the duties which he owed to the Company, as a de jure and de facto director, in relation to the removal of the UCL Funds. I found that Mr Raja was in breach of his duties in the manner alleged in paragraphs 66 and 68 of the Company's Amended Particulars of Claim. On this basis I found that Mr Raja was liable to the Company for damages and/or equitable compensation for breach of his duties as a director of the Company, again with such damages and/or equitable compensation to be subject to a separate assessment.

27. For the purposes of the assessment of damages and/or compensation it is important to identify the breaches of duty which I found to have been committed by Mrs Nisa and Mr Raja. Those breaches of duty were as alleged in paragraphs 66 and 68 of the Amended Particulars of Claim, and were as follows:

> *"66. In the premises, Mrs Nisa and Mr Raja were each in breach of the fiduciary, statutory and common law duties set out at paragraph 58 above and/or in breach of trust in causing or permitting:*
>
> *(a) The Known Transfers referred to above, which amounted to the misappropriation and misapplication of at least £16,270,427.43 of the UCL Funds;*
>
> *(b) The Unknown Transfers made by UCL, which amounted to the misappropriation and misapplication of at least £10,788,058.09 10,662,409.76 of the UCL Funds."*
>
> *"68. Further or alternatively, Mrs Nisa and Mr Raja at all material times, and Mr Cervenak when he was a de jure director, were each in breach of the*

fiduciary, statutory and common law duties pleaded at paragraph 58 above, in that they:

(a) failed to account to HMRC for the tax that UCL owes HMRC; and/or

(b) caused or permitted UCL to trade without making provision for such tax liabilities to HMRC, as set out above."

28. The Known Transfers were those transfers of the UCL Funds which were identified (or traced) in the evidence. I have summarised these Known Transfers above. They are set out in more detail in the First Judgment. The Unknown Transfers are those transfers of the UCL Funds which could not be identified (or traced), but which were said to constitute the balance of the sums which should have been paid to the Revenue by the Company, in respect of PAYE, NIC and VAT, but which were, instead, removed from the Company.

29. Essentially therefore, my findings against Mrs Nisa and Mr Raja were that they were both in breach of their duties as directors of the Company, in causing or permitting the removal of funds from the Company which should have been used to satisfy the Company's liabilities to the Revenue. In the result I ordered that judgment be entered against Mrs Nisa and Mr Raja, for damages and/or equitable compensation, with the amount of such damages and/or equitable compensation to be assessed.

30. Turning to Dynamic, I found that Dynamic was liable to pay equitable compensation to the Company in respect of the knowing receipt by Dynamic of the UCL Funds paid to it by the Company. I ordered judgment to be entered against Dynamic for equitable compensation, with the amount of such equitable compensation to be assessed.

31. I made equivalent findings against Universal Real and Universal Total. I found that each of these companies was liable to pay equitable compensation to the Company in respect of the knowing receipt, by each of the companies, of the UCL Funds which were paid to them. I ordered judgment to be entered against each of these companies for equitable compensation, with the amount of such equitable compensation to be assessed.

32. In the case of Mr Raja, Universal Real and Universal Total, I also made findings that certain of the Properties, which had been purchased in their respective names using UCL Funds, were held on constructive trust for the benefit of the Company. I made declarations to this effect in the First Order.

<u>The relief sought against the Defendants in this hearing</u>

33. So far as Mrs Nisa is concerned, a bankruptcy petition has been presented against by the Company. By an order made in the Derby County Court on 20th October 2022 Mrs Nisa was adjudged bankrupt. The Official Receiver has been appointed as her trustee in bankruptcy. In these circumstances the Company will prove in the bankruptcy rather than pursue its claim against Mrs Nisa in this action. I am therefore asked simply to stay the action against Mrs Nisa, pursuant to Section 285(1) of the Insolvency Act 1986.

34. As against Mr Raja the Company seeks an assessment of the amount due by way of damages and/or equitable compensation for Mr Raja's breaches of duty as a director of the Company.

35. Mr Cervenak has not taken any part in this action, following service of the proceedings on him. Mr Cervenak was a director of the Company between 10th September 2019 and 15th February 2020. In the First Judgment I made no findings against Mr Cervenak, save in respect of the period of his tenure as a director of the Company. As against Mr Cervenak the Company seeks a determination that Mr Cervenak was also in breach of the fiduciary duties which he owed to the Company as a director and, assuming such a determination, an assessment of the damages and/or equitable compensation which is due to the Company by reason of Mr Cervenak's breaches of his duties as a director of the Company.

36. As against each of Dynamic, Universal Real and Universal Total, the Company seeks an assessment of the amount due by way of damages and/or equitable compensation for knowing receipt of the UCL Funds.

37. As I have already noted, the Company only seeks, as against the Seventh and Eighth Defendants, orders dismissing the claims against these Defendants, with no order as to costs.

The evidence at this hearing

38. By reason of the Application and other applications made in this action and in separate enforcement proceedings in the Isle of Man, there is already a substantial body of evidence, contained in various affidavits and witness statements, in this action. This is illustrated by the fact that the evidence in support of the Company's case at this hearing is contained in an eighth witness statement of Louise Brittain, one of the liquidators of the Company, which is dated 28th September 2022. This witness statement was supplemented by two further (ninth and tenth) witness statements from Ms Brittain, dated respectively 29th September 2022 and 21st October 2022, which updated her evidence for this hearing.

39. Ms Brittain gave oral evidence, in the course of which she confirmed the evidence in her witness statements and was cross-examined by Mr Raja. The cross-examination was largely unsatisfactory. This was not the fault of either Ms Brittain or Mr Raja. The principal purpose of Mr Raja's cross-examination was to try to challenge the sum now alleged to be due by the Revenue from the Company. It will be recalled that the Revenue have now filed an updated final proof of debt in the liquidation in the sum of £35,170,471.98. As liquidator of the Company Ms Brittain was not involved in the calculation of this sum, and thus was effectively unable to deal with Mr Raja's questions concerning the way in which this sum had been calculated, and whether it contained errors of the kind alleged by Mr Raja.

40. In fact, if one wants to see how the Revenue calculated the sums said to be due from the Company it is necessary to go back to a witness statement of Andrew Siddle, a Senior Officer of the Revenue employed by the Proceeds of Crime Unit within the Revenue's Fraud Investigation Service. The witness statement is dated 23rd July 2020, and was made in support of the Revenue's application for the appointment of a provisional liquidator in respect of the Company. In the witness statement Mr Siddle, who had conduct of the Revenue's investigations into the affairs of the Company, explained how the Revenue had calculated what was then said to be due and unpaid, by way of PAYE, NIC and VAT. The witness statement was contained in an exhibit to Ms Brittain's first witness statement, dated 24th August 2021, made in support of the Application. Mr

Siddle was not called as a witness at this hearing. As a result, the bulk of Mr Raja's cross-examination was concerned with questions of calculation on which Ms Brittain was not able to give direct evidence.

41, I am satisfied that Ms Brittain was an honest witness but, as I have said, she was not able to give direct evidence as to how the Revenue had arrived at the figures for the liability of the Company, either at the time of the Application or as now set out in the updated final proof of debt.

42. Turning to Mr Raja there were four recent witness statements which he had made, dated respectively 16th July 2022, 29th August 2022, 31st August 2022 and 5th September 2022. These witness statements were not directly related to this hearing, as they were prepared principally in connection with an application made by Mr Raja for a variation of the terms of an order which I made against Mrs Nisa, Mr Raja and Dynamic, following the handing down of the First Judgment, on 21st January 2022. By that order I continued a freezing order previously made against Mrs Nisa, Mr Raja and Dynamic. I also continued an order which prevented Mrs Nisa and Mr Raja from leaving England and Wales until certain conditions were satisfied, and provided for their passports to be retained by the Company's solicitors. I also imposed a proprietary injunction upon Mrs Nisa, Mr Raja and Dynamic in respect of certain assets. I will refer to this order as **"the January Order"**. Although these four witness statements of Mr Raja were principally concerned with Mr Raja's application to vary the January Order, I understood Mr Raja to wish to rely on these four witness statements at this hearing, and I have therefore taken them into account as part of the evidence at this hearing.

43. Beyond this, there were three other documents prepared by Mr Raja which I have taken into account as part of Mr Raja's evidence. The first is the Defence prepared by Mr Raja in this action. This Defence was before me at the First Hearing, but it contains Mr Raja's case on, amongst other matters, the alleged unreliability of the Revenue's calculations of what is said to be due from the Company. The second is a document described as a Rebuttal Document, which was also before me at the First Hearing, and was prepared in response to the first witness statement of Ms Brittain (made in support of the Application). The Rebuttal Document also contains some material attacking the reliability of the Revenue's calculations of what is said to be due from the Company. The third is a second witness statement of Mr Raja, dated 24th November 2021, which was before me at the First Hearing. This second witness statement, to which various documents were attached, also contains material attacking the reliability of the Revenue's calculations. There was a dispute over the admission of this second witness statement at the First Hearing, which is recorded at [J31]. I could however see no objection to my taking this witness statement into account at this hearing.

44. For the avoidance of doubt I should also make it clear that I have taken full account of Mr Raja's skeleton argument for this hearing. I have however taken the skeleton argument into account as part of the Mr Raja's submissions to me at this hearing, as opposed to being part of his evidence.

45. There is one other item of evidence to which I should refer. This was a witness statement of Mr Raja dated 13th October 2022, together with certain attachments. The witness statement was served on the Company's solicitors at 10:49pm on 13th October 2022. This timing was important. Directions for the service of evidence for this hearing were given

by Master Clark on 24th August 2022. Those directions required witness statements to be exchanged by 4.00pm on 28th September 2022. Mr Raja did not comply with that deadline. By an order made by Joanna Smith J on 4th October 2022, the Defendants were debarred from serving evidence for this hearing unless such evidence was filed and served by 4.00pm on 13th October 2022. Mr Raja missed that deadline. If therefore his witness statement of 13th October 2022 was to be admitted, Mr Raja required to be relieved from the debarring sanction in the order of Joanna Smith J. In the event Mr Raja did not proceed with an application for the admission of this witness statement. This was, in my view, a sensible decision by Mr Raja for two reasons. First, if the application had been pursued, I would have refused it. There was no evidence or argument from Mr Raja which would have justified the grant of relief from the sanction in the order of Joanna Smith J and, in my view, it would have been wrong to grant relief from the sanction. Second, I did read the witness statement and its attachments. So far as I could see the witness statement did not contain any material, relevant to this hearing, which was not already available to the court in the previous witness statements and other documents provided by Mr Raja. So far as the attachments were concerned, they appeared to comprise documents which were also already available to the court pursuant to previous filings of evidence in the action. Accordingly, I could see no disadvantage to Mr Raja in not being able to introduce the witness statement of 13th October 2022. The same evidence was effectively already before the court.

46. Mr Raja gave oral evidence and was cross-examined by Mr Brockman. Mr Raja was not a satisfactory witness. Even allowing for the fact that Mr Raja was in person, and thus occupied the roles of advocate and witness, Mr Raja tended to use the questions as a platform to air his grievances over the alleged conduct of the Revenue and the liquidators of the Company. In particular, I heard a good deal of evidence relating to the removal and subsequent return of computers pursuant to a search operation which was carried out by the Revenue at the time of their original investigations into the Company. It seemed to me that investigation of the events of that operation had little relevance to what I have to decide in this hearing.

47. The issues which arise to be determined in this hearing are not ones which turn on a conflict of evidence between Ms Brittain or Mr Raja, or for that matter upon the credibility of either witness. I should however record that I was not satisfied that Mr Raja was a reliable witness. As I have already noted, Mr Raja tended to use questions as platforms to air his grievances in this matter. Beyond that however it was also a feature of Mr Raja's evidence that he tended to evade questions, either using the relevant question as a platform to air his grievances or evading the question by asking a question of his own or by diverting his answer to a separate topic. Beyond this however it was a striking feature of Mr Raja's evidence that he appeared to demonstrate no acknowledgement, let alone concern that, on the Revenue's figures, millions of pounds which should have been used to meet the Company's PAYE, NIC and VAT obligations had been diverted out of the Company, in the form of the UCL Funds. I will come later in this judgment to Mr Raja's arguments in support of his case that the Revenue have miscalculated the amounts due from the Company. Even if however one took all Mr Raja's arguments at face value, it is clear that they would do no more than result in a relatively small reduction to the overall sum said to be due from the Company. I found it concerning that Mr Raja sought to blame the Revenue and the liquidators of the Company for the current situation when it is quite clear to me, and I so find, that the root cause of the current situation is the diversion of the UCL Funds out of the Company;

being funds which the Company should have used to meet its obligations to the Revenue. This in turn was, I find, the result of the failure of the Company's directors, who included Mr Raja as a director throughout the Relevant Period, to ensure that the Company did meet its obligations to the Revenue. Nowhere in Mr Raja's written or oral evidence was there any acknowledgment of these realities.

48. In this context I should mention one particular matter which went directly to the credibility of Mr Raja. As I have already noted, the passports of Mrs Nisa and Mr Raja were, by the January Order, in the hands of the Company's solicitors, pending compliance by Mrs Nisa and Mr Raja with obligations of disclosure of assets which were imposed upon them by the January Order. By application notice dated 15th July 2022 Mr Raja sought variation of the terms of the January Order. The variation sought by Mr Raja was not clear from the terms of the application notice, but in Mr Raja's witness statement of 16th July 2022 Mr Raja explained that he was seeking (i) to preserve the ability of Mrs Nisa and Mr Raja to use a Barclays bank account on the Isle of Man in order to fund their living expenses, to the extent permitted by the January Order (ordinary living expenses of £1,000 per week were permitted by the January Order, subject to the Company's legal representatives being informed where the money was coming from), and (ii) to secure the return of their passports. The Barclays Bank account was, as I understand the situation, the subject of enforcement proceedings brought by the Company in the Isle of Man, along with other accounts on the Isle of Man which were said to contain the Company's money.

49. Mr Raja's application came before Meade J on 6th September 2022. I have seen a transcript of the hearing. By the time of the hearing Mr Raja had served a fourth witness statement, dated 5th September 2022, in which he claimed the mother of his wife (Mrs Nisa), that is to say his mother-in-law, had died on 3rd September 2022. In his second witness statement, dated 26th August 2022, Mr Raja had claimed that both of his wife's parents were on their death beds. This was one of various reasons why, so Mr Raja contended, he and his wife should have their passports returned, so that they could visit Pakistan. In his submissions to the court at that hearing Mr Brockman, for the Company, set out certain doubts that those acting for the Company had as to whether the information about the alleged death of Mr Raja's mother-in-law was actually true. At that point the Company's position was that Mrs Nisa could have her passport back, but not Mr Raja. The concern of the Company was that Mr Raja would abscond to Pakistan and there make use of those of the UCL Funds which found their way to Pakistan and were identified by me, in the First Judgment, as the Pakistan Payments.

50. At the hearing before Meade J on 6th September 2022, in the course of his oral submissions, Mr Raja reiterated his evidence that his mother-in-law had died. Mr Raja explained that his mother-in-law's body was being preserved, pending the arrival of Mrs Nisa in Pakistan, so that the funeral and burial could be completed. By that time Mr Raja had produced a death certificate, dated 5th September 2022, issued by the Tehsil Headquarter Hospital which stated that a Mrs Babo had died on 2nd September 2022. There were also some photographs which I have seen, although I am not sure if they were before the court on 6th September 2022, showing a deceased person.

51. In his submissions in reply Mr Brockman informed the court that they had an email received from a Mr Abbas. By way of explanation Mr Ghulam Abbas is the brother of Mrs Nisa and the brother-in-law of Mr Raja, and was the Fourteenth Defendant to this

action. What had happened was that Mr Saunders, the Company's solicitor, and Ms Brittain had spoken to Mr Abbas, inquiring about the health of Mr Abbas' mother. Mr Abbas followed up this telephone call with an email to Mr Saunders, timed at 12.33pm on 6th September 2022, in which Mr Abbas said this (italics have been added to all quotations in this judgment):

> *"Dear Richard Saunders*
> *I really appreciate that you asked about my mother health.*
> *She is ok and well now.*
> *You have received information that my mother had died which is not true.*
> *She is alive and recovering from Illness.*
> *Kind regards*
> *G Abbas"*

52. According to this email, Mr Raja's mother-in-law, the mother of Mr Abbas and Mrs Nisa, had not died. Mr Raja was given an opportunity to reply to the information given by Mr Brockman to the court. Mr Raja said that he had spoken to Mr Abbas, and that Mr Abbas had denied sending the email. Mr Raja said that he had a message from Mr Abbas to that effect, which he could send to the court.

53. The email itself from Mr Abbas was not produced to Meade J. Instead its contents were read out by Mr Brockman. At this hearing I was provided with a copy of the email, which is why I am able to quote its terms, as set above.

54. Meade J then gave his judgment on the applications made by Mr Raja. I have seen an approved transcript of the judgment. In the course of that judgment Meade J dealt with the chain of events, which I have summarised above, concerning the alleged death of Mr Raja's mother-in-law. The judge described the situation as an extraordinary one. The judge concluded his consideration of the issue of whether Mr Raja's mother-in-law was dead in the following terms, at paragraph 12 of his judgment.

> *"12. I cannot reach any definite conclusion about these matters today, but I have to say in these quite extraordinary circumstances I have the gravest doubt about the truth of the account that Mr Raja has put forward and I am not prepared to allow the return of his passport or that of Mrs Nisa in these circumstances. If Mrs Nisa's mother is indeed sadly deceased, in which case I offer her the greatest possible sympathy, then I am sure it would be possible for Mr Raja to come up with genuine, verifiable, and much better documentation proving that, even quite quickly, and to deal with the now disputed question of what Mr Abbas said. But for all these reasons I am not at all satisfied that there is a pressing need for the return of Mr Raja's passport at the moment."*

55. In this hearing Mr Raja was cross-examined on his evidence to the court, at the hearing on 6th September 2022, that his mother-in-law had just died. It was put to Mr Raja that he had deliberately misled the court, and that his mother-in-law was still alive. Mr Raja denied this, and said that he could provide further evidence from Mr Abbas to demonstrate that what he had said had been true. I ruled that I was not prepared to allow Mr Raja to adduce any further evidence on this issue. I indicated that I would give my reasons for that decision in this judgment. Before I do so I should mention that, following the conclusion of this hearing, Mr Raja emailed the court on 5th November 2022,

reiterating his request to be allowed to adduce further evidence from Mr Abbas. The email contained the following paragraph:

> *"As the honourable court is aware I was not given an opportunity to take a recess to obtain my brother in law's explanation to his email sent to Mr Saunders which was inappropriately requested. I am, with respect, requesting permission to add a witness statement from my brother in law Abbas as his email was put into evidence but is not in context and requires further information and clarification. Had Mr Saunders have asked if Babo had died he would have confirmed and informed them of her relationship to our family. For clarity she is our God mother and is seen as a mother figure in our culture and we refer to her as mother in Urdu. She was very close to Nisa and Nisa wished to attend her funeral but could not due to our passports been retained."*

56. As I understand the email of 5th November 2022, Mr Raja is identifying Mrs Babo, the woman whose name appears on the death certificate, as a *"God mother"* of Mr Raja and Mrs Nisa. I have no way of verifying whether this information is correct, but what is clear from Mr Raja's email of 5th November 2022 is that it was not his mother-in-law who had died, but another woman. In his fourth witness statement dated 5th September 2022, and in his submissions to the court at the hearing on 6th September 2022, Mr Raja was clear that it was his mother-in-law, who was also quite clearly identified as his wife's mother, who had died. I also note with concern that, according to the information in this email, the evidence which Mr Raja wished to obtain from Mr Abbas was not that Mr Abbas denied sending the email of 6th September 2022, but rather that Mr Abbas would be able to confirm that the person who had died was a person whom the family had regarded as a mother figure. At the hearing on 6th September 2022 Mr Raja informed the court that Mr Abbas was denying that he had written the email of 6th September 2022. There was no suggestion that the person who had died was someone other than Mr Raja's mother-in-law.

57. I refused Mr Raja permission to adduce further evidence on this issue at the hearing essentially for two reasons.

58. First, the issue of whether Mr Raja's mother-in-law had died was squarely raised at the hearing on 6th September 2022. Mr Raja informed the court at that hearing that Mr Abbas was denying that he had written the email which I have quoted above. Mr Raja also informed the court that he had a message from Mr Abbas to the effect that Mr Abbas did not write the email. This present hearing was held on 2nd and 3rd November 2022. Given the seriousness of the allegation that Mr Raja had misled the court, I would have expected Mr Raja, as soon as he could after the hearing on 6th September 2022, to send a copy of the alleged message from Mr Abbas to the Company's solicitors in order to make good what he had told the court. So far as this hearing was concerned, it will be seen that Mr Raja had almost two months within which to prepare evidence from his brother-in-law, confirming that his brother-in-law had not sent the email of 6th September 2022. Mr Raja however took no such steps. It did not seem to me to be right that Mr Raja should have further time within which to do that which he had already had ample time to do.

59. Second, Mr Raja was not in a position, at the hearing, to produce the further evidence which he said he wanted to adduce. As I understood the position, what Mr Raja wanted was some kind of adjournment of the hearing, so that he could go off and obtain the relevant evidence from Mr Abbas. It seemed to me that it would be unfair, and to the

prejudice of the Company to allow the hearing to be disrupted in this way, particularly in relation to an issue which, while it went squarely to the credibility of Mr Raja's evidence, did not relate directly to the issues which I have to determine in this hearing.

60. As matters have turned out, and by reference to Mr Raja's email to the court of 5th November 2022, I now know that if I had permitted Mr Raja to adduce further evidence on this issue, that evidence would have disclosed that it was not Mr Raja's mother-in-law who had died shortly before the hearing on 6th September 2022, contrary to what Mr Raja said in his evidence for that hearing, and contrary to what Mr Raja told the court in that hearing.

61. As I have said, this particular issue did not relate directly to the issues which I have to determine in this hearing. Mr Raja did however give evidence in this hearing, and his credibility as a witness was put in issue by Mr Brockman, on behalf of the Company. Given the events which I have described above, it seems to me that I have no option but to find that Mr Raja misled the court, essentially in two respects, at the hearing on 6th September 2022, as follows:
    (1) Mr Raja informed the court, in his written evidence and in his oral submissions, that his mother-in-law had recently died. I find that this information was false. Mr Raja's mother-in-law had not recently died.
    (2) Mr Raja informed the court, in his oral submissions, that he had spoken to Mr Abbas and that Mr Abbas had informed him, both in a telephone call and in a written message, that he, Mr Abbas, had not written the email of 6th September 2022. I find that this information was false, and that Mr Abbas gave no such information to Mr Raja.

62. It seems to me that the above findings are effectively confirmed by Mr Raja's email to the court of 5th November 2022. Nevertheless, I should make it clear that I would have made these findings even if I had not seen the email of 5th November 2022. If this email is put to one side, I cannot accept the suggestion that Mr Abbas did not send the email of 6th September 2022. It was not suggested that Mr Saunders had fabricated this email, and it would remarkable if anything of this kind had happened. It is simply not credible to suggest that Mr Abbas did not send this email, or to suggest that Mr Abbas somehow misunderstood what he was saying in the email. To this I add the point that, following the hearing on 6th September 2022 Mr Raja did nothing to make good what he had told the court about the position of Mr Abbas. There was no sign of the alleged message from Mr Abbas, no witness statement from Mr Abbas, and no communication of any kind from Mr Abbas to contradict the email of 6th September 2022. Accordingly, the findings which I have made above stand, with or without the confirmation of the position provided by the email of 5th November 2022.

63. This leaves the question of whether the misleading of the court which I have identified above was inadvertent or deliberate. I regret to say that I find that the misleading of the court was deliberate. Given my finding that Mr Raja's mother-in-law was alive, it is impossible to accept that Mr Raja made an innocent mistake in this respect. Indeed, there was no suggestion from Mr Raja, in his evidence and submissions at this hearing, that he had made an honest mistake. Instead, he claimed that his brother-in-law had informed him that he, Mr Abbas, had not written the email of 6th September 2022. I have found this claim to be false. Again, this is a finding which I would have made even without the email to the court of 5th November 2022. The email does however seem to me effectively

to confirm that Mr Raja deliberately misled the court at the hearing on 6th September 2022. Mr Raja was quite clear, in his evidence and his oral submissions, that he was referring to his mother-in-law, not to someone regarded as a mother figure. I cannot accept that Mr Raja made an innocent mistake in this respect.

64. In summary therefore I am satisfied that Mr Raja deliberately misled the court, in both his written evidence and his oral submissions, in relation to the alleged death of his mother-in-law, and in relation to his attempt to explain away the email from Mr Abbas of 6th September 2022. As will be apparent from my discussion of Mr Raja's evidence above, I had formed the view that Mr Raja was an unreliable witness for reasons independent of this particular issue. My findings on this particular issue do however serve to corroborate my earlier conclusion that Mr Raja was an unreliable witness.

65. There is one other matter with which I should deal before leaving the question of evidence. The witness statements of Ms Brittain which were relied upon for the purposes of this hearing did not comply with the requirements of CPR PD57AC. The same was true of the witness statements relied upon by Mr Raja although, in Mr Raja's case, the answer to this might have been that the relevant witness statements were not prepared specifically for this hearing, but rather for the hearing of the Application and Mr Raja's later application to vary the terms of the January Order. It seems to me that this hearing was clearly a trial, within the meaning paragraph 1.1 of PD57AC, while the relevant witness statements of Ms Brittain were trial witness statements, also within the meaning of paragraph 1.1.

66. I raised this point with Mr Brockman. Mr. Brockman did not suggest that PD57AC did not apply. As I understood Mr Brockman's submissions, the requirement of compliance with PD57AC had been overlooked in the preparation of the relevant witness statements of Ms Brittain. Mr. Brockman offered an undertaking, on behalf of the Company, to put the witness statements into a form compliant with the PD57AC. I did not require that undertaking to be provided at the hearing and, on reflection, I have decided that, in the very particular circumstances of this case, I should admit the evidence of Ms Brittain in the three relevant witness statements without requiring compliance with PD57AC. In coming to this conclusion I have taken four particular matters into account. First, this hearing is principally a quantum hearing. The only exception to this is the claim against Mr Cervenak, but Mr Cervenak did not attend the hearing and has taken no part in this action. Subject to this exception, this is not a trial of liability. Nor is this hearing a trial which raises conflicts of evidence which require to be resolved, at least in relation to the issues which I have to decide. Second, Ms Brittain's position is that of liquidator of the Company. In common with her first witness statement, which was relied on in support of the Application, Ms Brittain's witness statements for this hearing essentially set out an account of what has happened in this case, which she is able to give by reason of her position as liquidator. Putting the matter more simply, the relevant witness statements are narrative witness statements. Third, this is a case where the evidence relied upon by Mr Raja derives from witness statements and other documents filed in connection with interim applications. It might be thought unfair to the Company that it should be required to comply with PD57AC in circumstances where, by reason of the very particular circumstances of this case, Mr Raja could at least argue that the requirements of PD57AC should not apply to his evidence. Fourth, and given the narrative nature of Ms Brittain's evidence, it did strike me as potentially an unnecessary exercise to require Ms Brittain's evidence to be recast into a form compliant with PD57AC.

67. I am therefore prepared to make an order in this case, dispensing with the requirement for the witness statements relied upon at this hearing to comply with the requirements of PD57AC. I cannot stress too highly that this is a decision taken in the very particular circumstances of this case. Compliance with the requirements of PD57AC is important, and should be observed. This decision is not available as, and should not be used as any kind of precedent for dispensing with the requirements of PD57AC in any other case.

68. I now turn to my consideration of the substantive claims for relief made against the individual Defendants.

The claim against Mrs Nisa

69. As I have explained, I am asked simply to stay the action against Mrs Nisa, pursuant to Section 285(1) of the Insolvency Act 1986. There was no objection to such an order being made from Mr Raja, and Mrs Nisa took no part in this hearing. I will therefore make an order in these terms, as against Mrs Nisa.

The claim against Mr Raja

70. I have already decided that Mr Raja was in breach of his duties as a director of the Company, in causing or permitting the removal of the UCL Funds from the Company during the period when he was a director of the Company; that is to say over the whole of the Relevant Period, and also in failing to account to the Revenue for the tax owed by the Company and in causing or permitting the Company to trade without making provision for the Company's tax liabilities to the Revenue; see the First Judgment at [J151]-[J161].

71. In terms of causation the Company's case is that Mr Raja's breaches of duty have resulted in the current situation, in which the Company finds itself with a liability to the Revenue in the sum of £35,170,471.98. The sum for which Mr Raja is said to be liable is this sum, subject to reduction for those assets of the Company which the liquidators have managed to recover and realise. The evidence of Ms Brittain in her eighth witness statement, subject to some updating of the figures (set out in a supplemental skeleton argument filed on behalf of the Company), is that the Company has realised assets to the value of £13,358,938.79, leaving Mr Raja with an alleged liability of £21,811,531.93.

72. In terms of legal support for this case Mr Brockman referred me to the decision of the House of Lords in *Target Holdings Ltd v Redferns* [1996] AC 421 HL. In this case the House of Lords were concerned with whether a firm of solicitors were liable to make good the funds provided to them by a mortgage lender which the solicitors released to the borrower in breach of trust. The mortgage lender sought summary judgment against the solicitors. The breach of trust, which was admitted by the solicitors, arose because there was, at the time of the release of the funds to the borrower, no charge which had been obtained over the property which was to be security for the mortgage loan. A valid charge was subsequently obtained, but the Court of Appeal, by a majority, decided that the solicitors were liable to make good the funds which had been paid away in breach of trust, subject only to credit being given for any money recovered when the mortgage lender realised its security. The House of Lords reversed this decision, holding that the quantum of compensation payable for the breach of trust should be assessed at the date of judgment, as that sum which was necessary to put the beneficiary in the position in which he would have been if there had been no breach of trust. Given that the mortgage

lender had obtained precisely what it would have acquired if no breach of trust had occurred, namely a valid charge, the solicitors were entitled to defend the breach of trust claim.

73. In his speech in *Target* Lord Browne-Wilkinson set out the equitable rules of compensation for breach of trust. As his Lordship explained, at 434C-F:

> *"The equitable rules of compensation for breach of trust have been largely developed in relation to such traditional trusts, where the only way in which all the beneficiaries' rights can be protected is to restore to the trust fund what ought to be there. In such a case the basic rule is that a trustee in breach of trust must restore or pay to the trust estate either the assets which have been lost to the estate by reason of the breach or compensation for such loss. Courts of Equity did not award damages but, acting in personam, ordered the defaulting trustee to restore the trust estate: see Nocton v. Lord Ashburton [1914] A.C. 932, 952, 958, per Viscount Haldane L.C. If specific restitution of the trust property is not possible, then the liability of the trustee is to pay sufficient compensation to the trust estate to put it back to what it would have been had the breach not been committed: Caffrey v. Darby (1801) 6 Ves. 488; Clough v. Bond (1838) 3 M. & C. 490. Even if the immediate cause of the loss is the dishonesty or failure of a third party, the trustee is liable to make good that loss to the trust estate if, but for the breach, such loss would not have occurred: see Underbill and Hayton, Law of Trusts & Trustees 14th ed. (1987), pp. 734-736; In re Dawson, deed.; Union Fidelity Trustee Co. Ltd. v. Perpetual Trustee Co. Ltd. [1966] 2 N.S.W.R. 211; Bartlett v. Barclays Bank Trust Co. Ltd. (Nos. 1 and 2) [1980] Ch. 515. Thus the common law rules of remoteness of damage and causation do not apply. However there does have to be some causal connection between the breach of trust and the loss to the trust estate for which compensation is recoverable, viz. the fact that the loss would not have occurred but for the breach: see also In re Miller's Deed Trusts (1978) 75 L.S.G. 454; Nestle v. National Westminster Bank Pic. [1993] 1 W.L.R. 1260."*

74. His Lordship went on to quote from the judgment of McLachlin J in a Canadian case, *Canson Enterprises Ltd v Boughton & Co.* (1991) 85 DLR (4th) 129. At 438D-439B, his Lordship quoted the relevant extracts from this judgment, and stated his approval of what McLachlin J had said, in the following terms:

> *"Although the whole judgment deserves study, I extract the following statements. At p. 160:*
>
> > *"While foreseeability of loss does not enter into the calculation of compensation for breach of fiduciary duty, liability is not unlimited. Just as restitution in specie is limited to the property under the trustee's control, so equitable compensation must be limited to loss flowing from the trustee's acts in relation to the interest he undertook to protect. Thus, Davidson states [The Equitable Remedy of Compensation' (1982) 3 Melbourne U.L. Rev. 349] 'It is imperative to ascertain the loss resulting from breach of the relevant equitable duty (at p. 354, emphasis added)."*
>
> *At p. 162:*
>
> > *"A related question which must be addressed is the time of assessment of the loss. In this area tort and contract law are of little help. . . . The basis of compensation at equity, by contrast, is the restoration of the actual value of the thing lost through the breach. The foreseeable value of the items is not in*

issue. As a result, the losses are to be assessed as at the time of trial, using the full benefit of hindsight." (Emphasis added.)

At p. 163:

"In summary, compensation is an equitable monetary remedy which is available when the equitable remedies of restitution and account are not appropriate. By analogy with restitution, it attempts to restore to the plaintiff what has been lost as a result of the breach, i.e., the plaintiffs loss of opportunity. The plaintiffs actual loss as a consequence of the breach is to be assessed with the full benefit of hindsight. Foreseeability is not a concern in assessing compensation, but it is essential that the losses made good are only those which, on a common sense view of causation, were caused by the breach." (Emphasis added.)

In my view this is good law. Equitable compensation for breach of trust is designed to achieve exactly what the word compensation suggests: to make good a loss in fact suffered by the beneficiaries and which, using hindsight and common sense, can be seen to have been caused by the breach."

75. The decision of the House of Lords in *Target* was reaffirmed by the Supreme Court in *AIB Group (UK) plc v Mark Redler Associates & Co.* [2014] UKSC 58 [2015] AC 1503; see the judgment of Lord Toulson JSC, specifically at [62] to [71].

76. I accept that what was said by Lord Browne-Wilkinson in *Target* applies to the assessment of the equitable compensation payable by Mr Raja for breaches of the fiduciary duties which he owed to the Company as its director during the Relevant Period. So far as the claim is one for damages at common law it seems to me that ordinary principles of compensation apply. In both cases the essential factual question is what sum is required to put the Company into the position in which it would have been if Mr Raja's breaches of duty had not occurred.

77. The answer to this question, on the evidence before me, seems to me to be straightforward. The business of the Company, as explained by Ms Brittain in her evidence, was to trade as an umbrella company, as such companies are known, providing staff to staffing agencies in the medical field. The Company acted as the employer of these staff. As the employer the Company administered the payroll function of the staff provided to the agencies. These staff were the employees of the Company. The Company received from its clients the gross wages payable to these staff, and also charged VAT on these payments. If therefore the Company had been properly run by its directors, including Mr Raja, it would have had the funds available both to account to the Revenue for the PAYE and NIC elements of the gross wages of its employees, and to account to the Revenue for the VAT charged to its customers. Instead virtually all of these funds, which should have been used to account to the Revenue for the Company's tax liabilities, were unlawfully diverted out of the Company in the form of the UCL Funds, by the Known Transfers and the Unknown Transfers. The result is that the Company has been left with a substantial liability to the Revenue which, save for what can be realised in respect of the Company's assets, the Company has no means of discharging. I accept that this situation would not have occurred but for Mr Raja's breaches of his duties, as a de jure and de facto director of the Company, during the Relevant Period.

78. In his submissions to the court at this hearing, both orally and in a skeleton argument which Mr Raja filed for this hearing and in various documents which I have taken as comprising Mr Raja's written evidence for this hearing, Mr Raja did not identify any ground for contesting the Company's case on causation. Mr Raja concentrated his efforts on seeking to demonstrate that the Company did not in fact owe the amount claimed by the Revenue. While Mr Raja's arguments are relevant to the question of quantum, which I will consider shortly, they did not seem to me to affect the principle of the Company's case on causation.

79. I therefore find, on the evidence before me, that by reason of Mr Raja's breaches of his duties as a director of the Company, as found in the First Judgment, the Company has suffered a loss; being the liability which the Company now has to the Revenue for unpaid PAYE, NIC and VAT, and such penalties and interest as the Revenue have applied to the unpaid tax. On this basis I find that the Company is entitled to be paid, as equitable compensation and/or damages, the amount of the Company's liability to the Revenue.

80. This leaves the question of quantum. What is the amount of the Company's liability to the Revenue? In this context Mr Raja sought to demonstrate that the figure in the Revenue's updated proof of debt was wrong or, as Mr Raja put matters in his skeleton argument for the hearing, *"made up"*. As I understood Mr Raja's written and oral submissions, there were, essentially, three points taken by Mr Raja. The first point was that if one looked at Mr Siddle's explanation of how the liability for tax had been calculated, the calculation was based on extrapolation from particular dealings of the Company which were far too few in number to offer a reliable basis for the calculation. The second point was that, in a number of cases, the Company had not actually been liable to make payments of PAYE and NIC because it had been dealing with persons operating through companies, as opposed to individuals who were employees of the Company. The third point was that he, Mr Raja, had been prevented from obtaining access to the Company's records, and had not had a fair opportunity to go through the Company's records in order to ascertain for himself what was due from the Company.

81. There are a number of difficulties with these arguments. The first and most fundamental difficulty is that I accept the argument of Mr Brockman that what matters in the current situation is not whether the calculations spoken to by Mr Siddle were correct, but rather what the Company is obliged to accept as its liability to the Revenue in the present case. The Revenue has filed an updated proof of debt in the sum of £35,170,471.98. While, on the available evidence, I would have been willing to find that this was the correctly calculated figure for the quantum of the Company's liability to the Revenue, I accept the submission of Mr Brockman that the Company is not in a position to dispute that figure, and will have to accept the figure in the proof of debt. As such, and independent of the finding which I would have been willing to make as to the correct calculation of the Company's liability to the Revenue, I accept the submission of Mr Brockman that it follows from the Company's acceptance of the figure in the proof of debt that the correct figure for the liability of the Company to the Revenue, and thus the amount of equitable compensation and/or damages which Mr Raja must pay is £35,170,471.98.

82. The second difficulty is that Mr Raja's criticisms of the Revenue's calculations were far too vague and unparticularised to provide the basis of any reliable challenge to the Revenue's figure, either in its original amount or as updated in the most recent proof of debt. Mr Raja produced copies of bank statements which, so he said, illustrated that the

Company was making payments to companies, as opposed to paying wages to individuals which were subject to PAYE and NIC. This did not seem to me to provide any answer to the point that the Company failed to account for the VAT which it charged to its clients. In relation to the payment of wages to employees, the evidence was far too vague to satisfy me that, in relation to some or any cases, there was no obligation to account for PAYE and NIC. I am not satisfied that there were any such cases.

83. The third difficulty is that Mr Raja was a director of the Company throughout the Relevant Period and, as I have found in the First Judgment ([J/152-J/153]), the controlling mind of the Company and architect of the removal of the UCL Funds from the Company. I am unable to accept that Mr Raja does not have the means to put forward a properly particularised case on what he says is due from the Company to the Revenue. In this context I find that the real difficulty confronting Mr Raja is that any engagement with the detail of the sums due from the Company to the Revenue would oblige Mr Raja to acknowledge that, under his directorship of the Company, millions of pounds of what should have been public funds were diverted out of the Company for the benefit of various third parties, including Mr Raja.

84. I note that what I have said above largely reflects my reasoning and my findings which can be found in the First Judgment, at [J/117-J/134] and [J/152-J157]. I repeat that reasoning and those findings.

85. In terms of giving credit for realisations made in respect of the Company's assets, I accept the evidence of Ms Brittain in this respect, in her eighth and tenth witness statements. Accordingly, I find that the figure which should be credited for realisations of assets, in relation to Mr Raja, is £13,358,938.

86. In conclusion, I find that Mr Raja is liable to pay equitable compensation and/or damages to the Company, for breach of his duties as director of the Company, in the sum of £21,811,531.93.

87. For the sake of completeness I should add that Mr Raja's case for this hearing included a number of criticisms of the conduct of the Revenue and the liquidators of the Company and, in particular, Ms Brittain. Some of these criticisms reflected Mr Raja's previous criticisms of the Revenue and the liquidators; being criticisms which were made at the First Hearing. The criticisms also included Mr Raja's criticisms of the search operation mounted by the Revenue. So far as these criticisms were raised at the First Hearing, I reject them for essentially the same reasons as I have given in the First Judgment, in particular at [J/125] and [J/133-J/134]. In relation to the criticisms which I dealt with at [J/133-J/134], it seems to me that the position is the equivalent position to that which existed at the First Hearing; namely that the criticisms are not relevant to what I have decide in this hearing. So far as Mr Raja's criticisms of the conduct of the Revenue and the liquidators go beyond those made at the First Hearing, and to the extent that they have not been dealt with earlier in this section of this judgment, I do not think that they assist Mr Raja, in relation to the questions of causation and quantum which I have to decide in this hearing.

<u>The claim against Mr Cervenak</u>

88. As I have said, in the First Judgment I made no findings against Mr Cervenak, beyond the fact that he was a director of the Company between 10th September 2019 and 15th

February 2020. During this period Mr Cervenak was the registered director of the Company. I am not asked to find that Mr Cervenak was a de facto director of the Company during any other period.

89. The duties which Mr Cervenak is said to have owed to the Company are pleaded in paragraph 58 of the Re-Amended Particulars of Claim, and are the same duties as were owed by Mrs Nisa and Mr Raja, in their capacities as directors of the Company. I accept, and find that Mr Cervenak owed these pleaded duties to the Company while he was a director of the Company.

90. I have considered the content of the fiduciary duties which were owed by Mr Cervenak in the First Judgment; see [J92-J/97]. In addition to the authorities which I there considered, Mr Brockman drew my attention to the following statements of the duties of directors. *In Re Barings plc (No. 5)* [1999] 1 BCLC 433 Jonathan Parker said this, at 489:

> *"(i) Directors have, both collectively and individually, a continuing duty to acquire and maintain a sufficient knowledge and understanding of the company's business to enable them properly to discharge their duties as directors."*

91. Mr Brockman also drew my attention to *Lexi Holdings plc (In Administration) v Luqman* [2009] EWCA Civ 117 [2009] BCC 716. In his judgment in that case, Sir Andrew Morritt C confirmed that the duties of directors include duties to safeguard assets and, for that purpose, to take reasonable steps to prevent and detect fraud and other irregularities. As the Chancellor said, at [37]:

> *"37. In relation to the duty of a director counsel accepted that the judge rightly referred in [31]–[34] to the judgment of Jonathan Parker J. in Re Barings Plc (No.5); Secretary of State for Trade and Industry v Baker (No.5) [1999] 1 B.C.L.C. 433 and of the Court of Appeal in Re Westmid Packing Services Ltd; Secretary of State for Trade and Industry v Griffiths (No.3) [1998] B.C.C. 836 in relation to the duties of directors to safeguard the assets of the company and for that purpose to take reasonable steps to prevent and detect fraud and other irregularities."*

92. I bear this additional guidance in mind in considering both the content of the duties owed by Mr Cervenak while he was a director of the Company, and in terms of the question of whether he breached those duties.

93. In terms of breach of the duties owed by Mr Cervenak, the Company's case is pleaded in paragraphs 67 and 68 of the Amended Particulars of Claim. I have already set out paragraph 68 of the Amended Particulars of Claim but, for ease of reference, I set out paragraph 67, and repeat paragraph 68, as follows:

> *"67. Similarly, Mr Cervenak was in breach of the fiduciary, statutory and common law duties pleaded at paragraph 58 above and/or in breach of trust in causing or permitting:*
>
> *(a) The Known Transfers referred to at paragraph 3332 that were made when he was a de jure director, which amounted to the misappropriation and misapplication of at least £4,711,181.37 of the UCL Funds; and*
>
> *(b) The Unknown Transfers made by UCL when he was a de jure director.*

> *68. Further or alternatively, Mrs Nisa and Mr Raja at all material times, and Mr Cervenak when he was a de jure director, were each in breach of the fiduciary, statutory and common law duties pleaded at paragraph 58 above, in that they: (a) failed to account to HMRC for the tax that UCL owes HMRC; and/or (b) caused or permitted UCL to trade without making provision for such tax liabilities to HMRC, as set out above."*

94. The evidence of Ms Brittain, which I accept, is that during the period when Mr Cervenak was a director of the Company, the Company incurred liabilities to the Revenue in respect of PAYE, NIC and VAT in the sum of £9,931,823.28. I refer back to my findings in the First Judgment as to the movement of the UCL Funds out of the Company, being funds which should have been used to discharge the liabilities of the Company to the Revenue. So far as Mr Cervenak was concerned, there is no evidence that he did anything to prevent the movement of the UCL Funds out of the Company during his tenure as director of the Company. At the First Hearing Mr Raja contended that the movement of the UCL Funds out of the Company was all part of an investment scheme orchestrated by Mr Cervenak, Mr Ali and Ms Bogdanova, with Mr Raja as the unwitting dupe of this scheme; see [J/128]. I was not persuaded of this contention at the First Hearing, and there was no further evidence adduced by Mr Raja at this hearing to support this contention. On the evidence before me at this hearing, I find that Mr Cervenak did nothing, in his role as a director of the Company, to prevent the movement of the UCL Funds out of the Company.

95. On the basis of this inactivity, as opposed to any activity on the part of Mr Cervenak, it seems clear to me, and I so find, that Mr Cervenak was in breach of his duties as a director of the Company in the manner alleged in paragraphs 67 and 68 of the Amended Particulars of Claim. As such, and subject to questions of causation and quantum, Mr Cervenak has a liability to pay the Company equitable compensation and/or damages in respect of these breaches of duty.

96. In terms of causation the Company's case is that it is entitled to be compensated in the amount of unpaid PAYE, NIC and VAT which the Company incurred during the period when Mr Cervenak was a director of the Company. The evidence of Ms Brittain in her eighth witness statement is that this sum was £9,931,823.28. I accept this evidence, and I accept the Company's case on causation. In terms of quantum I accept that the sum for which Mr Cervenak should be held liable is this sum of £9,931,823.28, subject to credit being given for one of the Company's assets which was purchased during this period and has been sold at auction. The asset in question is Forester House, which was one of the Properties which was purchased using UCL Funds. The figure to be credited for Forester House is, I find, £1,541,000. Applying this credit, I find that the figure for which Mr Cervanek is liable is £8,390,823.28.

97. In conclusion, I find that Mr Cervenak is liable to pay equitable compensation and/or damages to the Company, for breach of his duties as director of the Company, in the sum of £8,390,823.28.

<u>The claim against Dynamic</u>

98. Dynamic is liable to pay equitable compensation to the Company in respect of the knowing receipt by Dynamic of UCL Funds; see [J/183]. The only question which remains to be resolved is the quantum of this compensation.

99. The editors of Lewin on Trusts (20th Edition) identify the nature of liability for knowing receipt in the following terms, at 42-091:

> *"The liability is to make good to the trust or company whose property has been transferred in breach of trust the money, or the value of the property, which has been received by the defendant, with interest. In general a trustee who distributes trust property in breach of trust will be personally liable to restore the property, and may be held liable to pay the value of the property at the date of misapplication or, if greater, the value of the property at the date of judgment or when it would sooner have been sold in the proper administration of the trust. The recipient is subject to custodial duties which are the same as those voluntarily assumed by express trustees, and the recipient's core duty is to restore the misapplied trust property."*

100. The quantification of this liability in the case of Dynamic is a straightforward process. In terms of the UCL Funds, I have already found that Dynamic received the sum of £16,032,303.17 directly from the Company, and the further sum of £2,187,418 indirectly; see [J/52]. That is the sum which Dynamic is liable to make good to the Company, subject to any realisations which fall to be credited against these sums. In the case of Dynamic the evidence of Ms Brittain in her eighth witness statement is that the sum of £784,880.43 has been recovered from a Santander Bank account in the name of Dynamic, and thus falls to be credited against the sums received by Dynamic by way of UCL Funds. Mr Brittain also identifies what she refers to as return credits, in the sum of £31,214.00 which also fall to be credited against the sums received by Dynamic. I accept the evidence and calculations of Ms Brittain as to the sums which fall to be credited against the amounts received by Dynamic by way of UCL Funds. The final figure calculated by Ms Brittain for the quantum of Dynamic's liability for knowing receipt is £17,403,626.74. I accept Ms Brittain's calculation of this figure, and I find that it represents the sum which Dynamic is liable to make good to the Company by reason of Dynamic's knowing receipt of the UCL Funds which, as I found in the First Judgment, Dynamic received, directly and indirectly, from the Company.

101. I therefore conclude that Dynamic is liable to the Company, in respect of its knowing receipt of the UCL Funds identified in [J/52], in the sum of £17,403,626.74 by way of equitable compensation.

Universal Real

102. The position is the same in relation to Universal Real. It is also liable to pay equitable compensation to the Company in respect of the knowing receipt by Universal Real of UCL Funds; see [J204]. I have cited above the extract from Lewin which explains how equitable compensation for knowing receipt is to be calculated.

103. The quantification of this liability in the case of Universal Real is, again, a straightforward process. In terms of the UCL Funds, I have already found that Universal Real received the sum of £1,933,430.22 directly from the Company, and the further sum of £1,723,895.44 indirectly through Dynamic; see [J/52-J/53]. These are the sums which Universal Real is liable to make good to the Company, subject to any realisations which fall to be credited against these sums. In addition to this Ms Brittain gives evidence, in paragraph 53 of her eighth witness statement, of certain further sums which have accrued to the benefit of Universal Real. I accept this evidence, and find that these further sums

should also be brought into account as part of Universal Real's liability to pay equitable compensation.

104. A number of the Properties were purchased in the name of Universal Real, with the consequence that there is quite a high level of realisations to be credited against the sum for which Universal Real would otherwise be liable by way of equitable compensation. The sum to be credited includes both Properties which have been sold, and the purchase price of Properties which have not yet been sold. In terms of sums received by Universal Real and realisations made, the relevant calculations are in Ms Brittain's eighth witness statement. The total of the UCL Funds received by Universal Real, together with rent from the Properties, totals £3,811,161.59. The sum to be credited against that total, by way of realisations, is £3,319,828.71. The net sum due is £491,332.88. I accept Ms Brittain's evidence and calculations, and I find that the sum due from Universal Real, by way of equitable compensation for knowing receipt, is £491,332.88.

105. I therefore conclude that Universal Real is liable to the Company, in respect of its knowing receipt of the UCL Funds identified in [J/52-J/53], in the sum of £491,332.88 by way of equitable compensation.

Universal Total

106. The position is also the same in relation to Universal Total. It is also liable to pay equitable compensation to the Company in respect of the knowing receipt by Universal Total of UCL Funds; see [J217]. I refer again to the extract from Lewin, cited above, which explains how equitable compensation for knowing receipt is to be calculated.

107. The quantification of this liability in the case of Universal Total is, again, a straightforward process. In terms of the UCL Funds, I have already found that Universal Total received the sum of £2,231,000 indirectly through Dynamic; see [J//53]. I have also found that Universal Total received a VAT refund, on Properties purchased in its name using UCL Funds, in the sum of £374,276.90; see [J/53]. In relation to this latter sum I note that Ms Brittain, in her eighth witness statement, gives this latter sum as £360,221.61. As Ms Brittain's evidence was not challenged in this respect, I take the sum of £360,221.61 as the correct figure to use as the VAT refund. The sum which Universal Total is liable to make good to the Company is therefore £2,591,221.61, subject to any realisations which fall to be credited against this sum.

108. Ms Brittain's evidence in her eighth witness statement is that there was one Property purchased in the name of Universal Total. The Property in question is Forester House. Ms Brittain ascribes a value to this Property, to be credited to Universal Total, of £1,600,000. As I have mentioned earlier in this judgment, Forester House has recently sold at auction for £1,541,000. I therefore find that the sum to be credited to Universal Total, in relation to Forester House, is the figure of £1,541,000.

109. Beyond this, Ms Brittain also gives evidence, in paragraph 64 of her eighth witness statement, that a further Property was purchased using UCL Funds held by Universal Total, even though the Property in question was not registered in the name of Universal Total. Ms Brittain says in her evidence that Universal Total should be given credit for the purchase price of this Property, which is known as 29 East Street. The relevant figure spoken to by Ms Brittain is £241,233.26. I accept this evidence of Ms Brittain.

110. Setting off the above realisation figures against the sum received by UCL, the net result is a figure of £808,988.35. I find that this is the sum due from Universal Real, by way of equitable compensation for knowing receipt.

111. I therefore conclude that Universal Total is liable to the Company, in respect of its knowing receipt of the UCL Funds identified in [J/53], in the sum of £808,988.35 by way of equitable compensation.

Conclusion

112. In summary, my conclusions as to the liability of the relevant remaining Defendants in the action are as follows:
    (1) I find that Mr Raja is liable to pay equitable compensation and/or damages to the Company, for breach of his duties as director of the Company, in the sum of £21,811,531.93.
    (2) I find that Mr Cervenak is liable to pay equitable compensation and/or damages to the Company, for breach of his duties as director of the Company, in the sum of £8,390,823.28.
    (3) I find that Dynamic is liable to the Company, in respect of its knowing receipt of UCL Funds, in the sum of £17,403,626.74 by way of equitable compensation.
    (4) I find that Universal Real is liable to the Company, in respect of its knowing receipt of UCL Funds, in the sum of £491,332.88 by way of equitable compensation.
    (5) I find that Universal Total is liable to the Company, in respect of its knowing receipt of UCL Funds, in the sum of £808,988.35 by way of equitable compensation.

113. There is also a claim for compound interest on the sums for which the relevant Defendants are liable. I will consider the question of interest when I come to consider any other matters arising in relation to the order to be made consequential upon this judgment.

114. As against Mrs Nisa I will make an order staying the action against her pursuant to Section 285(1) of the Insolvency Act 1986. As against each of the Seventh and Eighth Defendants I will make an order dismissing the claims against them, with no order as to costs.

115. I will hear the parties further, as necessary, to resolve any other matters arising as to the terms of the order to be made consequential upon this judgment.