IN THE HIGH COURT OF JUSTICE **Nuetral citation [2022] EWHC 3562 (Ch)**
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
BUSINESS LIST (ChD) **Claim No. BL-2019-BHM-000067**

Before His Honour Judge Rawlings sitting as a High Court Judge

B E T W E E N :

NORTHAMBER PLC

Claimant

- and -

(1) GENEE WORLD LIMITED (In Liquidation)

(2) MR RANJIT SINGH

(3) INTERACTIVE EDUCATION SOLUTIONS LIMITED

Defendants

Hearing dates 18-27 October 2022
Draft judgment circulated 16 January 2023
Judgment handed down 3 March 2023

Representation:
Claimant – Mr Falkowski and Kyle Leuona
First Defendant- unrepresented
Second Defendant – Mr Brown
Third Defendant – Mr Skeate

BACKGROUND

1. The Claimant, Northamber PLC ("Northamber") is a distributor of information technology equipment in the UK. It distributes many different brands of IT equipment to IT resellers.

2. Interactive Education Limited ("IEL") was incorporated in September 1999. Its business was reselling various brands of IT equipment, to schools and other educational establishments in the UK. The Second Defendant, Ranjit Singh ("Mr Singh") was the director and his wife, Mrs Mandeesh Kaur ("Mrs Kaur") the secretary of IEL.

3. The First Defendant, Genee World Limited ("Genee") was incorporated in September 2005, and started trading in March 2006. Mr Singh and Mrs Kaur were appointed directors on 31 March 2006. Genee created its own brand of IT equipment (principally AV displays manufactured by Hitevision, a Chinese company) which Genee imported into the UK to sell ("Genee World Products"). Genee also supplied Genee World Products to foreign buyers. Mrs Kaur resigned as a director of Genee on 12 November 2015.

4. The Third Defendant, Interactive Education Limited ("IES") was incorporated in December 2006, Balbir Singh, Mrs Kaur's brother was appointed as a director of IES on 27 December 2006. Mrs Kaur was appointed company secretary of IES on 31 May 2007 and on 31 January 2008 Balbir Singh resigned and was replaced by Mr Singh, as sole director of IES.

5. On 12 October 2011 IEL was placed into creditors voluntary liquidation and in November 2011 IES commenced trading (having been dormant up to that point) carrying on the business formerly carried on by IEL, Mrs Kaur was appointed a director of IES on 10 November 2011 and Mr Singh resigned as its director. A substantial proportion of the IT equipment that IES bought and sold were Genee World Products.

6. Northamber and Genee entered into two agreements. The first agreement was entered into in March 2016, under that agreement Genee appointed Northamber as a distributor of its Genee World Products in the UK ("Reseller Agreement"). On 13 July 2017, Northamber entered into what was termed an exclusivity agreement with Genee ("the Exclusivity Agreement"). In brief, the Exclusivity Agreement provided for Northamber to become the 100% exclusive source for all Genee World Products in the UK effective from 1st July 2017, save for four named resellers to whom Genee was entitled to continue to sell directly ("the Excluded Accounts").

7. The Exclusivity Agreement was to last from 1 July 2017 to 31 December 2018. The agreement provided that it would automatically renew, from year to year in perpetuity from each January, starting in January 2019, unless terminated on at least 90 days' notice to end at a year end. The Exclusivity Agreement was stated to be supplemental to the existing Reseller Agreement, but in the event of a conflict between the two agreements, the terms of the Exclusivity Agreement were to prevail.

8. The provisions of the Exclusivity Agreement included provisions for :

    a. A minimum order quantity per annum ("MOQ") starting from 1 January 2018, of £4 million, which Northamber was to endeavour to achieve;
    b. Genee and Northamber would co-fund the employment of four members of Northamber staff who would make telesales to resellers of Genee World Products in the UK;
    c. Genee and IES would supply Northamber with a list of their outstanding sales opportunities as at 1 July 2017;
    d. Northamber would endeavour to maintain 10 days of Genee World Products in stock at its warehouse at average run rates;
    e. Northamber would be entitled to a 1% early payment discount if it paid for any purchases from Genee within 7 business days of invoice;
    f. Genee gave Northamber the right to deduct any amount owed by IES to Northamber from monies owed by Northamber to Genee, if IES was more than 7 working days late in paying Northamber's invoices to IES;
    g. breach of the exclusivity provisions of the Exclusivity Agreement by Genee gave Northamber the right to receive from Genee in compensation, 25% of Northamber's lost revenue; and
    h. Genee would send annual audited accounts to Northamber and Northamber had the right to audit Genee's records within working hours should it believe its exclusivity was not being honoured by Genee.

9. Genee and IES both had confidential invoice discounting Agreements with LBCF. Pursuant to those Agreements, LBCF advanced to Genee/IES 85% of the value of invoices assigned to it, with the balance of 15% (less LBCF's charges and fees) being paid to Genee/IES by LBCF, when the invoice was paid. Between December 2017 and February 2018: (a) LBCF's credit insurer (AIG) reduced the credit insurance that it provided for debts owed by Northamber to Genee, from £277,000 to nil; (b) LBCF substantially ceased to provide funds to Genee and IES; (c) Hill Dickinson, LBCF's solicitors gave notice to Northamber that Genee had assigned to it the benefit of Genee's invoices to Northamber; and (d) LBCF terminated its agreement with IES. Quite why LBCF took the steps that it did take between December 2017 and February 2018, is a matter of dispute between the parties.

10. By email dated 27 April 2018, Northamber wrote to Genee complaining of continuing breaches of the Exclusivity Agreement.

11. By letter dated 25 July 2018, Genee notified Northamber that Genee was terminating the Exclusivity Agreement. Two bases for termination were advanced, namely that (a) Northamber had failed or would fail to achieve the MOQ of £4 million for 2018 and (b) Northamber had failed to maintain 10 days' worth of Genee World Products for every product line. Northamber did not accept that it had committed either breach and by letter dated 2 August 2018 made it clear that the letter of termination was not accepted and Northamber were treating the Exclusivity Agreement as still in force and required Genee to comply with its obligations thereunder. The letter went on to allege that Genee had been acting in breach of the Exclusivity provisions by selling direct to UK customers and gave notice pursuant to clause 9.2 that Northamber required Genee to provide all necessary facilities and access so that Northamber could carry out an audit of Genee. Genee was asked to confirm by return that it would give such access. The letter sought

immediate confirmation, amongst other matters that Genee would desist from selling directly with any resellers, in the UK, that Genee would provide a date and time within the next five days for an audit to be carried out by Northamber and that the purported notice of termination was withdrawn with Genee accepting that the Exclusivity Agreement had not been brought to an end.

12. There was no response from Genee to that letter and on 15 August 2018 Northamber issued proceedings against Genee, Mr Singh personally, and IES.

13. On 10 September 2018, Northamber obtained an injunction, granted by Garnham J, requiring Genee to refrain from selling Genee World Products to resellers in the UK (other than to the Excluded Accounts and Northamber) and to provide facilities for Northamber to carry out an audit of its accounts to determine what sales had been made in breach of the Exclusivity Agreement ("the Injunction").

14. On 2 October 2018, Genee made an unsuccessful application to discharge that part of the injunction which required it to provide facilities for Northamber to carry out an audit.

15. On 12 November 2018, Genee was placed into creditor's voluntary liquidation.

16. On 16 January 2020, Mr Singh was fined £25,000 for contempt of court in breaching the Injunction by: (a) failing to provide to Northamber, by 9 am on 25 October 2018 Genee's Sage electronic accounting data; and (b) failing to provide to Northamber, within 14 days of 10 September 2018, an audited account of Genee's sales since 12 July 2017, per seller per month.

THE CLAIMS

17. The Claimant Northamber PLC ("Northamber") claims against:
    (a) Genee for breach of the Exclusivity Agreement. Northamber says that Genee sold Genee World Products to entities in the UK (other than Northamber and the Excluded accounts) in breach of the Exclusivity Agreement and is liable to compensate Northamber at the rate of 25% of revenue lost by Northamber as a result. Judgment on liability for breach of contract by Genee was entered against Genee in January 2019. Genee was placed into creditors voluntary liquidation on 12 November 2018 and the liquidators have accepted a proof of debt in the sum of £1,634,729.95 from Northamber. Genee was not represented at trial before me.
    (b) Mr Singh as sole director and shareholder of Genee for inducing Genee to breach the Exclusivity Agreement and conspiracy, acting in concert with the Genee and IES; and
    (c) IES for inducing Genee to breach the Exclusivity Agreement and conspiracy, acting in concert with the Genee and Mr Singh.

18. Mr Singh and IES, whilst accepting that Genee did sell Genee World Products to resellers based in the UK (other than Northamber and the Excluded Accounts) between 1 July 2017 and 12 November 2018, when Genee went into creditors voluntary liquidation, say that such sales did not breach the Exclusivity Agreement because:

a. the Exclusivity Agreement provided that the period from 1 July 2017 to 31 December 2017 was a transition period during which period Genee's customers would be transferred to Northamber and during this period, Genee was entitled to continue to supply those of its customers who had not yet transferred to Northamber. So that Northamber's exclusivity period would only start on 1 January 2018; and/or
b. from at least January 2018, Northamber failed to pay Genee (or its assignee LBCF) in accordance with the agreed credit terms and thereby breached the Exclusivity Agreement entitling Genee to not comply with the exclusivity provisions of the Exclusivity Agreement; and/or
c. it was necessary for Genee to supply entities in the UK other than Northamber and the Excluded Accounts because Northamber from January 2018 onwards: (i) was not placing sufficient orders with Genee to enable it to discharge its outgoings; and (ii) had ordered insufficient stock from Genee to supply purchasers in the UK, Genee was therefore justified, in any event, in supplying resellers in the UK in order to survive, even if such supplies did constitute a breach of the Exclusivity Agreement. Genee is entitled therefore to rely upon the defence of justification and is not therefore liable for any breach of the Exclusivity Agreement; and/or
d. at a meeting on 27 March 2018 at Oxford ("the Oxford Meeting") Genee and Northamber agreed that the Exclusivity Agreement was not working for either party and should be terminated. Pursuant to this agreement, Genee was entitled to supply resellers in the UK, in particular (but not restricted to) with stock that Genee agreed at the Oxford Meeting to buy back and did buy back from Northamber after the Oxford Meeting; and
e. Northamber agreed, in February 2018 that, in consideration of Genee allowing it to set off monies owing by IES to Northamber against monies owing by Northamber to Genee, that Northamber would recommence supplying IES on credit, but Northamber breached that agreement by then refusing to supply IES, entitling Genee to supply IES direct.

19. Northamber say:
a. there was no transition period, Northamber's exclusivity started on 1 July 2017;
b. Northamber's credit terms were 45 days from delivery, save for a large delivery which Northamber agreed to take in December 2017 when the agreed credit terms were 66 days from 13 December 2018. Northamber paid Genee within those credit terms;
c. having taken delivery of a large order from Genee in December 2017, Northamber had around 55 days stock of Genee World Products at average run rate which was well in excess of the 10 days stock at average run rate which the Exclusivity Agreement provided for Northamber to endeavour to maintain. Northamber was unable to sell that stock at least in part because Genee were selling direct to resellers in the UK in breach of the Exclusivity Agreement. Genee was not therefore justified in selling in breach of the Exclusivity Agreement;
d. at the Oxford Meeting Northamber raised the fact that Genee was breaching the Exclusivity Agreement and sought to obtain Mr Singh's Agreement to abide by its terms. Northamber say that at the meeting Mr Singh told Northamber that he would liquidate Genee World and incorporate a new company to trade in its place if Northamber tried to enforce the Exclusivity Agreement. This is, says Northamber, what Mr Singh arranged to do. There was no agreement that the Exclusivity Agreement was not working and should be terminated; and

e. Northamber set off that part of the debt owed to it by IES which was more than 7 days overdue against the debt it owed to Genee as it was entitled to do under the Exclusivity Agreement, there was no agreement that it would recommence supplying IES on credit.

20. Mr Singh says that, even if Genee breached the Exclusivity Agreement he is not liable for inducing it to do so or conspiring by lawful or unlawful means to injure Northamber because:
    (a) Mr Singh believed that Genee was entitled to supply UK entities other than Northamber and the Excluded Accounts after February 2018 (even if in fact it was not entitled to) and did not therefore believe that Genee would breach the Exclusivity Agreement by doing so (it being a necessary element of the tort of inducing a breach of contract that Mr Singh believed that Genee would breach the Exclusivity Agreement);
    (b) at all times Mr Singh acted as director of Genee, within the scope of his authority and in accordance with the duties that he owed to Genee and he cannot therefore be liable for inducing Genee to breach the Exclusivity Agreement; and
    (c) Mr Singh denies the allegations of lawful and unlawful means conspiracy with Genee and IES.

21. IES says that even if Genee breached the Exclusivity Agreement it is not liable for inducing it to do so or conspiring by lawful or unlawful means to injure Northamber because:
    (a) it denies that Mr Singh exercised any control over it;
    (b) it denies knowing that any goods supplied to IES by Genee were supplied in breach of the Exclusivity Agreement (because Mr Singh who did know its exclusivity terms did not control IES and Mrs Kaur who did control IES did not know what the exclusivity terms of the Exclusivity Agreement were);
    (c) it denies that it, by its actions, in ordering Genee World Products from Genee, induced Genee to breach the Exclusivity Agreement;
    (d) if it did induce Genee to breach the Exclusivity Agreement, then it relies upon the defence of justification; and
    (e) it denies engaging in a lawful or unlawful means conspiracy with Genee and Mr Singh.

REPRESENTATION

22. Northamber were represented by Mr Falkowski and Mr Lecuona.

23. Genee did not attend the trial, Northamber's proof of debt having been admitted in the sum of £1,634,729.95 in the liquidation of Genee

24. Mr Singh was represented by Mr Brown.

25. IES was represented by Mr Skeate

THE ISSUES

26. Although Mr Brown for Mr Singh and Mr Skeate for IES were able to agree a list of 9 issues for me to consider, they were unable to agree that list with Mr Falkowski for Northamber.

27. Mr Falkowski suggested that I should decide 10 issues which were not agreed by Mr. Brown/Mr Skeate. As far as the remaining 9 issues are concerned there was some difference in wording between the wording proposed by Mr. Brown/Mr Skeats and the wording proposed by Mr Falkowski, but they were broadly agreed.

28. In my judgement the 10 issues proposed by Mr Falkowski, which were not agreed by Mr. Brown/Mr Skeate, should be dealt with as part of the remaining 9 issues, which are largely agreed, rather than as separate issues, namely:
    a. whether Mr Singh ever controlled IES after Mrs Kaur became its sole director, on 10 November 2011 and whether Mrs Kaur was ever a personal assistant to Mr Singh as director of Genee (Mr Falkowski's issues 1 and 2) should be dealt with as part of issue 7 (a) and (b) below, because the issue of who controlled Genee and IES and to what extent Mrs Kaur was aware of what was going on in Genee's business is relevant to the question of whether IES and/or Mr Singh induced Genee to supply goods to IES and what Mrs Kaur knew about the Exclusivity Agreement (issue 7 (a) and (b) below) ;
    b. why did LBCF freeze Genee's confidential invoice discounting ledger (Falkowski's issue 3) should be dealt with as part of issue 7 (h) below because LBCF freezing payments to Genee under Genee's confidential invoice discounting Agreement with LBCF forms part of Genee's justification for selling Genee World Products to IES and other UK resellers, after LBCF froze payments to Genee;
    c. why LBCF put a block on IESs' ledger (Mr Falkowski's issue 4) should also be dealt with as part of issue 7 (h) below because IES says that LBCF blocking its ledger, forms part of its justification for buying Genee World Products from Genee after February 2018;
    d. Whether Genee supplied Genee World Products, in breach of the Exclusivity Agreement directly to IES and to other entities after 1 July 2017 and if so until when (Mr Falkowski's issues 5-8) falls within the ambit of issue 4 below; and
    e. what was the total value of orders that should have been put through Northamber, but were not, after 1 July 2017 and what loss did Northamber suffered as a result (Mr Falkowski's issues 9 and 10) should be dealt with as part of issue 9 below (what, if any loss did Northamber suffer as a result of any inducement by Mr Singh and/or IES to Genee to breach the Exclusivity Agreement or conspiracy between Genee and/or Mr Singh and/or IES?).

29. All counsel agree that I need to determine the following 9 issues (where different wording has been proposed by Mr Brown and Mr Skeate on the one hand and Mr Falkowski on the other hand I have chosen between the competing formulations). I have changed the order in which counsel suggested that I should determine those 9 issues:
    1. Was Northamber in breach of the Exclusivity Agreement in (a) failing to pay Genee's invoices in accordance with the agreed terms (b) exceeding the limit on credit insurance for Northamber's debt (c) failing to pay sums outstanding in excess of the LBCF limit within 7 days (d) the stock of Genee World Products it was holding; and/or (e) attempting to set off sums.
    2. Was it agreed at the Oxford Meeting that the Exclusivity Agreement would be terminated?

3. Was the Exclusivity Agreement terminated as a result of Genee's letter dated 25th July 2018?
4. Was Genee in breach of the Exclusivity Agreement in relation to any of the supplies of Genee World Products it made directly to IES and to other UK entities after 1 July 2017 and if so until when?
5. What was the reason/cause of Northamber not supplying IES with goods in February 2018? Was this factually incorrect?
6. Did Northamber supply IES with Genee World Products after February 2018?
7. In relation to Northamber's allegations of inducing a breach of contract:
    (a) what knowledge did IES have of the terms of the Exclusivity Agreement?
    (b) was there an act of inducement? Did Mr Singh or IES do any act to procure or induce Genee to breach the Exclusivity Agreement?
    (c) insofar as Genee was in breach, did Mr Singh act bona fide within the scope of his authority as director and agent of Genee and in accordance with his duties as director of Genee?
    (d) did Mr Singh or IES know or believe that Genee was acting in breach of the Exclusivity Agreement?
    (e) did Mr Singh or IES have an honest belief that placing the order(s) with Genee would not amount to a breach of contract?
    (f) was there 'Blind Eye Knowledge' by IES?
    (g) did Mr Singh or IES have an intention to procure a breach of that contract either as an end in itself, or as a means to an end? and
8. In relation to Northamber's claim for conspiracy:
    (a) did IES combine with Genee and/or Mr Singh?
    (b) did Genee, Mr Singh and/or IES use unlawful means as part of or in furtherance of that combination?
    (c) did Mr Singh act bona fide within the scope of his authority as director and agent of Genee and in accordance with his duties as director to Genee?
    (d) was the purpose of that combination/conspiracy to cause injury to Northamber? and
    (e) if so, was that combination/conspiracy justified?
9. What loss has Northamber suffered as a result of any inducement by Mr Singh and/or IES of Genee to breach the Exclusivity Agreement or conspiracy by Mr Singh and/or IES?

30. Northamber must prove that Genee has breached the Exclusivity Agreement, before either Mr Singh or IES can have any liability to Northamber for inducing that breach of contract or conspiracy to injure Northamber. Issues 1-4 therefore deal with whether, and if so to what extent, Genee breached the Exclusivity Agreement. Issues 5 and 6 deal with the question of whether Northamber supplied IES with goods and if not why not. This is relevant to the question of whether IES is entitled to rely upon the defence of justification to the claims made against it for inducing a breach of contract by Genee and conspiracy to injure Northamber. Issue 7 deals with Northamber's claim against Mr Singh and IES for inducing Genee to breach its contract with Northamber. Issue 8 deals with Northamber's claim against Mr Singh and IES for conspiracy to injure Northamber and finally issue 9 deals with the quantification of Northamber's loss, to the extent that it proves that Mr Singh and/or IES induced Genee to breach its contract with Northamber and/or that they conspired, together with the other defendants to injure Northamber.

FACTUAL WITNESSES

31. I will now set out details of the witnesses who attended trial, the party they appeared for and, by reference to the issues I have identified above, what issues those witnesses dealt with in their witness statements.

Northamber's Witnesses

32. Northamber relied upon witness statements form two witnesses: (a) Alexander Micheal Phillips ("Mr Phillips"); and (b) John Phelim Henry ("Mr Henry").

33. Mr Phillips is now the Managing Director of Northamber, but at all times relevant to Northamber's claim, Mr Phillips was Northamber's director of strategy. Mr Phillips was responsible, on behalf of Northamber for negotiating the terms of the Exclusivity Agreement with Mr Singh (acting for Genee). Mr Phillips's father, David Phillips was the founder of Northamber and in 2017/2018, David Phillips was the Chairman of Northamber, unfortunately David Phillips has since died.

34. Mr Phillips's trial witness statement is dated 7 March 2022. In his witness statement, Mr Phillips deals principally with the following matters:
    a. Northamber's trading relationship with Genee under the Reseller Agreement;
    b. His negotiation of the Exclusivity Agreement with Mr Singh and Mrs Kaur's involvement in those negotiations and her knowledge of the Exclusivity Agreement;
    c. Mr Phillips's meeting with Mr Singh on 5 February 2018; and
    d. the Oxford Meeting between Mr Phillips, Mr Henry and Philip Gaut ("Mr Gaut") for Northamber and Mr Singh and Jeremy Warren ("Mr Warren") for Genee.

35. Mr Henry is and was at all times material to this litigation Northamber's Operations Manager. Mr Henry was not involved in the negotiation of the Exclusivity Agreement, although he says that Mr Phillips consulted him about the drafting of the Exclusivity Agreement. Mr Henry's trial witness statement is dated 7 March 2022. In his witness statement, Mr Henry deals principally with:
    a. the Oxford Meeting;
    b. the connection between Mrs Kaur and Mr Singh/Genee;
    c. his assertion that IES persuaded or induced Genee to breach its contract with Northamber;
    d. the correspondence between Northamber and LBCF and its solicitors and the reasons why he asserts that LBCF withdrew invoice funding from Genee and IES;
    e. stock levels maintained by Northamber;
    f. payments made by Northamber against Genee invoices;
    g. Genee's purported termination of the Exclusivity Agreement on 25 July 2018;
    h. the basis upon which Northamber calculates its loss; and
    i. these proceedings.

Genee's Witnesses

36. Mr Singh was the sole director of IES from 31 January 2008 until 10 November 2011 when he was replaced as sole director by Mrs Kaur. Mr Singh and Mrs Kaur were appointed directors of Genee on 31 March 2006. Mrs Kaur resigned as a director of Genee on 12 November 2015, leaving Mr Singh as the sole director of Genee.

37. Mr Singh's trial witness statement is dated 7 March 2022. In his witness statement, Mr Singh provides evidence on all of the issues which I have identified except those that relate to the actions, knowledge or beliefs of IES

38. Satnam Jakhu ("Mr Jakhu") was employed by Genee from around October 2014 until it went into liquidation on 12 November 2018. Initially Mr Jakhu marketed Genee World Products to resellers but after about 12 months he took on the role of managing the accounts between Genee and various of its resellers.

39. Mr Jakhu's trial witness statement is dated 7 March 2022. In his witness statement, Mr Jakhu deals with:
    a. his initial introduction to Northamber as a reseller of Genee World Products, pursuant to the Reseller Agreement;
    b. the new arrangements with Northamber, from July 2017 under the Exclusivity Agreement (which he says he did not know the full details of, but he explains how he saw things change);
    c. he refers to receiving complaints from resellers that they were unable to get stock from Northamber; and
    d. he says he was instructed, in March 2018, by Mr Warren, Genee's then Operations Manager, who took up that post in October 2017, to contact resellers and sell to them direct.

IES's Witnesses

40. Mrs Kaur has been the sole director of IES from 10 November 2011. Mrs Kaur's trial witness statement is dated 7 March 2022. In her witness statement, Mrs Kaur deals with:
    a. on her case, that she was not aware that Genee had agreed that Northamber would have the exclusive right to purchase Genee World Products in the UK pursuant to the Exclusivity Agreement;
    b. the circumstances surrounding LBCF freezing IES's ledger, so that it could no longer pay its suppliers out of its invoice discounting facility with LBCF;
    c. that IES ordered all Genee World Products from Northamber from 1 July 2017 until the end of February 2018, when she says it was forced to order those products from Genee because Northamber would not supply IES (or not on credit) and IES desperately needed those products to supply to its customers; and
    d. IES did not seek to persuade or induce Genee to supply Genee World Products to IES after February 2018, it simply placed orders with Genee, which Genee accepted.

41. Herpreet Bains ("Mr Bains") was at all material times employed by IES and subsequently was and is employed by IES, initially selling IT products to schools and further education establishments and then as an account manager for schools and further educational establishments in the midlands.

42. Mr Baines's trial witness statement is dated 7 March 2022. In his witness statement, Mr Bains deals with:
    a. his finding out, in July 2017 that Genee was entering into an arrangement for Northamber to act as their "key distributor", with Northamber and that Northamber would hold a large quantity of Genee World Products in its warehouse allowing swifter delivery of those products to IES's customers;

b. his understanding that IES would be transitioning its orders from Genee to Northamber with a launch in January 2018;
c. the relationship with Northamber starting to go wrong in January 2018;
d. Mrs Kaur becoming ill in the first quarter of 2017, and not seeing Mrs Kaur for days or weeks after that;
e. suppliers to IES starting to chase payments in January 2018 and salaries being paid late for January 2018;
f. on 6 February 2018 he was told by a colleague that Northamber were refusing to release orders IES had placed. Mrs Kaur related to him a telephone conversation that she had had with Mr Hall of Northamber about releasing the goods that IES had ordered, from Northamber, Northamber refused to release the goods and thereafter IES started ordering stock from Genee; and
g. in September/October 2018 Mrs Kaur told him that Genee could not supply Genee World Products for any of future orders placed with it by IES.

EXPERT WITNESSES

43. By an order of District Judge Rouine dated 5 October 2021 each party was given permission to rely on evidence from a forensic accountant, with Genee and IES being permitted to share an expert if so advised. The expert forensic accountants were to provide their opinions on the following: (a) any loss sustained by Northamber within clause 9.2 of the Exclusivity Agreement from 1 July 2017 to 31 December 2018; and (b) the loss of profit that Northamber would have enjoyed but for the direct sales by Genee, in breach of the Exclusivity Agreement from 1 July 2017 to 31 December 2018.

44. Northamber instructed Benjamin Leandro of Moore Kingston Smith who produced a report dated 11 April 2022 ("Mr Leandro" and "Mr Leandro's Report"). Genee and IES instructed Adrian Pym of Prime Forensic Accountants who produced a report dated 20 June 2022 ("Mr Pym" and "Mr Pym's Report").

45. Mr Leandro and Mr Pym produced a joint report following a meeting on 18 July 2022 ("the Joint Report").

46. I do not propose at this stage to comment on the content of those reports or the credibility of Mr Leandro or Mr Pym as expert witnesses, I will do so later, so far as necessary, when dealing with the issues on which they expressed their opinions.

FACTUAL EVIDENCE AND CREDIBILITY OF FACTUAL WITNESSES

47. There was a large measure of Agreement between counsel that I should place much greater reliance, in deciding the issues upon contemporaneous documents than on the recollections of the factual witnesses. The evidence of Genee's and IES's witnesses (and their credibility) is of more significance in determining the issues that I need to determine than that of Northamber's witnesses, because Mr Phillips and Mr Henry (Northamber's witnesses) have little direct knowledge of the facts which are relevant to the determination of those issues.

48. I was referred by Mr Brown to the well-known judgment of Leggatt J (as he then was) in **Gestmin SGPS S.A, v Credit Suisse UK Limited and others [2013] EWHC 3560 (comm).**

49. Mr Justice Leggatt's comments concern oral evidence and the fallibility of witnesses memories and how their recollection can be affected by their recalling past events as part of the litigation process, particularly if they have a vested interest in the result. The comments are pertinent in this case where the relevant events happened in 2017/2018 and the principal factual witnesses have a vested interest in the outcome of these proceedings.

50. In paragraphs 15-21 of his judgment Leggatt J said as follows:

> *" 15. An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.*
> *16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.*
> *17. Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event (the very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.. External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).*
> *18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the pasSage of time.*
> *19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a*

tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does or does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

21. It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such questions are misguided in at least two ways. First, they erroneously presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.

22. In the light of these considerations, 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 a 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."

51. I will now set out my conclusions as to the credibility, honesty and reliability of the factual witnesses, all of whom were cross examined at trial, bearing in mind the comments and guidance of Legatt J in ***Gestmin.***

Mr Phillips

52. I consider Mr Phillips to have been an honest witness, he made appropriate concessions, such as his acceptance that he could not say that Mrs Kaur was present at any meeting at which he and Mr Singh discussed the terms of the Exclusivity Agreement.

53. Mr Phillips's evidence as to his understanding of the meaning of the Exclusivity Agreement, as to his discussions and negotiations with Mr Singh regarding the Exclusivity Agreement and as to Mrs Kaur's knowledge and understanding of the Exclusivity Agreement is of limited use to me in resolving the issues that I need to resolve because: (a) the actual meaning of the Exclusivity Agreement, so far as relevant to the issues I have to resolve, is a question of contractual interpretation, for which purpose, details of the negotiations are an impermissible aid to the proper construction of the Exclusivity Agreement; and (b) Mr Singh and Mrs Kaur's genuine belief, at the relevant time as to what the terms of the Exclusivity Agreement meant (and in the case of Mrs Kaur her knowledge of them) are relevant to certain issues, but Mr Phillips cannot provide direct evidence as to what their belief and knowledge was, he can merely give evidence from which their belief and Mrs Kaur's knowledge might be inferred or their assertions as to their beliefs challenged.

54. Mr Phillips was not involved in any communications with LBCF regarding the invoice discounting Agreements between LBCF and Genee/IES and he can only therefore exhibit those communications to his witness statement, nor is he able to directly comment on the state of the account between Genee and Northamber, which was the responsibility of others within Northamber.

55. Mr Phillips is able to give direct evidence as to what was said and agreed at a meeting between Mr Phillips and Mr Singh in Amsterdam on 5 February 2018 and at the Oxford Meeting on 27 March 2018.

Mr Henry

56. I consider Mr Henry to be an honest witness although he had a tendency, when asked questions to speculate about what the answer might be where he did not know what the answer was. I mentioned to him on a few occasions that this was not something he should do.

57. There was very little that Mr Henry could give direct evidence about, he was not involved in: (a) the negotiation of the Exclusivity Agreement, or its operation, on a day to day basis from July 2017; (b) most of the correspondence with LBCF or its solicitors; or (c) paying Genee's invoices or correspondence/Agreements regarding credit allowed by Genee to Northamber. He could give direct evidence of what was said at the Oxford Meeting which he was present at.

58. Large parts of Mr Henry's witness statement consists of his exhibiting documents or communications which he was not involved in at the time and arguing Northamber's case based upon them, rather than providing his own evidence of matters that he has personal knowledge of. For example he: (a) asserted that Northamber had always paid Genee's invoices within the agreed credit periods although he had no personal knowledge of what the agreed periods of

credit were, or when Northamber paid Genee's invoices; (b) exhibited correspondence between Mr Phillips and Mr Singh and argued, based upon it, that there was no transition period; (c) produced correspondence between others and LBCF and argued that it was Genee's fault and not Northamber's that LBCF stopped payments to both Genee and IES. He said this happened because Genee had wrongly sent pro forma invoices to LBCF to advance funds against but arranged for Genee's customers to pay the invoices direct to another account in Genee's name, rather than the trust account into which payments for invoices assigned to LBCF were meant to be paid; and (d) asserted that IES had persuaded or induced Genee to make supplies to it in breach of the Exclusivity Agreement without explaining in his witness statement how IES had done either and without being able to explain at trial the basis upon which he made those assertions (other than that IES had sent purchase orders to Genee).

Mr Singh

59. Mr Falkowski suggested that Mr Singh, in putting Genee into liquidation, was following through on the threat that Mr Phillips and Mr Henry say he made at the Oxford Meeting to liquidate Genee and acquire its business through a "phoenix company", if Northamber sought to enforce the Exclusivity Agreement.

60. Mr Falkowski asked Mr Singh a large number of questions about debts owed to IEL (in liquidation) and Genee (in liquidation) by associated companies. The aim of these questions was to suggest that those associated companies had, by various means, avoided paying money properly due to IEL/Genee in liquidation. Mr Falkowski suggested that this demonstrated a lack of commercial probity on the part of Mr Singh, because Mr Singh managed to avoid associated companies that he owned and/or controlled paying the debts that they owed to IEL and then Genee.

61. Mr Falkowski took Mr Singh to a report by IEL's liquidator which referred to: (a) Sonya and Paul Limited (named after Mr Singh and Mrs Kaur's children) owing £143,000 to IEL; and (b) Genee Solutions India PVT Limited owing IEL £239,000. The liquidator of IEL reported that he was unable to collect either debt.

62. In the case of Genee's liquidation, Mr Singh was taken to an e mail sent by Mr Talbot to the liquidator of Genee in which Mr Talbot asserted that Genee owed IES £232,202.03. In arriving at that figure, Mr Talbot said that IES was entitled to charge Genee rent of £456,860, which the director of Genee (Mr Singh) was satisfied was a fair market rent for the use of part of Unit 3 Pendeford Business Park which offset the aggregate of transfers by Genee to IES of a similar figure. Mr Falkowski put it to Mr Singh that Unit 3 had been purchased for £155,000 and it was therefore difficult to see how (as Mr Talbot asserted) Mr Singh as the director of Genee had been able satisfy himself that £456,860 was a fair market rent for the part of Unit 3 which had been occupied by Genee for 2 years.

63. On the face of it Sonya and Paul Limited and Genee Solutions India avoiding paying the debts that they owed to IEL and IES claiming rent of £456,860 for the occupation of part of Unit 3 by Genee appear to be instances of the creditors of IEL and Genee incurring substantial losses as a result of them illegitimately avoiding paying the debts that they owed to those companies. However those are matters which concern the liquidators of IES and Genee. It is they who have or had a responsibility to pursue sums owed to those companies and it would be unsafe for me to come to any conclusions as to the honesty or commercial probity of Mr Singh, based upon those matters.

64. I am sorry to say however that, for the reasons that follow, I have come to the firm conclusion that Mr Singh was not an honest witness doing his best to assist the court with his honest recollection of events.

65. At the start of his evidence, with the agreement of Mr Falkowski, Mr Brown asked Mr Singh to expand upon paragraph 146 of his witness statement in which Mr Singh says "During the whole time and in all my dealings with all parties including Northamber I acted as a director of [Genee] I was trying to look out for the best interests of [Genee] and protect the business I had started. I did not at any time do anything to undermine [Genee] or to benefit myself. My sole goal was to keep the business afloat in very difficult circumstances." In response to Mr Brown's question, Mr Singh said that, at all times he had acted in the best interests of Genee which he had started in 2005, it was his brainchild. He wanted to control how technology for its teaching products was developed, he was proud of it and upset when it had to go into liquidation. A lot of the resellers were his friends and he thought long and hard before deciding to hand over those resellers to Northamber. This evidence seemed to be aimed at demonstrating that Mr Singh would not have liquidated Genee unless he was forced to and to counter Northamber's assertion that, in putting Genee into liquidation, in November 2018, Mr Singh was making good on a threat that he made at the Oxford Meeting to liquidate Genee and arrange for a phoenix company to take over its business and assets, if Northamber tried to enforce the Exclusivity Agreement. Northamber say this is what happened with G Tech Innovation Limited, a company owned by Mr Singh and of which he is a director taking over and carrying on the business formerly carried on by Genee. I found Mr Singh's evidence unconvincing. It may be that Mr Singh wished to preserve the business of Genee, given the amount of time and effort and presumably money that he had invested in it, for the benefit of himself and his family, but I am not satisfied that he had any particular desire to preserve Genee as a corporate entity.

66. Initially, when asked about who were the shareholders and directors of various companies, Mr Singh often said either that he could not recall or he gave an answer to the "best of my knowledge". In my judgement it is unlikely that Mr Singh could not recall at least whether or not he had been a director or shareholder of these companies.

67. It is part of Mr Singh's case that the Exclusivity Agreement had a transition period between the 1st of July 2017 and the 31st of December 2017 (or at least that he believed that it did) Mr Singh says that, during the transition period Genee's customers would migrate across to Northamber and Genee could continue to supply those customers direct rather than through Northamber, with Genee only supplying its Genee World Products exclusively to Northamber to the exclusion of any other customer in the UK (other than the Excluded Accounts) from 1 January 2018. Genee had, prior to the 1 July 2017, four categories of reseller, platinum, gold, silver and unclassified. The categories depended on the amount of goods that the reseller purchased from Genee. I asked Mr Singh which of Genee's resellers had gone across to Northamber with effect from 1 July 2017, he said the silver customers and perhaps some of the gold but definitely not the platinum resellers. I reject Mr Singh's case, both that the Exclusivity Agreement had a transition period and (if it did not) that he thought it did, for four reasons :

    (a) if only some of Genee's resellers were to be supplied direct by Northamber from 1 July 2017 then some list of those that Northamber would supply immediately or of those that Northamber would not supply immediately, or some means of determining

which ones would and would not be supplied immediately by Northamber would, in my judgment have been agreed. Mr Singh could not say what that means was or point to any list;
(b) there is not, amongst any of the voluminous documents that have been disclosed in these proceedings, any reference to Genee's resellers transferring over to Northamber over a period of time or to any (other than the Excluded Accounts) not doing so immediately on 1 July 2017;
(c) IES was a platinum supplier and yet both Mr Singh and IES say that IES ordered Genee World Products exclusively from Northamber from 1 July 2017; and
(d) clause 1.1 of the Exclusivity Agreement provides that: "Northamber will become the 100% exclusive source for all Genee World Products effective July 1st with no sales by Genee to any reseller or other party in the UK. (a) the only exception to this is for a pre-agreed list of resellers who are under contract and currently unable to be easily swapped across. A list of those resellers will be supplied by Ranjit [Mr Singh] no later than Monday 10 July and will form Appendix A together with the expiry date of those agreements at which time these accounts will be directed to purchase from Northamber. Accounts may be added or removed from this list if mutually agreed by both parties." Appendix A to the Exclusivity Agreement lists the four Excluded Accounts. The meaning of clause 1.1 is clear (that Northamber enjoy full exclusivity for the supply of Genee World Products in the UK from 1 July 2017 (other than the Excluded Accounts) and in my judgment leaves no scope for Mr Singh to genuinely believe that there was to be a transition period between 1 July 2017 and 31 December 2017 when UK customers of Genee (other than the Excluded Accounts) would transition across so that Northamber would only enjoy full exclusivity in supplying UK entities with Genee World Products (other than the Excluded Accounts) from 1 January 2018. In particular, the Exclusivity Agreement makes it clear that the Excluded Accounts are the only exception to Northamber's exclusivity, in the UK, from 1 July 2017.

68. In these proceedings, Mr Singh says that Northamber caused LBCF to withdraw funding from Genee/IES because Northamber failed to pay LBCF within the credit period allowed to it. However, in his defence of proceedings taken against him by LBCF ("the LBCF Proceedings") Mr Singh blamed LBCF for all the losses that Genee incurred as a result of LBCF refusing to advance further funds to Genee under its invoice discounting facility. Mr Singh attempted to explain away those inconsistencies, but in my judgment they cannot be explained away. Either Mr Singh was misrepresenting the position in his defence of the LBCF proceedings or he is misrepresenting the position in these proceedings. For example: (a) paragraph 4 of Mr Singh's LBCF defence in the LBCF Proceedings, he says that the liquidation of Genee was 100% due to LBCF wrongful actions. Mr Singh said, in cross examination that LBCF's actions were a consequence of Northamber not paying LBCF on time, but, if as Mr Singh suggests in these proceedings Northamber failed to pay LBCF on time, then Mr Singh's suggestion in his defence of the LBCF Proceedings, that LBCF were 100% responsible for Genee's liquidation misrepresented the position in those proceedings; and (b) importantly, in these proceedings, Mr Singh asserts that Northamber did not pay its invoices on time and was therefore in breach of the Exclusivity Agreement. In contrast to that, in paragraphs 17, 23 and 53 of Mr Singh's defence to the LBCF Proceedings, Mr Singh asserts that Northamber paid on time every two weeks.

69. In his cross examination, Mr Singh said that entries in Genee's Sage records showing that sales invoices had been raised in the name of IES at the end of September 2018 which had

been deleted from Genee's Sage records, had been entered in error by an employee of Genee. When Mr Singh was asked which employee had entered the sales invoices in error, Mr Singh said it was Kaljit Singh who was a graduate trainee and that Kaljit Singh had come and told him that the entries had been made in error and they had then been deleted. However this explanation is at odds with the explanation that Mr Singh gave to Mr Pym for the same entries being made and then deleted. Mr Pym, in Mr Pym's Report records Mr Singh as having told him that "the first defendant (Genee) routinely raised sale invoices on receipt of a firm order from a customer. This was done to allow tracking of the sales pipeline. The reference in Sage to "deleted SI" related to instances where the supply of the particular product could not be made and therefore the order was cancelled. The Sage ledger was updated by deletions of the original invoice rather than by raising a credit note. Therefore the deleted invoices do not represent sales of products."

70. Mr Pym said that he regarded Mr Singh's explanation to him of a practice of entering a firm sales order as an invoice, as unusual. I asked Mr Pym how many Sage records he had seen over the years and he said it ran into the thousands, I asked him on how many occasions he had seen sale invoices entered in those records which did not represent actual sales, but rather entries made on receipt of a firm order to keep track of the sales pipeline, Mr Pym said that he had never seen this and agreed with me that a better description of the practice that Mr Singh had told him Genee carried on was a "unique practice". I do not accept that the entries in Genee's Sage records showing that sales invoices had been raised in the name of IES at the end of September 2018 which were then deleted were either entered in error as Mr Singh said in cross examination, or as a means of tracking the sales pipeline, on receipt of a firm order as Mr Singh suggested to Mr Pym. I find that those entries represented genuine sales and that Mr Singh made up two conflicting explanations for them (one to Mr Pym and one in cross examination) to cover up the fact that Genee supplied Genee World Products to IES after Garnham J granted the Injunction on 10 September 2018 prohibiting Genee from selling Genee World Products in breach of the Exclusivity Agreement.

71. I find support for the conclusion that I have come to in paragraph 70 above, in paragraph 61 of the witness statement of Mr Bains (IES's witness). Mr Bains says that he told Mrs Kaur that IES's suppliers were asking about a High Court writ issued against IES and that Mrs Kaur told him that Genee could no longer supply IES with future orders, it could only supply orders IES had already placed with Genee. These proceedings were issued against Genee, Mr Singh and IES on 15 August 2018 and the Injunction was granted just under a month later. IES were not represented at the hearing on 10 September, but its solicitors were notified of the Injunction on 11 September 2018. On the balance of probabilities I find that the conversation to which Mr Bains refers took place between him and Mrs Kaur, shortly after the Injunction was granted and not after these proceedings were issued but before the Injunction was granted. I find that because: (a) the proceedings were issued under a month before the Injunction was granted; and (b) it is unlikely that IES's suppliers would find out about the proceedings before the Injunction was granted, but after the Injunction was granted Mr Singh accepts for example that Aldermore who was then providing invoice discounting facilities to Genee found out about the injunction and froze the advance of funds to Genee see paragraph 75 below). The Injunction provided that Genee was immediately from the date of this order and until 31 December 2018 restrained from supplying Genee World Products within the UK to persons other than Northamber or the Excluded Accounts. That injunction did not therefore allow Genee to supply IES with Genee World Products after 10 September 2018 even if IES had ordered them from Genee

before that date, but Mr Bains' reference to his conversation with Mrs Kaur supports the conclusion that Mrs Kaur was proceeding on the basis that this was allowed (or was telling IES's employees that it was) and that therefore Genee did supply Genee World Products to IES after 10 September 2018.

72. On the last day of the trial (meant to be taken up with closing submissions) Genee produced (at my request) copies of a Genee invoice addressed to Capital Link International Trading Limited ("Capital Link") for the supply of 396 55 inch Geneetech screens dated 31 July 2018 and an invoice from Capital Link to NSJ Company Limited (a company based in Vietnam) ("NSJ") dated 21 November 2018. The relevance of these documents was that Mr Pym (Genee and IES's expert) treated sales to Capital Link as non-UK sales (notwithstanding the Capital Link is a company which had its registered office in Cardiff) and therefore not in breach of the Exclusivity Agreement, whereas Mr Leandro (Northamber's expert) treated them as falling within the Exclusivity Agreement, on the basis that they were UK sales. I wanted to see example copy invoices from Genee to Capital Link and from Capital Link to NSJ, for the same consignments, in order to determine whether they shed any light on the question of whether Genee's sales to Capital Link would fall within the terms of the Exclusivity Agreement.

73. Mr Pym records Mr Singh as having explained Genee's sales to Capital Link as follows: (a) all goods went direct from Hitevision, the manufacturers, in China to Vietnam, never entering the UK; and (b) due to the size of the orders, irrevocable letters of credit were used. NSJ proposed using Capital Link to arrange these letters of credit because NSJ was unable to do so and Genee used the letters of credit to obtain credit itself from Hitevision. This explanation suggests that Capital Link were introduced into what were essentially transactions between Genee and NSJ to arrange payment between NSJ and Genee. What I would expect to see, if this was the nature of Capital Links' involvement would be Capital Link making a profit from a fee or charge for arranging that finance.

74. The invoices from Genee to Capital Link and Capital Link to NSJ give rise to two problems, with the explanation that was given by Mr Singh to Mr Pym, namely: (a) the invoice from Genee to Capital Link is one of the invoices which has been deleted from Genee's Sage sales ledger and Mr Singh's case, which I have already rejected at least in relation to invoices addressed to IES, is that these deleted invoices represent sales that never took place; and (b) Genee charged Capital Link, in its invoice dated 31 July 2018 US$401,940 whereas Capital Link charged NSJ US$869,749. Capital Link were therefore applying a markup of over 100% on the price charged by Genee to Capital Link.

75. In cross-examination, Mr Singh confirmed that the invoice addressed by Genee to Capital Link dated 31 July 2018 had been cancelled. He said that this happened because Aldermore, which was providing invoice discounting facilities to Genee at the time froze Genee's bank account as a result of receiving notice of the Injunction granted on 10 September 2018 and the transaction went ahead between the Capital Link and Genee World International Limited instead. Mr Singh also said that, when he gave his explanation to Mr Pym of the involvement of Capital Link (on his case) in the sale of goods to NSJ he had not recalled the Capital Link made such a large profit on what it charged NSJ for the goods, but he said that what Capital Link charged NSJ was up to Capital Link/NSJ.

76. It is possible that the Capital Link's invoice of 31 July 2018 was cancelled, as Mr Singh suggests and for the reasons he suggests. The markup of 100% between what Genee

charged Capital Link and what Capital Link charged NSJ however paints a different picture of Capital Link's involvement than that represented to Mr Pym by Mr Singh. Such a high markup suggests that Capital Link was purchasing goods from Genee and then selling them onto NSJ, as part of its business rather than simply being involved in arranging finance for what were essentially transactions between Genee and NSJ. It seems to me to be unlikely that NSJ would suggest that Capital Link become involved merely to facilitate the provision of letters of credit and thereby accepted a 100% mark up on what Genee charged Capital Link. Whether or not this means that the supplies by Genee to Capital Link fall within the terms of the Exclusivity Agreement is another matter that I will need to consider in due course but, in my judgement, Mr Singh was trying (in telling Mr Pym that Capital Link were involved simply in order to arrange letters of credit for what were essentially transactions between Genee and NSJ) to distance Genee's sale of product to Capital Link from the UK as far as possible and I am satisfied that the explanation Mr Singh gave to Mr Pym misrepresented what in my judgment was the true position and that is that Capital Link was purchasing goods from Genee and then selling them on at a substantial profit to NSJ (rather than simply acting to arrange finance for the purchase by NSJ of goods from Genee).

Mr Jakhu

77. I did not consider Mr Jakhu to be an impressive witness: (a) very little if anything dealt with in his witness statement was a matter of which he had personal knowledge, his witness statement was mainly based on what he had heard from others, who he failed to identify; (b) there were often long periods of silence after he was asked a question and it was unclear whether he was going to answer the question at all; and (c) on a number of occasions he said that he had now forgotten information that is contained in his witness statement, even though his witness statement was only made some 7 months ago and the relevant events took place 4 – 8 years ago.

78. In one respect I do not consider that Mr Jakhu gave honest evidence and that is that he insisted that he had typed his witness statement himself and that all of the words in it were his own words. That cannot however be correct as the witness statement contains a lot of standard wording that Mr Jakhu was taken to but which he insisted was his own wording, which is identical to standard wording in the witness statement of Mr Singh. Also Mr Jakhu uses the abbreviation D1 for Genee, in his witness statement, which is an unlikely abbreviation for a layman to use. Mr Jakhu ought to have conceded that paragraphs in his witness statement which contained what was obviously standard wording were added by someone else. In my judgement, Mr Jackhu had, as Leggett J put it in **Gestmin**, a desire to assist Mr Singh and/or Mrs Kaur and felt that that desire was best served, by insisting that every word of his witness statement was in his own words, when they clearly were not. This manifestation of Mr Jakhu's desire undermines the reliability/credibility of his evidence.

Mrs Kaur

79. Mr Falkowski asked Mrs Kaur, in cross examination about the same associated company debts owed to IEL (in liquidation) and Genee (in liquidation) which he asked Mr Singh about. As with Mr Singh, the aim of these questions was to suggest that those associated companies had, by various means, avoided paying money properly due to IEL/Genee in liquidation which Mr Falkowski suggested demonstrated a lack of commercial probity on

the part of Mrs Kaur as well as Mr Singh. As with the evidence of Mr Singh on these points, it seems to me that these are or were points for the liquidators of IEL and Genee and are not matters that I consider that I can rely on as an indication of any lack of commercial probity on the part of Mrs Kaur .

80. Although I do not suggest that Mrs Kaur's dishonesty was as marked or as prolific as that of her husband, Mr Singh, I do consider that Mr Falkowski was able to demonstrate that Mrs Kaur has previously given dishonest evidence in relation to proceedings taken against her by LBCF and that she was prepared to act with a lack of commercial probity in respect of her dealings with LBCF, this calls into question the honesty and reliability of the evidence she gave in these proceedings.

81. On the 1st of July 2015 a guarantee and indemnity was executed in favour of LBCF by, on the face of it Genee and IEL. In fact, by the 1st of July 2015 IEL had been dissolved, following its liquidation.

82. Mrs Kaur accepted that it was not the intention of LBCF to enter into a guarantee and indemnity with IEL, rather it was its intention to enter into a guarantee and indemnity with IES which was in existence and trading and of which she was the only director at the time. Mrs Kaur also accepted, in cross examination that it must have been her (or Mr Singh) who supplied LBCF with the name IEL and its company number for inclusion in the guarantee and indemnity. That could, as Mrs Kaur suggested have been an error, but on 26 February 2018 when LBCF were refusing to release money to IES which had a credit on its invoice discounting facility because of issues with Genee's facility, in reliance on the guarantee and indemnity, Mrs Kaur pointed out that the guarantee and indemnity was not executed by IES. This action on Mrs Kaur's part lacked commercial probity when she knew that the reason why the guarantee and debenture was executed in the name of IEL (when it was intended to be in IES's name) was that the wrong company name and number had been supplied to LBCF by Mrs Kaur or Mr Singh.

83. In her defence to proceedings taken against her by LBCF at paragraph 2, Mrs Kaur asserted that she had not seen the guarantee and indemnity dated 1st July 2015 before. In cross examination however, Mrs Kaur accepted that that was not true, she suggested that her fear for her business and health issues may have made her confused so that she denied having seen the guarantee and indemnity before, even though she now accepts that she signed it. Ultimately she said that she did not know why she had denied, in her defence to the claim against her by LBCF, having seen the guarantee and indemnity before. I consider that Mrs Kaur did know when signing her defence to LBCF's claim (with a statement of truth) that she had signed the guarantee and indemnity and she knew that it was untrue to suggest that she had not seen it before. It may be that she did this under pressure in an effort to avoid a financial liability, but in this case she is seeking to avoid a financial liability for her company, IES and her willingness to include a false assertion in her defence of the proceedings taken against her by LBCF undermines the confidence that I can have in the truth and reliability of the evidence that she gives in these proceedings.

Mr Bains

84. Mr Bains relevant evidence largely consisted of what Mrs Kaur had told him and so it is of limited assistance to me in deciding the issues that I need to decide.

85. I had a similar concern to the concern that I have expressed about Mr Jakhu's evidence, namely that Mr Bains insisted that he had typed his witness statement himself on his laptop, with no input from anyone else and that all of the wording in it was his wording, in spite of paragraphs 2 and 3 clearly being standard wording which is identical to the wording contained in the same paragraphs of Mrs Kaur's witness statement. In my judgement, Mr Bains must have been told what subject matter he should include in his witness statement and the standard wording which is the same as that contained in Mrs Kaur's witness statement must have been added by someone other than Mr Bains (even if Mr Bains typed his own statement on a laptop). As with Mr Jakhu, I consider that Mr Bains, in a misguided desire to support Mrs Kaur/Mr Singh, insisted that every word of his witness statement was in his own words, when clearly the content of at least the standard wording in paragraphs 2 and 3 was not. This causes me some concern, that Mr Bains may have included in his witness statement other evidence in a desire to support Mrs Kaur/Mr Bains which may not truly reflect his recollection of events.

ISSUE 1 BREACH OF THE EXCLUSIVITY AGREEMENT BY NORTHAMBER

Issues 1 (a) –(c)

86. Issues 1 (a) – (c) (was Northamber in breach of the Exclusivity Agreement in: (a) failing to pay Genee's invoices in accordance with the agreed terms; (b) exceeding the limit placed on its credit with LBCF; and (c) failing to pay sums outstanding in excess of the LBCF limit within 7 days) all concern the questions of what the agreed credit terms were for the payment of Genee invoices by Northamber from 1 July 2017 onwards and whether Northamber complied with those credit terms. I will deal first with the question of what the agreed credit terms were, before going on to decide if Northamber complied with them.

What were the agreed credit terms?

87. The Reseller Agreement was signed on behalf of Northamber on 3 February 2016 and Mr Singh signed it on behalf of Genee on 8 March 2016. It is a standard form Genee agreement which appears would have been signed by all Genee's resellers at the time. Clause 7 of the Reseller Agreement deals with the terms of payment, it says as follows:
    - "7.1 unless Genee shall have previously agreed with the customer that the products shall be supplied on credit payment for the products shall be made in full by the customer with the customer's order or on delivery or collection of the products as determined by Genee.
    - 7.2 where Genee has agreed to supply the products on credit customer shall pay the price of the products within 45 days of the date of Genee's invoice notwithstanding that the property in the products has not passed to the customer. Invoices will be dated the day of dispatch of the products. Genee shall be entitled at its absolute discretion to alter the terms of payment (other than on concluding contracts) and withdraw or alter any credit limit granted at any time without notice.
    - 7.3 The time of payment of the price shall be of the essence of the contract. If the customer fails to make a payment on the due date then without prejudice to any other right or remedy available to it Genee shall be entitled to: 7.3.1 cancel the contract or suspend any further deliveries or suspend any services to the customer…."

88. The heading to the Exclusivity Agreement states as follows "… The below supplements the existing agreement between Northamber and Genee, where there is a difference between our existing agreement and the below terms, the below terms would supersede our prior agreement…".

89. The Exclusivity Agreement does not contain any terms as to payment, other than clause 6, which provides: "Northamber will be offered a 1% early settlement discount, redeemable, should they choose to pay for any purchases within 7 working days of receiving delivery rather than on their usual payment terms."

90. Clause 6 of the Exclusivity Agreement therefore anticipates that there are existing "usual payment terms" and it gives Northamber the option of paying within 7 working days in return for a 1% early settlement discount. Clause 7 of the Reseller Agreement sets out the terms of payment as set out above. Clause 6 of the Exclusivity Agreement does not therefore conflict with clause 7 of Genee's standard terms and conditions attached to the Reseller Agreement and therefore clause 7 of Genee's standard terms and conditions determined when Nortamber had to pay Genee for goods it delivered to Northamber after 1 July 2017 (which the Exclusivity Agreement identifies as its start date).

91. It is common ground that, prior to 1 July 2017, while operating under the Reseller Agreement, Genee allowed Northamber credit on goods delivered by Genee to Northamber and that the credit terms were (what clause 7.2 of Genee's standard terms and conditions attached the Reseller Agreement says they will be) 45 days from Genee's invoices.

92. Mr Singh relies upon e mails passing between Mr Singh and Mr Phillips, on 12 July 2017, the day after Mr Phillips signed the Exclusivity Agreement on behalf of Northamber, but the day before Mr Singh signed it, on behalf of Genee, as constituting an agreement between Genee and Northamber that, if Northamber owed Genee more than the LBCF credit limit applying to Genee's supplies to Northamber, then Northamber would pay down the excess within 7 working days.

93. The emails that Mr Singh relies on are an e mail from Mr Singh to Mr Phillips timed at 18.54 on 12 July 2017 which says (in acknowledging receipt of a copy of the Exclusivity Agreement signed by Mr Phillips on behalf of Northamber) "Thank you for sending this over. I still need you to confirm that if you are over your credit limit that you will resort to the 1% for 7 days payment plan." Mr Phillips responds at 18.56 on 12 July "Can you advise if you heard back from Lloyds on limit please? Happy to pay down if we are above our limit for the 1% weekly if we are above the limit"

94. Although Northamber say that it did not know that LBCF was providing factoring facilities to Genee (Northamber's case is that it thought LBCF was merely a credit insurer) Northamber does accept that it was aware that the credit insurance limit was £270,000 at the start of the Exclusivity Agreement and Mr Phillips's e mail of 12 July to Mr Singh was asking whether he had heard back from LBCF about an increase on that limit, which had been requested by Genee.

95. I find that the email exchanges of 12 July 2017 do not amount to a binding promise by Northamber that it would pay whatever part of its overall account with Genee exceeded the credit insurance limit which applied to Northamber's account with Genee from time to time, within 7 working days (as Genee contend). I make this finding because:

a. the Exclusivity Agreement was signed by Mr Singh on behalf of Genee on 13 July 2017 and became binding on Northamber and Genee at that time. The email exchange of 12 July 2017 therefore forms part of the negotiations between Genee and Northamber which led up to the Exclusivity Agreement coming into force. Evidence of those negotiations is an impermissible aid to the interpretation of the Exclusivity Agreement and clause 6 of the Exclusivity Agreement, objectively read makes it clear, in my judgment that Northamber has no obligation to pay Genee's invoices within 7 working days, it merely provides an incentive of a 1% early payment discount should Northamber pay Genee's invoices within that time period;
b. in my judgement, Mr Phillips's response that Northamber were "happy to pay down if we are above our limit for 1% weekly…" was not intended to be a legally binding promise but merely an expression of intent. I come to this conclusion because Mr Phillips responded to Mr Singh's request for confirmation within 2 minutes and he uses wording ("happy to pay down") which is not indicative of language which is intended to be legally binding;
c. in due course, as I will mention LBCF's credit insurer, AIG, reduced its insurance of sums owed by Northamber from £270,000 to nil. I am not satisfied, that Mr Phillips, in expressing an intention that Northamber would pay down its account with Genee for 1% if Northamber was above the credit limit, intended that, if Northamber's credit insurance limit was reduced to nil, or reduced substantially, Northamber would pay the entire account or substantially all of it within 7 working days, particularly in relation to orders already accepted by Genee; and
d. as I will explain next, neither Mr Singh nor Northamber, in my judgment, after 8 December 2017 (when LBCF notified Genee that AIG had reduced its insurance of Northamber's debt to nil) in their communications, acted as if Northamber was bound to pay for all goods supplied by Genee, in excess of the Northamber credit insurance limit, within 7 working days.

96. Prior to 8 December 2017 Genee had sought an increase in the credit insurance limit for Northamber's debt, from Euler (credit insurers) and via LBCF's credit insurer, AIG. On 8 December 2017, Andrew Collett (LBCF's client manager responsible for Genee's account) ("Mr Collett") notified Mr Singh by email that, far from confirming an increase in the credit insurance limit from £270,000 to a higher credit insurance limit, AIG had reduced its credit insurance limit for Northamber to nil. It appears thereafter that Genee and LBCF relied upon the credit insurance provided by Euler which was £277,000 (£7,000 more than AIG's limit).

97. On 14 December 2017, Mr Singh sent an email to Mr Gaut of Northamber in the following terms:

> "Currently your ledger stands at £640k. As you know we only have insurance right now for 277k with Euler.
> We need the ledger paying down to this level asap.
> As you know Lloyds have pulled all other limits.
> I am going to have to put your account on hold until this is sorted. I need a payment tomorrow of £360k to bring your account back in line.
> I need a call this morning to get this sorted….."

98. Mr Gaut responded the next day saying that:

"…. You asked us to increase our stockholding significantly in December from 22 days to 55 days, as you were clear with us you needed a minimum monthly turnover to manage your business, I personally sponsored this order with our board. It is unfortunate that the early shipment of these goods has exaggerated a credit limit issue.
You raised the issue of insurance with Lloyds this week, I have discussed this with [Mr Phillips] and we are doing everything we can to move more of our Euler credit to Genee, you have to understand that this takes some time…
As you know Northamber has always settled its bill with Genee within the terms offered, we have a 100% payment record with yourselves. We made our payment today of £145,000, our open payment schedule is in line with all our agreements and is attached."
(The reference to Northamber doing everything it could to move more of its Euler credit to Genee, refers to Northamber having an overall credit insurance limit with Euler for all it suppliers of £10 million. Mr Gaut was confirming that Mr Phillips would try to see whether Euler would allocate more of the overall limit of £10 million to Northamber's purchases from Genee).

99. Mr Gaut's e mail, in referring to Genee asking Northamber to increase its stock holding refers to a large order placed by Northamber with Genee, to the value of £300,692.40 (including VAT) on 30 November 2017 ("the 30 November Order"). Mr Gaut had sent the 30 November Order under cover of an email dated 30 November 2017 in which email Mr Gaut said that the order was conditional upon 60 day payment terms from the time that Northamber took delivery of the stock regardless of the credit limit. He said that "consequently this order needs to be considered on top of the current facility". The purchase order itself also confirmed the payment terms were within 60 days of delivery and the order was on "call off" which meant that the goods referred to in the order would only be delivered when Northamber called upon Genee to deliver them (therefore Northamber only had to make payments within 60 days of each delivery of goods "called off" from the 30 November Order.

100. In the event, Northamber subsequently agreed to accept delivery of the whole of the 30 November Order in one go and it was all delivered on 11 December 2017 (3 days after Mr Collett advised Mr Singh that AIG had reduced its credit insurance limit to nil). Genee raised an invoice for the £300,692.40 addressed to Northamber on 11 December 2017.

101. On 15 December 2017, Mr Singh sent an email to Mr Gaut confirming that the outstanding ledger stood at £658k, of which only £277k was insured (through Euler). He confirmed in that email that he had agreed 60 day payment terms on the last delivery. Mr Singh asked for a payment schedule for the next 4 weeks (ie details of what payments Northamber intended to make to Genee over the next four weeks).

102. It may be that, in agreeing 60 days credit, from delivery on the 30 November order, and subsequently pressing Northamber to take delivery of that order in one go, Mr Singh was hoping that efforts, through LBCF, to get Northamber's credit insurance limit increased by AIG would be successful and that therefore the delivery of the 30 November Order would not take Northamber's debt above (or substantially above) the credit insurance limit. However, far from increasing Northamber's credit insurance limit AIG reduced it to nil and Mr Singh was informed of this on 8 December 2017, 3 days before the balance of the 30 November order was delivered to Northamber triggering its obligation to pay Genee within 60 days and taking Northamber's debt to Genee well above the Euler credit insurance limit of £277,000 then in force. Mr Gaut's email of 15 December 2017 was simply pointing out

to Mr Singh that it was because Northamber had taken delivery of the large 30 November Order, at Genee's request, in one go, that Northamber's debt was above or substantially above the Euler credit insurance limit.

103. Finally, on 2 January 2018, Mr Singh sent an email to Mr Phillips/Mr Gaut in which he said: "In terms of where we are right now. The most pressing issue for yourselves has to be getting higher credit limits approved by Euler. Currently you have approval of £277k. I know you are trying to move credits around so you can get higher. It is at £537,718.98 as of today. This is £260,718 over the limit that we can get approval for you at. I need to know what solution you have for this. If you are ordering more stock I cannot just send it out without understanding how we are covering it. My suggestion would be for payment upfront for any additional orders you have."

104. In fact no further orders were sent by Northamber to Genee (or no substantial order) and therefore the question of, on what terms as to payment, Genee would supply goods to Northamber, after 2 January 2018, did not need to be resolved.

105. I said in paragraph 95 (d) above that neither Mr Singh nor Northamber, acted, after 8 December 2017, in their communications, as if Northamber was bound to pay for all goods supplied by Genee, in excess of the Northamber's credit insurance limit, within 7 working days. Those communications are summarised by me in paragraphs 93 – 98 above. The closest that Mr Singh comes to suggesting that Northamber was obliged to pay down its account to the credit insurance limit for Northamber's debt was Mr Singh's e mail of 14 December where he says that he needs the ledger to be paid down to the Euler credit limit of £277,000 asap and "I need a payment of £360k tomorrow to bring your account into line". He does not suggest however that this is a contractual obligation and in his e mail of 15 December, Mr Singh accepts that he agreed 60 day payment terms on the last delivery (that is the large 30 November Order which was all delivered on 11 December only 3 days earlier) and he merely asks for a schedule of payments that Northamber will make in the following 4 weeks. Mr Singh's e mail of 2 January 2018 then presses Northamber to try to get approval of a higher credit limit from Euler and suggests that Northamber might pay up front for future orders, he is no longer suggesting that Northamber's should pay down its account to £277,000, the credit limit supported by Euler.

106. Even if I am wrong and the e mail exchanges between Mr Singh and Mr Phillips on 12 July 2017 did impose an obligation on Northamber to pay, within 7 working days any amount by which Northamber's debt to Genee exceeded the applicable credit insurance limit from time to time, in my judgement, Mr Gaut's email of 30 November 2017, enclosing the 30 November Order specifically recognised that Genee fulfilling that order may take Northamber above any agreed credit limit. Mr Gaut stated however in that email that the 30 November Order was being placed on the basis that Northamber would be allowed 60 day credit regardless of the credit limit. Subsequently Northamber agreed to take delivery of the entire order on 11 December 2017, which resulted in the total debt owing by Northamber to Genee increasing well beyond the credit insurance limit. Any understanding, or agreement between Northamber and Genee, that Northamber would pay down its outstanding account with Geene to the applicable credit insurance limit which applied before the 30 November Order was placed and/or before Northamber agreed to take delivery of the entire order and did so on 11 December 2017, was, in my judgment, varied, so that Northamber was not bound to pay down the Genee account to the extent that it

exceeded the applicable credit insurance limit, as a result of the placing of the 30 November Order and taking delivery of the entire order on 11 December 2017.

107. In my judgement, Genee's terms and conditions allow it to withdraw credit from Northamber, but only for future orders, not for Northamber orders that Genee had already accepted. I come to this conclusion for the following reasons:
   a. as already noted clause 7.2 of Genee's terms and conditions attached to the Reseller Agreement provides that; …" Genee shall be entitled in its absolute discretion to alter terms of payment (other than on concluded contracts) and withdraw or alter any credit limits granted at any time without notice." Although the words in brackets ("other than on concluded contracts") appears in brackets after the reference to altering the terms of payment and not after "withdraw or alter any credit limit", in my judgment those words apply to the withdrawal or alteration of a credit limit as well. The terms of payment for which clause 7 as a whole provide are either; (i) payment in full by the customer with order or on delivery or collection of the products; or (ii) on credit if Genee agrees to supply the products on credit, which credit will be 45 days from invoice. If Genee were allowed to withdraw or alter credit limits on concluded contracts then it would necessarily be altering the terms of payment for concluded contracts which clause 7.2 makes clear that Genee cannot do;.
   b. very clear words would be needed, in my judgment for Genee to be entitled to withdraw or alter a credit that it had already agreed to provide to Northamber and at the very least clause 7.2 does not contain those clear words; and
   c. in my judgement, interpreting clause 7.2 objectively it cannot have been the intention of Northamber/Genee that credit that Genee had already agreed to provide to Northamber could be retrospectively withdrawn at any time, by Genee.

108. I am not, in any event satisfied that Mr Singh did withdraw Northamber's credit limit for future orders (although there were none) (or if contrary to my interpretation of clause 7.2) for orders already accepted by Genee. In my judgement, in order to withdraw credit terms agreed with Northamber it would be necessary for Genee to do so unambiguously. Mr Singh relies upon his email of 14 December 2017 as withdrawing Northamber's credit however, although Mr Singh's e mail refers to needing a payment tomorrow of £360k to bring Northamber's account back into line (that is within the credit insurance limit of £277,000 that Euler were providing) and to having to put Northamber's account on hold:

(a) the Euler limit of £277,000 was slightly higher than the AIG limit of £270,000 and Genee had agreed to 60 days credit for the 30 November Order based upon the AIG credit insurance limit;

(b) saying "I need a payment tomorrow of £360k to bring your account back into line" and threatening to put Northamber's account on stop is not a clear and unambiguous statement that Genee is withdrawing Northamber's credit or requiring it to pay £360,000 as a consequence of that withdrawal of credit; and

(c) thereafter the e mail correspondence passing between Mr Singh and Northamber did not suggest that Mr Singh had withdrawn the credit which Genee had agreed to provide to Northamber of 45 days (or 60 days for the 30 November Order) or that Northamber were in breach of contract for failing to pay £360,000 on 15 December 2017 or otherwise in less than 45 or 60 days from delivery. As already noted, the next day (15 December 2017) rather than suggesting that Northamber were in breach of contract by not paying Genee £360,000 that day, Mr Singh confirmed that he had agreed 60 day payment terms on the 30 November Order (which he did not suggest no longer applied) and he asked for a schedule of what Northamber intended to pay in the next 4 weeks.

Did Northamber comply with the agreed credit terms?

109. Having determined what the agreed credit terms were, I now turn to deal with Issues 1 (a) – (c) all of which relate to whether Northamber complied with those credit terms.

110. Mr Henry has produced a schedule which he says shows: (a) when Northamber paid for the goods Genee supplied to Northamber; and (b) that Northamber always paid Genee's invoices in accordance with the agreed credit terms.

111. In his written closing argument, Mr Brown says that: (a) Mr Henry has based his schedule on Northamber having 45 days to pay for goods supplied by Genee; but (b) Northamber had to pay down any debt it owed to Genee to the extent that it exceeded the applicable credit insurance limit; and (c) the applicable credit insurance limit was nil from 8 December 2017. Mr Henry's schedule does not therefore (Mr Brown says) demonstrate that Northamber paid Genee's invoices on time, in fact it demonstrates that Northamber did not do so, because it shows invoices not being paid within 7 working days after AIG reduced Northamber's credit insurance limit to nil on 8 December 2017. Mr Brown also refers to LBCF's solicitors, Hill Dickinson threatening to issue a winding up petition against Northamber, on 16 February 2018, if the account was not cleared in full and he suggests that this is evidence that Northamber did not pay its account within the agreed credit terms.

112. I am satisfied, on the balance of probabilities, that Northamber did pay Genee's invoices in accordance with agreed credit terms for the following reasons:

a. I have found that the applicable credit terms for payment of Northamber's account with Genee were, at all relevant times 45 days from invoice, save that the terms for the 30 November Order were 60 days from the date of delivery (11 December 2017));
b. Mr. Brown referred to LBCF's solicitors, Hill Dickinson demanding, on 26 February 2018, that Northamber pay the whole of the debt then outstanding, but the credit terms agreed between Genee and Northamber were also binding upon LBCF as assignee of the debt owed by Northamber to Genee. Neither LBCF, nor their solicitors, Hill Dickinson could have had any knowledge, (beyond what they might have been told by Genee) about what the agreed credit terms between Genee and Northamber were. Hill Dickinson demanding payment on 16 February 2028 is not therefore evidence that, as between Northamber and Genee, Northamber had not paid in accordance with the agreed credit terms;
c. Mr Singh does not assert that Northamber did not pay Genee's's invoices within either 45 or 60 days and I have also noted that, in his defence to the proceedings taken against him by LBFC, contrary to his position in these proceedings, Mr Singh asserted that Northamber paid Genee's invoices every two weeks "in accordance with the agreed credit terms". Further, when sending a letter to Northamber on 25 July 2018, purporting to terminate the Exclusivity Agreement, Mr Singh asserted that Northamber had breached the Exclusivity Agreement in two ways (by not purchasing the MOQ and not holding the minimum amount of stock which he asserted that Northamber had to hold in accordance with the terms of the Exclusivity Agreement) he did not assert that Genee had not paid Genee's invoices in accordance with the agreed credit terms. I consider that he would have done so, had he considered this to be the case;

d. Mr Henry asserts, based on his schedule, that Northamber always paid Genee's invoices within 45 days (or in the case of the 30 November order 60 days) and that his schedule demonstrates this; and
e. Mr Brown has not disputed the accuracy of Mr Henry's schedule (Mr Henry says it is accurate) and nor did he suggest to Mr Henry in cross examination that it was inaccurate (save in so far as Mr Brown challenged Mr Henry's contention that the agreed credit terms were either 45 or 60 days). Mr Singh has not produced a schedule. I am therefore satisfied, on the balance of probabilities that Mr Henry's schedule is accurate and that it demonstrates that Northamber paid Genee and (following receipt of notice of assignment given by Hill Dickinson) LBCF in accordance with the credit terms that I have found were agreed between Genee and Northamber.

Issue 1 (d)

113. Issue 1 (d) is whether Northamber breached the Exclusivity Agreement by the stock that it was holding.

114. Clause 5.4 of the Exclusivity Agreement states "Northamber will endeavour to maintain 10 days of stock of run rate levels to maximise cash available to fund reseller credit days".

115. Mr Henry and Mr Phillips maintain that clause 5.4 means that Northamber had to endeavour to hold an average of 10 days of stock in total across all product lines. Mr Singh maintains that clause 5.4 required Northamber to hold 10 days of stock for each product line.

116. Mr Phillips and Mr Henry accept that Northamber did not hold 10 days stock on all product lines. Mr Singh has not disputed that Northamber held at least 10 days of stock on average, in total across all product lines.

117. The determination of issue 1 (d) therefore depends upon the meaning of clause 5.4 of the Exclusivity Agreement.

118. The leading authorities on the construction of contractual terms are the two Supreme Court decisions in: ***Arnold v Britton*** **[2015] AC 1619 (SC**) in particular the judgment of Lord Neuberge**r**; and (b) ***Wood v Capita Insurance Services Limited*** **[2017] AC 1173 (SC),** in particular the judgment of Lord Hodge. I take the following to be the guidance given in those cases, when read together:
   a. the meaning of the words has to be assessed objectively in the light of: - the natural and ordinary meaning of the clause and any other relevant provisions; the overall purpose of the clause; the facts and circumstances known or assumed by the parties at the time that the document was executed; and commercial common sense; but disregarding subjective evidence of any party's intentions; and
   b. if the natural and ordinary meaning of the clause is clear then the enquiry as to their meaning may stop there, but if their meaning is not clear then I may have regard to the other factors (noted in (a) above) in order to discern their meaning.

119. Clause 5.4 splits into 3 parts: (a) "Northamber will endeavour to maintain"; (b) "10 days stock of run rate levels"; and (c) "to maximise cash available to fund reseller credit days". Part (c) is the reason for parts (a) and (b) and not part of the obligation that falls on Northamber. Part (a) provides for Northamber to endeavour to carry out part (b) it is not an

absolute obligation. It is part (b) that sets out what it is that Northamber will be endeavouring to do and which forms the subject matter of the dispute between the parties, as to the proper interpretation of clause 5.4.

120. I accept that it is tolerably clear that run rate refers to the rate at which a product or the stock of products as a whole are achieving sales and that the amount of stock which Northamber is to endeavour to hold is 10 days of stock based upon the sales that are being achieved. What is not so clear however is whether part (b) of clause 5.4 is intended to refer to an average of 10 days of stock in total across all product lines, based upon what has been sold across all product lines or 10 days stock for each product line based upon the sales of each product line.

121. On balance I consider that Northamber's interpretation of the words is to be preferred. The word "stock" is used in isolation and without qualification or limitation. Used in that way the word "stock" would appear to relate to the stock held by Northamber in total. If clause 5.4 were intended to refer to 10 days of stock for each product line, then the word "product" or some other word indicating the 10 days was to relate to each individual product, rather than stock as a whole would have been used.

122. As I accept, however, that the wording is not clear I should have regard to the other factors identified in paragraph 113 (a) to see if they are of any assistance in determining objectively what the words "10 days stock of run rate levels" were intended to mean in July 2017. Unfortunately however those factors are of no assistance: (a) I do not find any other provisions of the Exclusivity Agreement of any assistance in interpreting clause 5.4; (b) the purpose of clause 5.4 is to place an obligation on Northamber to endeavour to hold in stock a certain level of Genee World Products, but this does not assist me in determining which of the two possible interpretations of the level of stock clause 5.4 is referring to; (c) I have no details of any relevant facts or circumstances known to Genee or Northamber in July 2017 which bear or may bear on the choice between the two interpretations; and (d) commercial common sense does not favour either interpretation. Northamber may not have wanted to hold 10 days stock of slow moving products and to have the flexibility of deciding what quantity of what products it would hold, within the average of 10 days stock across all product lines, but on the other hand Genee may have wanted Northamber to commit to endeavour to hold at least 10 days stock of each product line, to ensure that Northamber would always hold a certain level of stock in all product lines and would buy more stock from it. Neither interpretation lacks commercial common sense (a clause does not lack commercial common sense merely because it is to the financial disadvantage of one party or the other).

123. I conclude therefore, by a small margin that the proper interpretation of clause 5.4 is that Northamber were agreeing to endeavour to hold an average of 10 days stock across all product lines.

124. I have already said that the obligation imposed upon Northamber by part (a) of clause 5.4 is not an absolute obligation but an obligation to "endeavour to maintain" 10 days stock of run rate levels. However, if Mr Singh's interpretation were correct then Northamber will not have been endeavouring at all to maintain 10 days of stock for each product line and therefore would be in breach of clause 5.4. On the other hand, based upon my interpretation, that Northamber's obligation was to endeavour to maintain an average of 10 days of stock overall, I am satisfied that Northamber did endeavour to do so because: (a) that is the

evidence of Mr Phillips and Mr Henry which was not challenged in cross examination; (b) Mr Singh has not advanced any evidence to suggest that Northamber did not hold at least an average of 10 days of stock across all product lines; and (c) in his e mail of 15 December 2017 to Mr Singh (to which I have already referred) Mr Gaut said that "You asked us to increase our stockholding significantly in December from 22 days to 55 days…" supporting the conclusion that for at least a period prior to and after 11 December Northamber's stock holding overall was well above 10 days.

Issue 1 (e)

125. Issue 1 (e) is whether Northamber breached the Exclusivity Agreement by attempting to set off sums.

126. This issue relates to Northamber setting off against the debt that it owed to LBCF (as assignee) for stock that Genee supplied to it: (a) monies that were owed to it by IES; and (b) monies that it claimed that Genee owed it for "co-funded telesales heads".

127. On 26 January 2018, LBCF, acting by their solicitors, Hill Dickinson, gave notice to Northamber that the debt owed by Northamber to Genee had been assigned to LBCF.

128. On 16 February 2018, Northamber set off £137,332.32 of the debt owed to it by IES against the debt owed by it to LBCF (following notice of assignment). Northamber also set off part of the cost of employing 4 joint heads to market Genee World Products against the debt that Northamber owed to LBCF. Mr Singh says that Northamber was not entitled to set off either of these sums against what it owed to LBCF, following notice of assignment.

129. I can deal with this issue relatively shortly:

a. once notice of assignment was given by Hill Dickinson, on behalf of LBCF to Northamber, on 26 January 2018, Northamber could not set off against monies that it now owed to LBCF (as assignee of the debt previously owed by Northamber to Genee) any sum which had not been set off before 26 January 2018 or which did not arise out of the same contract as the contract giving rise to the debt which Genee had assigned to LBCF;
b. clause 3.2 of the Exclusivity Agreement provides "Genee and Northamber will co-fund 4 telesales heads based at Northamber's offices to call resellers and generate opportunities for Genee and your externals. Genee will contribute towards the cost of these heads at £1,500/head/month which Northamber will deducted monthly from payments due to Genee for stock." Clause 3.2 therefore gave Northamber a right to set off, against monies owing by it to Genee, Genee's contribution towards the co-heads at the rate of £1,500 per head per month;
c. clause 6.2 of the Exclusivity Agreement provided: "Genee give Northamber the right to deduct from any payment to Genee an amount equivalent to any overdue monies owed by [IES] to Northamber if [IES] is more than seven working days late in paying an invoice to Northamber." Clause 6.2 therefore gave Northamber a right of set-off, of monies owing by IES to Northamber, against monies owing by Northamber to Genee, in the circumstances set out in clause 6.2;
d. Northamber say (and Mr Singh/IES do not contend otherwise) that the debt of £137,332.32 owed to it by IES was more than 7 days overdue by 16 February 2018. I am therefore satisfied that the conditions that needed to be met, in order for

Northamber to exercise a set off, in accordance with clause 6.2 were met and Northamber was entitled, as against Genee to set off that amount against the debt that Northamber owed to Genee;

e. Northamber would not therefore be breaching the Exclusivity Agreement (which is an agreement only between Northamber and Genee) by setting off against the debt it owed to Genee £137,332.32 of the debt owed to it by IES on 16 February 2018, or the sum owed to it by Genee for the 4 co-funded telesales heads. Whether it was entitled to exercise a set off as against LBCF was a matter between Northamber and LBCF; and

f. the set offs provided by clauses 3.2 and 6.2 of the Exclusivity Agreement are part of the same agreement that gave rise to the debt owed by Northamber to Genee for stock, namely the Exclusivity Agreement (which incorporated the terms of the Reseller Agreement to the extent that they do not conflict with the Exclusivity Agreement). Northamber was therefore, in any event entitled to set off those sums against LBCF as assignee of the debt owed by Northamber to Genee for stock.

ISSUE 2

130. Issue 2 is: was it agreed at the Oxford Meeting that the Exclusivity Agreement should be terminated?

131. Mr Brown invites me to find that, at the Oxford Meeting it was agreed between Genee and Northamber that: (a) the Exclusivity Agreement was not working; (b) Genee would buy back stock from Northamber; and (c) the Exclusivity Agreement would be terminated. Mr Brown also invites me to find that, contrary to Northamber's case, Mr Singh did not threaten to wind up Genee and thereafter resume trading its business through a new legal entity ("Phoenix Company") if Northamber sought to enforce the Exclusivity Agreement, rather, Mr Singh merely pointed out the futility of Northamber pursuing legal proceedings against Genee, because Genee had few, if any assets.

132. Issue 2 only requires me to make a factual finding as to whether it was agreed at the Oxford Meeting that the Exclusivity Agreement should be terminated. I will, nonetheless, decide whether I can make the factual findings that Mr Brown invites me to make, as set out in paragraph 131 (a) and (b) because, if I make those factual findings then they may be consistent with it also having been agreed at the Oxford Meeting that the Exclusivity Agreement should be terminated. The question of whether Mr Singh threatened to wind up Genee and thereafter continue its business through a Phoenix Company, if Northamber took steps to enforce the Exclusivity Agreement is not directly relevant to the question of whether it was agreed at the Oxford Meeting that the Exclusivity Agreement should be terminated, but if I find that Mr Singh did make that threat, then it may suggest that Mr Singh either knew that Genee was breaching the Exclusivity Agreement and intended it should continue to do so, or alternatively that it intended/wished to do so, otherwise there would be no reason for Mr Singh to threaten to wind up Genee if Northamber attempted to enforce the Exclusivity Agreement.

133. Mr Singh was taken by Mr Falkowski to a note which Mr Phillips and Mr Henry say that Mr Gaut made of what was discussed at the Oxford Meeting ("Mr Gaut's Note"). Mr Falkowski asked Mr Singh whether he disputed the accuracy of Mr Gaut's Note and if so

in what respects. Mr Singh referred to various parts of Mr Gaut's Note that he disagreed with. I am however satisfied that Mr Gaut's Note is a fair summary of what was said at the Oxford Meeting for three reasons: (a) although Mr Gaut was not called as a witness to confirm the authenticity or accuracy of his note, Mr Henry and Mr Phillips both say that the note does accurately reflect what was discussed at the meeting and neither of them were challenged in cross examination on that evidence and I accept it; (b) Mr Gaut's Note appears to have been created broadly contemporaneously with the meeting and therefore to represent at least what Mr Gaut considered was discussed at the Oxford Meeting at a time when what was discussed would have been fresh in Mr Gaut's memory, even if he did not make a manuscript note of what was said at the meeting (Mr Phillips and Mr Henry did not give clear evidence on whether Mr Gaut had made a manuscript note or not); and (c) Mr Singh has not produced his own note of the Oxford Meeting and I consider his evidence about the inaccuracies of the note to be unreliable because (i) I have found him to be a dishonest witness; (ii) in my judgment, after being invited by Mr Falkowski to say which parts of Mr Gaut's Note he said were inaccurate, Mr Singh looked for anything in the note that he thought did not support his case and said that it was inaccurate, he did not identify anything as inaccurate which was not contrary to Genee's case; and (iii) Mr Singh's recollection of what was said at the Oxford Meeting is unlikely to be as reliable as Mr Gaut's Note, even if he was providing his honest recollection of what was said at the meeting.

134. Having considered Mr Gaut's Note, I am satisfied that both Genee and Northamber considered that the Exclusivity Agreement was not working, but for different reasons.

135. Genee's reasons, according to Mr Gaut's Note, were said by Mr Singh to be that: (a) Genee were not receiving regular purchase orders from Northamber for Genee World Products and Genee needed regular orders each month in order to discharge its outgoings; and (b) the Exclusivity Agreement preventing Genee from factoring their debts and Genee could not offer Northamber "realistic payment terms" as a result (Mr Singh did not dispute those parts of Mr Gaut's Note which are consistent with his case).

136. Both Mr Phillips and Mr Henry (according to Mr Gaut's note) stated that the Exclusivity Agreement was not working for Northamber because Genee was making direct sales to resellers, in breach of the Exclusivity Agreement at a lower price than Northamber was offering to sell to UK resellers and in consequence, Northamber was being prevented from selling its stock of Genee World Products. Mr Phillips and Mr Henry sought assurances from Genee that it would stop making direct sales to UK resellers. Mr Henry made a veiled threat that Northamber would seek an injunction to prevent Genee from selling directly unless it stopped doing so. So Northamber only considered that the Exclusivity Agreement was not working because Genee was breaching the Exclusivity Agreement in selling direct to resellers, it did not agree that the Exclusivity Agreement would not work, if Genee did not breach the Exclusivity Agreement, in that way.

137. I find that it was agreed at the Oxford Meeting that Genee would buy back stock from Northamber. This is common ground and is reflected in Mr Gaut's Note. What is not common ground however is: (a) the reason why Genee would buy back stock; and (b) whether it was explicitly or implicitly agreed by Northamber that any stock Genee bought back from Northamber could be sold by Genee direct to resellers in the UK.

138. Mr Singh says that Genee buying back stock from Northamber was part of the agreed process leading to termination of the Exclusivity Agreement and that it was explicitly or implicitly acknowledged that Genee would be able to sell the stock that it bought back from Northamber direct to resellers.

139. Mr Phillips and Mr Henry say that it was agreed that Genee would buy back stock because, as a result of Northamber placing the large 30 November Order for Genee World Products and Genee selling direct to resellers, by the end of March 2018, Northamber was left with a large amount of stock which it was unable to sell and which was well in excess of the amount of stock which Northamber had agreed, under the Exclusivity Agreement to endeavour to maintain.

140. I am satisfied that Genee did not agree to buy back stock from Northamber as a step towards the termination of the Exclusivity Agreement, but rather, at Northamber's request, to rebalance Northamber's stock of Genee World Products, so that it was no longer holding excess stock in Genee World Product lines that it was unable to sell. I am satisfied of this because:

(a) Mr Gaut's Note supports that conclusion in that it records that: (i) Mr Henry, after stating that the Exclusivity Agreement prohibited Genee making direct sales and making a veiled threat to take out injunction proceedings if Genee did not desist from doing so, said that "a reduction in stock is the only way to get the relationship back on the front foot"; (ii) Mr Singh is recorded as having responded that he wanted the exclusivity removed and to return to the position between Genee and Northamber as it was before the Exclusivity Agreement was signed, but he would discuss with Mr Warren purchasing back stock and come back to Northamber with a proposal; and (c) on 27 April 2018, in an e mail to Mr Warren, Mr Phillips refers to a telephone call he says he just had with Mr Warren during which he says that Mr Warren had told him that Mr Singh had instructed Mr Warren not to share Genee's pipeline of future prospective orders and that Northamber were still seeing strong evidence of direct sales by Genee, in breach of the Exclusivity Agreement and he complains that "we still haven't received the stock clearance plan from a month ago that you and [Mr Singh] were going to provide as you acknowledged it wasn't fair or proper that we still have 200k stock exposure from the previously induced buy in";

(b) Mr Singh says Northamber asked him to send a letter to it, which he did, dated 25 July 2018 to formally terminate the Exclusivity Agreement pursuant to the agreement at the Oxford Meeting that the Exclusivity Agreement should be terminated. However, that letter was sent 4 months after the Oxford Meeting and its content is inconsistent with it having been written pursuant to any agreement between Northamber and Genee that the Exclusivity Agreement should be terminated because it: (i) does not mention any agreement that the Exclusivity Agreement should be terminated; (ii) gives 60 days' notice to terminate the Exclusivity Agreement "as per the contract conditions"; and (c) refers to failings or expected failings on Northamber's part to comply with the Exclusivity Agreement. I will set out the content of the letter when dealing with Issue 3 below;

(c) Mr Henry and Mr Phillips both confirm that Genee was asked to repurchase stock from Northamber to reduce its stock of unsaleable products and not as part of steps towards the termination of the Exclusivity Agreement. I have found both Mr Henry and Mr Phillips to be broadly honest and reliable witnesses, in contrast to Mr Singh who I found not to be an honest witness; and

(d) Mr Henry and Mr Phillips version of the reasons why Genee agreed in principle to repurchase stock from Northamber at the Oxford Meeting, is supported by Mr Gaut's Note and Mr Phillips email to Mr Warren on 27 April 2018.

141. It follows from what I have already said, that I find that it was not agreed at the Oxford Meeting that the Exclusivity Agreement should be terminated. It is clear from Mr Gaut's Note that that is what Mr Singh wanted to happen, but it is equally clear that Northamber would not agree to that.

142. I am satisfied that Mr Singh did threaten that, if Northamber sought to enforce its contractual rights under the Exclusivity Agreement that he would wind up Genee and resume trading its business via a Phoenix Company. I have come to this conclusion for the following reasons:

(a) both Mr Phillips and Mr Henry who were present at the Oxford Meeting say that Mr Singh made this threat at the start of the meeting. For the reasons I have already explained I consider the evidence of Mr Phillips and Mr Henry to be more honest and reliable than the evidence of Mr Singh (the only witness who challenges Mr Phillips and Mr Henry's version of events);

(b) there is no mention in Mr Gaut's Note of the threat that Mr Henry and Mr Phillips say Mr Singh made, but they have explained that Mr Gaut did not join the meeting initially and that the threat made by Mr Singh was made before Mr Gaut joined the meeting and therefore Mr Gaut did not hear the threat and did not therefore incorporated into his note. I accept that that is the honest recollection of Mr Henry and Mr Phillips;

(c) on 29 March 2018, Mr Phillips sent an email to Mr Singh in which he referred to "your threat to collapse Genee and resume trading under a different entity with your existing stocks from Genee, should Northamber seek to enforce our contractual rights". Mr Singh, in his response to that email denied making that threat, but Mr Phillips email, sent only two days after the Oxford Meeting (and therefore composed at a time when what was said at the Oxford Meeting is likely to have been fresh in his mind) acts as a powerful confirmation of the evidence of Mr Henry and Mr Phillips that Mr Singh made that threat;

(d) on 15 March 2018 (12 days before the Oxford Meeting) G-tech Innovation Limited ("G-tech") was incorporated with Luckveer Singh, an employee of Genee (and the nephew of Mr Singh) being appointed as its director. Mr Singh was appointed as director of G-tech in place of his nephew on 2 October 2018 and subsequently, on 14 November 2018 Genee was placed into creditors voluntary liquidation. Thereafter G-tech did carry on the business formerly carried on by Genee. That sequence of events is consistent with Mr Singh having prepared shortly before the Oxford Meeting to carry out the threat that Mr Phillips and Mr Henry both say that he made at the Oxford Meeting. Mr Singh sought to explain that his nephew had incorporated G-Tech to undertake some consultancy work, but G-tech was dormant until it commenced trading the business formerly carried on by Genee and I reject that evidence of Mr Singh and find that G-Tech was incorporated for possible future use as a company to acquire the business of Genee should that prove necessary to preserve its business for the benefit of Mr Singh and his family (which in the event it was); and

(e) Mr Brown refers to that part of Mr Gaut's Note which records Mr Singh saying "a legal battle was pointless as the business has no assets, all properties leased, all stock is owned by the Chinese factory". Mr Brown suggests that Mr Phillips and Mr Henry have confused what Mr Singh said about a legal battle with Genee being pointless, in

view of its lack of assets, with a threat by Mr Singh that, if Northamber sought to enforce the terms of the Exclusivity Agreement then he would wind up Genee and resume trading its business through a Phoenix Company. In my judgement however there is a very great deal of difference between Mr Singh simply pointing out that Genee had no assets against which Northamber might enforce a judgement and making a threat to wind up Genee and arrange for its business to be taken over by a Phoenix Company. I bear in mind that it is possible (as Leggett J put it in ***Gestmin***) that a witnesses memory may be "overwritten" by subsequent events. It is possible therefore that both Mr Phillips and Mr Henry could have reconstructed their memories of what was said at the Oxford Meeting, so that they wrongly believe that they recall Mr Singh making a threat to take those steps which he subsequently did take. That does not however explain the email of Mr Phillips sent on 29 March 2018, two days after the Oxford Meeting, when Mr Phillips was not aware of any step having been taken by Mr Singh (on Mr Phillips and Mr Henry's case) to carry out his threat to collapse Genee and resume trading under a Phoenix Company if Northamber sought to enforce the Exclusivity Agreement. That email is important corroboration for what Mr Henry and Mr Phillips say they recollect about Mr Singh making the threat at the Oxford Meeting and militates against them having reconstructed their memories in light of subsequent events.

ISSUE 3

143. Issue 3 is, was the Exclusivity Agreement terminated as a result of Genee's letter of 25 July 2018?

144. Genee's letter to Northamber of 25 July 2018, where relevant states as follows:

> "Please accept this letter as notification of termination of the above Agreement" (the heading to the letter says "termination of agreement dated 13 July 2017").
>
> We are giving you 60 days' notice as per the contract conditions with the last date being 24 September 2018.
>
> It is clear that Northamber will fail to achieve the MOQ set of £4 million for 2018 owing to the disappointing first six months performance… Current sales totalling £341,497. Our expectation would be that Northamber would achieve a minimum in line with the MOQ for this period of £2.3 million…..
>
> Under the agreement Northamber is required to maintain a minimum of 10 days of stock for each product line. However, as the attached stock list shows dated 26 June 2018 there is NO STOCK for the majority of product lines and this has been the case for a number of months.
>
> There has been no substantial stock order placed on Genee for the whole of 2018 despite repeated requests.
>
> Therefore we are left with no alternative but to implement the termination of this agreement."

145. Mr Singh admits by his Re-Amended Defence that the grounds upon which the 25 July 2018 letter purported to terminate the Exclusivity Agreement were insufficient to enable Genee to lawfully terminate it (although it is pleaded that Mr Singh thought that those grounds were sufficient). IES does not specifically plead to Northamber's case that the letter was insufficient to terminate the Exclusivity Agreement but its amended defence says

that any allegation which is not specifically admitted is denied and I therefore take IES to deny the letter was insufficient to terminate the Exclusivity Agreement.

146. Mr Singh suggested, as I have already noted that the letter of 25 July 2018 was written at the request of Northamber to formally give effect to an agreement reached at the Oxford Meeting to terminate the Exclusivity Agreement. I reject that suggestion because: (a) I have found that it was not agreed at Oxford Meeting that the Exclusivity Agreement would be terminated; (b) the letter of 25 July 2018 was written some 4 months after the Oxford Meeting; and (c) the letter was responded to by Mr Falkowski, on behalf of Northamber, in a letter dated 2 August 2018, in which Mr Falkowski rejected the purported termination of the Exclusivity Agreement. On 15 August 2018 the present proceedings were issued. Northamber did not therefore act, in responding to letter 25 July in a manner that was consistent with it having agreed that the Exclusivity Agreement be terminated, or that the letter of 25 July was merely giving effect to that agreement.

147. The letter of 25 July purported to give 60 days' notice to terminate the Exclusivity Agreement, expiring on 24 September 2018. Clause 1.3 of the Exclusivity Agreement allows either party to terminate the Exclusivity Agreement on at least 90 days' notice, but such notice must expire on 31 December in any year (otherwise the Exclusivity Agreement is renewed from year to year "unless there is a joint agreement to terminate or a failure to meet a clause below"). The letter 25 July did not therefore validly terminate the Exclusivity Agreement in accordance with clause 1.3 and there is no provision allowing the Exclusivity Agreement to be terminated on 60 days' notice.

148. The letter may suggest that there was a "failure to meet a clause below", for the purposes of clause 1.3 of the Exclusivity Agreement in two ways, namely: (a) because Genee believed that Northamber would not purchase the MOQ for which clause 2.1 of the Exclusivity Agreement provided, by the end of 2018; and (b) by not holding a minimum of 10 days stock of each product line (clause 5.4 of the Exclusivity Agreement). I say "may" suggest that Northamber had failed to meet clause 2.1 and/or 5.4, because, whilst the letter complains about both matters it does not assert that either or both constitute a failure to meet a clause of the Exclusivity Agreement, which entitled Genee to terminate the Exclusivity Agreement, without giving 90 days' notice expiring on 31 December 2018. Nor does the letter say that Genee is terminating the Exclusivity Agreement, in reliance on breaches of clause 2.1 or 5.4.

149. I am not satisfied that, as at 25 July 2018, Northamber had breached (or failed to meet) clause 2.1 of the Exclusivity Agreement because: (a) clause 2.1 merely requires Northamber to endeavour to achieve the MOQ of £4 million per annum, it is not an absolute obligation and neither Mr Singh nor IES have pleaded that Northamber failed to endeavour to achieve the MOQ of £4 million in 2018 (Northamber say that Genee selling direct to resellers in breach of the Exclusivity Agreement was preventing it from selling Genee World Products); and (b) even if, contrary to my finding there was some absolute obligation upon Northamber to purchase a minimum of £4 million per annum from Genee, Genee was merely suggesting in the letter that Northamber would not achieve that MOQ by the end of 2018, but until the end of 2018, Northamber would not breach clause 2.1, even if it did amount to an absolute obligation.

150. The letter also refers to Northamber failing to maintain 10 days of stock for each product line, but I have already found the clause 5.4 of the Exclusivity Agreement required

Northamber to endeavour to maintain 10 days of stock on average across all product lines and that Northamber did not breach clause 5.4 based upon that finding. There was therefore no breach by Northamber of clause 5.4 as at 25 July 2018.

151. Mr Brown says that, if there were grounds upon which Genee could have terminated the Exclusivity Agreement at the time when the letter of 25 July 2018 was sent, then the termination of the Exclusivity Agreement would be valid, even if Genee was unaware of those grounds when it sought to terminate the Exclusivity Agreement on 25 July 2018. In support of that proposition, Mr Brown refers to ***Chitty on Contracts (34 ed)*** which at paragraph 27-2067 says "*The general rule is well established that, if a party refuses to perform a contract, giving a wrong or inadequate reason or no reason at all, he may yet justify his refusal if there were at the time facts in existence which would have provided a good reason, even if he did not know of them at the time of his refusal.* ".

152. In my judgement the extract from ***Chitty*** is authority for the proposition that, if grounds exist on which a party would be entitled to refuse to perform a contract, but that party, in ignorance of them, fails to perform the contract, then that party will not be in breach of the contract by failing to perform it. The existence of such grounds would not however mean that the letter of 25 July 2018 was effective to terminate the Exclusivity Agreement, because: (a) that letter does not validly terminate the Exclusivity Agreement for the reasons I have already given; and (b) nothing in the extract from Chitty suggests that a notice terminating a contract could be rendered valid by virtue of a breach of contract by the party receiving that notice which is unknown to the party giving the notice.

153. The ground which Mr Brown says existed and which would entitle Genee to terminate the Exclusivity Agreement (or in my view, if made out, may mean that Genee's own failure to perform the Exclusivity Agreement might be excused) is that Northamber did not pay Genee's invoices on the dates on which they fell due for payment. I have already found however that Northamber did pay Genee's invoices on the dates on which they fell due for payment whether to Genee or, following notice of assignment on 26 January 2018 to LBCF. Therefore, late payment of Genee's invoices by Northamber cannot represent a ground upon which Genee would be entitled not to perform the Exclusivity Agreement without being in breach of it, or (if I am wrong) terminate the Exclusivity Agreement.

ISSUE 4 WAS GENEE IN BREACH OF THE EXCLUSIVITY AGREEMENT IN RELATION TO ANY OF THE SUPPLIES IT MADE DIRECTLY TO IES OR TO OTHER ENTITIES AFTER 1 JULY 2017 AND IF SO UNTIL WHEN?

154. This issue is not concerned with the question of what supplies Genee made directly to IES or other UK entities (other than Northamber and the Excluded Accounts) but rather whether such supplies would breach the Exclusivity Agreement if made and if so during what period the making of such supplies would breach the Exclusivity Agreement.

155. I have already explained in paragraph 67 above, when dealing with Mr Singh's credibility and honesty as a witness, why I have rejected Mr Singh's case that the Exclusivity Agreement provided for a transitional period, between 1 July 2017 and 31 December 2017, when Genee would be free to sell to some entities in the UK (in addition

to the Excluded Accounts) Genee World Products until all UK accounts transitioned across to Northamber by 31 December 2017. It follows that, with the exception of the four Excluded Accounts Genee was in breach of the Exclusivity Agreement to the extent that it made supplies of Genee World Products to IES and other entities in the UK, other than the Excluded Accounts and Northamber from 1 July 2017.

156. Northamber's expert, Mr Leandro suggests that Genee may have made supplies in breach of the Exclusivity Agreement after 12 November 2018, when Genee was placed into Creditors' Voluntary Liquidation. Whilst it is theoretically possible that such supplies could have occurred, Genee can only have made such supplies under the authority of its liquidators (under Section 103 of the Insolvency Act 1986, Mr Singh's powers as director of Genee ceased on passing of the resolution to wind Genee up). It forms no part of Northamber's case that Mr Singh or IES induced the liquidators of Genee to cause it to sell Genee World Products, in breach of the Exclusivity Agreement and therefore, the cut-off date for supplies by Genee which Mr Singh or IES may have induced Genee to make, is 12 November 2018.

157. The answer to issue 4 therefore is that Genee was in breach of the Exclusivity Agreement to the extent that it supplied Genee World Products to IES or any other entities in the UK, other than the Excluded Accounts or Northamber, between 1 July 2017 and (for the purposes of the claims against Mr Singh and IES) 11 November 2018.

ISSUE 5 WHAT WAS THE REASON/CAUSE OF NORTHAMBER NOT SUPPLYING IES WITH GOODS IN FEBRUARY 2018? WAS THIS FACTUALLY INCORRECT?

158. The factual background to this issue is not in dispute and is as follows:
   (a) on 25 January 2018, Mr Singh handed over a cheque, payable to Northamber, drawn on IES's account for £91,571.44 ("IES Cheque") and received in return a cheque for £133,567.11 drawn on Northamber's account payable to Genee. The IES Cheque represented monies owing by IES to Northamber which fell due for payment on or before 15 January 2018. Mr Singh asked Northamber not to present the IES Cheque for payment until he instructed Northamber to do so;
   (b) on 26 January 2018, Hill Dickinson wrote to Northamber, on behalf of LBCF giving Northamber notice of assignment, by Genee, of the debt owed to it by Northamber. Northamber then cancelled the cheque for £133,567.11 which had been handed to Mr Singh on 25 January;
   (c) on 31 January Northamber paid the £133,567.11 by bank transfer to the account specified by Hill Dickinson (which was the same account as specified on Genee's invoices to Northamber);
   (d) on 5 February 2018 Siva Yaganathan ("Mr Yaganathan") of Northamber sent an email to Mr Singh in which he confirmed that the sum of £91,571.44 was overdue for payment and that he intended to bank the IES Cheque for £91,571.44 to clear the overdue balance;
   (e) as at 5 February 2018, LBCF were restricting the release of funds to both Genee and IES under their respective confidential invoice discounting agreements with LBCF. Mr Singh proposed to Mr Phillips that, instead of Northamber cashing the IES Cheque, £91,571.44 should be offset against the sum of around £270,000 which

would fall due for payment by Northamber to Genee in mid-February 2018. I infer that Mr Singh suggested that, because LBCF would not make available the funds to IES to enable the IES Cheque to be honoured;

(f) on 6 February 2018, Mrs Kaur spoke to David Hall ("Mr Hall") Northamber's credit manager about releasing stock which IES had ordered from Northamber. Mr Hall confirmed that Northamber would not release the goods which IES had ordered until the position with LBCF was sorted out. Mr Hall offered that Northamber would supply goods direct to IES's clients, with IES receiving the profit from the sale, but this proposal was rejected by Mrs Kaur;

(g) on 9 February 2018 LBCF refused to agree to the set off which Mr Singh had proposed to Mr Phillips on 5 February 2018;

(h) on 15th February Mr Henry told LBCF by email that Northamber had set off the £137,332.32 then due and owing by IES to Northamber against monies that Northamber owed to Genee/LBCF;

(i) on 16 February Hill Dickinson for LBCF rejected the set off of the £137,332.32 against the debt owed by Northamber to Genee/LBCF and threatened that their client would consider presenting a winding up petition against Northamber, if the whole of the balance owed by Northamber to Genee/LBCF was not paid; and

(j) on 23 February Mr Hall confirmed, by e mail to Mrs Kaur, that Northamber had removed the credit facility on IES's account with Northamber. Mr Hall referred to the balance owing by IES to Northamber as being £169,278.14.

159. Mr Henry, in cross examination accepted that the £169,278.14 referred to in Mr Hall's email of 23 February 2018 did not take into account the set off of £137,332.32 applied by Northamber to IES's account on 15 February. Mr Henry speculated that the reason why Mr Hall's email referred to £169,278.14, as being outstanding was that the ledger entries to give effect to the set off which Northamber applied on 15 February 2018 had not yet been carried out. Mr Henry was unable to say what had happened in relation to Northamber's account with IES after 23 February.

160. I conclude that the cause of Northamber not supplying goods to IES, from 6 February 2018 up to 15 February 2018 was that Northamber were unwilling to supply goods on credit to IES until the sum of £91,571.44, then overdue, was paid and IES was unable or unwilling to pay for goods without credit facilities or to agree to Northamber supplying its customers direct, as proposed by Mr Hall on 6 February 2018. I come to these conclusions because:

(a) the IES Cheque for £91,571.44 which Mr Singh handed over to Northamber was never cashed by Northamber because Mr Singh asked Northamber not to cash it until he instructed Northamber to do so and Mr Singh never instructed Northamber to present the cheque for payment; and

(b) Mr Singh suggested, on 5 February that the £91,571.44 then outstanding should be set off against the debt which Northamber would owe to Genee as at 15 February 2018, however it appears that confirmation was being sought from LBCF that it would agree to the proposed set off. On 6 February, Mr Hall refused to release goods to IES until the position with Lloyds was resolved, which in my judgment meant, at that stage, until LBCF agreed to the set off.

161. From the 15 February to the end of February 2018, I find that the cause of Northamber not supplying IES was:

(a) a failure of communication within Northamber which led to Mr Hall cancelling IES's credit facility on 23 February, which he would not have done had he been aware that

the debt owed to Northamber by IES had been reduced to £31,945.82, none of which was overdue for payment on 23 February;

(b) IES was unwilling or unable to pay Northamber for the supply of goods without a credit facility;

(c) IES was unwilling to agree to Northamber's proposal that Northamber should supply IES's customers direct; and

(d) a failure to agree the reinstatement of IES's credit facility with Northamber after 23 February. There is no evidence that IES responded to Mr Hall's e mail by pointing out his mistake in his e mail of 23 February in stating that the outstanding debt was £169,278.44, when in fact it was £31,945.82 (none of which was overdue for payment) or that Northamber recognised its error and offered to restore IES's credit facilities.

162. I make the findings in paragraph 161 because:

(a) whilst LBCF did not agree to the set off proposed by Mr Singh, Northamber applied the set off on 15 February 2018, reducing the debt owed by IES to Northamber to £31,945.82, none of which was overdue for payment as at 15 February 2018;

(b) I am satisfied that had Mr Hall been aware, when he sent his email on 23 February to Mrs Kaur, that Northamber had set off £137,332.32 of the debt owing by IES to Northamber and that the balance of £31,945.82 was not yet overdue for payment he would not have withdrawn IES's credit facilities with Northamber. I am satisfied of that because Mr Henry confirmed that the set off was applied on the 15 February. Whether Mr Henry was right to suggest that Mr Hall wrongly stated in his e mail that the balance outstanding was £169,278.44, because IES's ledger had not being updated to reflect the set off applied on 15 February does not matter for present purposes;

(c) the withdrawal of IES's credit facility did not mean that Northamber was not willing to supply goods to IES cash on delivery; and

(d) Mrs Kaur made it clear that she was not prepared to agree to Northamber supplying IES's customers direct, but had she been willing to do so, I have no reason to believe that Northamber would not have been willing to make supplies on this basis after 15 February 2018 and after Mr Hall withdrew IES's credit facility on 23 February 2022.

ISSUE 6 - DID NORTHAMBER SUPPLY IES WITH GOODS AFTER FEBRUARY 2018?

163. Mr Henry said that he believed that Northamber did supply goods to IES in June 2018 and he asserted that those goods were not paid for. It appears however that the amount of goods involved was very small and there are no invoices in the bundle reflecting those sales. In the circumstances, I find on the balance of probabilities, that Northamber did not supply a material amount of goods to IES after February 2018.

ISSUE 7 - INDUCING A BREACH OF CONTRACT

164. Issues 7 (a) – (h) all relate to Northamber's claim that Mr Singh and/or IES induced Genee to breach the Exclusivity Agreement by supplying Genee World Products to customers in the UK other than Northamber and the Excluded Accounts.

165. Counsel are agreed that the leading authority on the question of what Northamber must prove in order to succeed in its claim that Mr Singh and/or IES induced Genee to breach the Exclusivity Agreement is ***OBG Limited v Allan [2007] UKHL 2***, and in summary what Northamber must prove is that:

(a) Genee breached the Exclusivity Agreement by supplying Genee World Products to customers in the UK other than Northamber and the Excluded Accounts. (I have already found (Issue 4) that Genee was in breach of the Exclusivity Agreement to the extent that it did supplied Genee World Products to IES or any other entity in the UK, other than the Excluded Accounts or Northamber, between 1 July 2017 and (for the purposes of the claims against Mr Singh and IES) 11 November 2018;

(b) Mr Singh/IES acted in such a way as to induce or procure the act or acts that amount to a breach of contract by Genee (in this case supplying Genee World Products to entities other than Northamber and the Excluded Accounts between 1 July 2017 and 11 November 2018);

(c) Mr Singh/IES must have actually known that what they were inducing Genee to do was a breach of the Exclusivity Agreement, but "blind eye" knowledge may be sufficient (that is if they know of facts that put them on enquiry as to whether what they were inducing Genee to do would be a breach of the Exclusivity Agreement, but they deliberately choose not to enquire into whether it would amount to such a breach);

(d) Mr Singh/IES must intend to induce Genee to breach the Exclusivity Agreement as an end in itself or as a means to an end. If breach of the Exclusivity Agreement is merely a foreseeable consequence of the inducement, then this will not amount to an intention to induce Genee to breach the Exclusivity Agreement; and

(e) if Mr Singh/IES have a lawful justification for inducing Genee to breach the Exclusivity Agreement, then this may provide them with a defence to the claim.

ISSUE 7 (a) WHAT KNOWLEDGE DID IES HAVE OF THE TERMS OF THE EXCLUSIVITY AGREEMENT?

166. For present purposes the relevant terms of the Exclusivity Agreement which Northamber must prove that IES had knowledge of are clauses 1.1-1.2 ("the Relevant Terms"). In answering Issue 4, I have found that Genee will have breached the Relevant Terms to the extent that it supplied Genee World Products to customers in the UK, other than Northamber and the Excluded Accounts after 1 July 2017 but that, for the purposes of the claim against Mr Singh and IES, they are only alleged to have induced Genee to make such supplies from 1 July 2017 up to 11 November 2018 (the day before Genee was placed into liquidation).

167. The relevant time for considering whether IES knew of the Relevant Terms is therefore from 1 July 2017 up to 11 November 2018.

168. Northamber says that:

(a) Mr Singh controlled IES and he negotiated the Exclusivity Agreement and signed it on behalf of Genee, IES therefore knew about the relevant terms of the Exclusivity Agreement through Mr Singh. In support of its contention that Mr Singh controlled IES, Northamber rely upon Mr Singh:

(i) being a signatory to IES's bank account;

(ii) together with Mrs Kaur executing a cross guarantee and indemnity on behalf of Genee and IES (albeit, as already noted wrongly in the name of IEL) in favour of LBCF on 1 July 2015;

(iii) controlling when IES made payments;

(iv) agreeing on behalf of IES, in the Exclusivity Agreement that it would provide a full pipeline of all outstanding opportunities as at 1 July 2017 and that Genee would allow Northamber to deduct from sums Northamber owed to Genee money that IES owed to Northamber if it was more than 7 days overdue; and

(v) communicating in a manner by e mail with Mrs Kaur which showed that Mrs Kaur was following Mr Singh's directions in respect of the management of IES; and

(b) Mrs Kaur, IES's sole director knew about the relevant provisions of the Exclusivity Agreement and therefore IES knew. Northamber's case that Mrs Kaur knew is based upon Mrs Kaur being;

(i) the wife of Mr Singh who negotiated the Exclusivity Agreement on behalf of Genee and signed it on Genee's behalf

(ii) shown on correspondence as personal assistant to Mr Singh as the director of Genee and signing an e mail in January 2017 as a director of Genee herself;

(iii) present at meetings at which the Exclusivity Agreement was discussed; and

(iv) copied in on emails sent to Mr Singh concerning the Exclusivity Agreement, including e mails to which the Exclusivity Agreement was an attachment.

169. Mrs Kaur says that whilst she may have been aware of the existence of the Exclusivity Agreement, she was not aware that it prohibited Genee from supplying Genee World Products to anyone other than Northamber in the UK (with the exception of the Excluded Accounts) from 1 July 2017. Mrs Kaur says that:

(a) Genee and IES were run separately with Mr Singh taking responsibility for controlling and running Genee and Mrs Kaur controlling and running IES;

(b) she was not a party to any meetings or discussion regarding the Exclusivity Agreement;

(c) she was introduced to Northamber as the new supplier to IES in place of Genee and told about all the advantages to IES of being supplied by Northamber in place of Genee, but was not told about what the agreement was between Northamber and Genee, which was not her concern;

(d) she may have been copied in to e mails regarding the Exclusivity Agreement but she did not read or consider their content as they did not concern her, or her business, IES;

(e) she had serious health issues from early 2017 at all relevant times throughout the period when the Exclusivity Agreement was being negotiated and after it was signed in July 2017, which substantially reduced her involvement in the day to day operations of IES and her ability and desire (as she says she was pre-occupied with her health issues) to take an interest in the business and affairs of Genee, including what was being agreed between Genee and Northamber; and

(f) whilst she sought and obtained advice from Mr Singh regarding aspects of the management of IES's business, she decided whether or not to take that advice and made the management decisions for IES.

The dates on which Mr Singh and Mrs Kaur were officers of Genee and IES

170. Genee was incorporated on 28 September 2005 and IES was incorporated on 14 December 2006. According to returns filed at Companies House Mr Singh and Mrs Kaur were appointed and resigned as officers of Genee and IES on the following dates:
   (a) Mrs Kaur was appointed company secretary of IES on 31 May 2007;
   (b) on 31 January 2008 Mr Singh replaced his nephew Balbir Singh as sole director of IES (Balbir Singh had been appointed sole director of IES on 27 December 2006);
   (c) on 10 November 2011, Mrs Kaur was appointed as a second director of IES, and resigned as IES's company secretary (being replaced by a Mr Maher) this appears to have coincided approximately with IES commencing trading the business formerly carried on by IEL which was placed into creditors voluntary liquidation on 12 October 2010;
   (d) on 28 June 2013 Mrs Kaur was re-appointed as company secretary of IES and Mr Maher resigned as company secretary; and
   (e) on 12 November 2015 Mr Singh resigned as director of IES leaving Mrs Kaur as the sole director of IES and Mrs Kaur resigned as director and company secretary of Genee leaving Mr Singh as Genee's sole director.

Did Mr Singh Control IES at a relevant time?

171. Mr Singh started to negotiate the terms of the Exclusivity Agreement with Mr Phillips in mid May 2017, Northamber made it clear that it wanted to be the exclusive supplier of Genee World Products in the UK from early on in those negotiations. The Exclusivity Agreement was signed by Mr Phillips on behalf of Northamber on 12 July 2017 and by Mr Singh, on behalf of Genee on 13 July 2017, the agreement took effect from 1 July 2017. For present purposes I will take 13 July 2017 as the date upon which Mr Singh knew that Genee had agreed that it would not supply Genee World Products to anyone other than Northamber in the UK (with the exception of the Excluded Accounts).

172. I accept that if, as Northamber says, Mr Singh controlled IES, then IES would know of the relevant terms of the Exclusivity Agreement at all times when Mr Singh controlled it, provided that that was on or after 13 July 2017.

173. I am not satisfied that Mr Singh: (a) being a signatory to IES's bank account (at least in January 2018) and; or (b) executing a cross guarantee in favour of LBCF, on behalf of IES (in July 2015) demonstrates that Mr Singh was controlling IES on or after 13 July 2017.

174. Mrs Kaur says that Mr Singh being a signatory to IES's bank account was a matter of convenience and that she determined what payments should be made by IES. In particular, Mrs Singh says that she authorised Mr Singh to sign the IES Cheque for £91,571.44 which Mr Singh signed and handed over to Mr Phillips on 25 January 2018.

175. The cross guarantee in favour of LBCF was executed on 1 July 2015. At that point, both Mr Singh and Mrs Kaur were directors of IES (and Mrs Kaur was company secretary of IES). It was appropriate therefore for Mr Singh and Mrs Kaur to execute the guarantee

on behalf of IES (albeit, as already noted, the cross guarantee was in fact, I accept in error, executed in the name of IEL). Mere execution of the cross guarantee does not demonstrate that Mr Singh was controlling IES in July 2015 and is not evidence that would support the conclusion that Mr Singh was controlling IES 2 years later on 13 July 2017 (when the Exclusivity Agreement was executed) or thereafter, particularly as Mr Singh resigned as director of IES and Mrs Kaur as director/company secretary of Genee on 12 November 2015 and Mrs Kaur and Mr Singh say that thereafter Mr Singh controlled and ran Genee and Mrs Kaur controlled and ran IES.

176. In asserting that Mr Singh controlled when IES made payments, Northamber rely upon: (a) Mr Singh signing the IES Cheque on behalf of IES in favour of Northamber for £91,571,44 and handing that cheque over to Mr Phillips on 25 January 2018 with instructions not to present it for payment until Mr Singh confirmed that it could be presented; and (b) Mr Singh then proposing to Mr Phillips on 5 February 2018, that Northamber should set off the £91,571,44 owed by IES to Northamber against the approximately £270,000 which would fall due for payment by Northamber to Genee in mid-February 2018.

177. I am not satisfied that either signing or handing over the IES Cheque or proposing the set off arrangement is evidence of Mr Singh controlling IES. The context in which Mr Singh signed and handed over the IES Cheque and later proposed a set off arrangement was that: (a) LBCF were severely restricting the release of funds to both Genee and IES, because of issues concerning Genee's ledger with LBCF (which caused LBCF to restrict the funds it released to Genee and IES (because it was thought that IES had entered into a guarantee of Genee's obligations to LBCF); (b) Mrs Kaur was unwell and Mr Singh may simply have decided to take on the burden of resolving or trying to resolve the issues with LBCF caused by the problems with Genee's ledger, certainly the correspondence with LBCF, in relation to both Genee and IES is with Mr Singh and not Mrs Kaur; and (c) under clause 6.2 of the Exclusivity Agreement Northamber had the right to deduct from any payment it owed to Genee any monies owed to Northamber by IES which were more than 7 working days overdue. The sum of £91,571.44 had fallen due for payment on or before mid-January 2018 and therefore Northamber had the right under clause 6.2 of the Exclusivity Agreement to deduct that payment from the sum that would fall due for payment by Northamber to Genee, in mid-February 2018, in any event, regardless of whether Mr Singh agreed to this.

178. Mr Singh's actions in signing the IES Cheque and handing it over to Mr Phillips and then proposing the set off arrangement, in place of the cheque, must therefore be viewed in the context of IES being unable to pay its suppliers (including Northamber) because LBCF was restricting the money that it released to IES. Mr Singh and not Mrs Kaur was in correspondence with LBCF and Mr Singh was looking for ways to discharge the debt owed by IES to Northamber. He attempted to do this by handing over the IES Cheque to Mr Phillips with instructions to withhold presenting it for payment until Mr Singh instructed Northamber that it could be presented for payment, when funds were available to meet it. When it became apparent that funds were unlikely to be released by LBCF to IES in the immediate future, Mr Singh proposed a set off in accordance with clause 6.2 of the Exclusivity Agreement. Mr Singh clearly had an interest in trying to ensure that as little damage as possible was suffered by IES as a result of its access to funds being restricted by LBCF, if for no other reasons than that his wife, Mrs Kaur was the sole shareholder and director of IES and the problem with LBCF not releasing funds to IES had been caused by

issues with Genee's agreement with LBCF. Mr Singh may therefore have felt some responsibility to find a mechanism to enable IES to pay what it owed to Northamber. This does not imply that Mr Singh was controlling IES.

179. Clause 4.1 of the Exclusivity Agreement provides that both Genee and IES would provide a full pipeline of all outstanding opportunities as of 1 July 2017 to Northamber and clause 6.2, as already noted, provided that Northamber would have the right to set off against monies that it owed to Genee any monies owed by IES to Northamber if they were more than 7 working days overdue for payment. IES was not a signatory to the Exclusivity Agreement.

180. Mrs Kaur did not say that she agreed to the inclusion of any terms in the Exclusivity Agreement that related to IES but she did say that it would be normal practice for IES to supply details of its pipeline to its key suppliers so that they were forewarned of what orders IES was likely to place over the coming months. Mrs Kaur said therefore that clause 4.1 merely confirmed what IES would do in any event. I accept that evidence, it makes sense to me that IES would provide to its key suppliers (including Northamber, a key supplier after 1 July 2017) details of its likely future orders in order to ensure that the supplier could arrange to hold sufficient stock to meet those future orders.

181. Agreeing to the inclusion in the Exclusivity Agreement of a clause that, on the face of it, placed an obligation upon IES (although given that IES was not a signatory to the Exclusivity Agreement, an obligation that may not have been enforceable against IES) appears to suggest that Mr Singh was exercising a degree of decision-making on behalf of IES. I am not however satisfied that this demonstrates that Mr Singh was exercising control over IES, rather than agreeing something on behalf of IES which he was confident that his wife, Mrs Kaur would not object to. In my judgment, Mr Singh would know enough about the business of IES to know whether, what clause 4.1 provided for amounted to an onerous or unusual obligation, which I am satisfied on the evidence of Mrs Kaur it did not. It is also possible that a discussion took place between Mr Singh and Mrs Kaur about IES providing details of its sales pipeline to Northamber, but that Mrs Kaur simply does not recall it.

182. Clause 6.2 of the Exclusivity Agreement did not impose any obligation upon IES, it enabled Northamber to set off against monies that it owed to Genee monies owed to it by IES which were 7 working days or more overdue and as such was something which Genee was agreeing to and did not require the agreement of IES, this does not imply that Mr Singh was making a decision on behalf of IES.

183. Northamber point to email communications between Mr Singh and Mrs Kaur on 28 February 2017 and 4 January 2018 which Northamber suggest demonstrates Mrs Kaur treating Mr Singh as someone that she was answerable to in relation to the affairs of IES and therefore as evidence of Mr Singh controlling IES:

(a) on 28 February 2017 Mr Singh forwarded Mrs Kaur an exchange of emails between Mr Singh and Mr Talbot regarding the financial performance of IES for February 2017 which referred to its financial performance having significantly deteriorated. Mr Singh's email to Mrs Kaur said "I think we should discuss at home the below. I know we can turn [IES] around and make it a big success. With your new plan and some new externals I know it can be making good profit for us. I am confident." Mrs Kaur responded "I am really sorry Ranjit I will turn this round I promise"; and

(b) on 4 January 2018 there were a number of email exchanges between Mrs Kaur and Mr Singh: (i) at 16:16 Mrs Kaur wrote "Hi Ranjit as discussed please find below the sales targets for Q1 and marketing budgets plans for the whole year. Your thoughts and advice on this would be much appreciated."; (ii) at 16:24, Mr Singh wrote "having reviewed it in detail, the targets seem fine. I really need you to work within your budget. My suggestion is look at reducing your staff costs £7,500…."; (iii) at 17;12 Mrs Kaur wrote "I will do everything in my power to work within the means"; and (iv) at 17:18 Mr Singh responded "thanks, that is great. Look forward to the successful implementation of the plan.". In cross-examination Mrs Kaur accepted that the language in the email at 17:12 may have appeared to be language which might be used by an employee communicating with their line manager, but she insisted that she simply sought advice and assistance from Mr Singh but the decisions, so far as IES was concerned, were her decisions.

184. The first point to make about the e mail correspondence that Northamber refer to is that the e mails passing between Mr Singh and Mrs Kaur over 2 days are a small fraction of the e mails appearing in the trial bundle and are not therefore necessarily representative of the e mail communications between Mr Singh and Mrs Kaur as a whole.

185. The e mails of 28 February 2017 took place before the Exclusivity Agreement was signed by Mr Singh on 13 July 2017, but I accept that, if they demonstrate that Mr Singh was in control of IES in February 2017 this would be good evidence, absent some change of circumstances, that Mr Singh was in control of IES in July 2017. However, in my judgment the e mails of 28 February do not demonstrate that Mr Singh was in control of IES in February 2017. The e mails do show that Mr Singh had been discussing IES's financial performance with Mr Talbot, the accountant of IES and Mr Singh says "I think we should discuss at home" and "I know that we can turn IE around. At most this suggests some joint effort on the part of Mr Singh and Mrs Kaur to turn IES's fortunes around, not that Mr Singh was controlling IES, it is Mrs Kaur's plan and not that of Mr Singh that Mr Singh suggests will result in IES making a good profit for us.

186. The first e mail of 4 January 2018, from Mrs Kaur to Mr Singh asks for Mr Singh's advice on sales targets and budgets for IES which Mrs Kaur has produced, consistent with Mrs Kaur's evidence that she sought advice from Mr Singh. I accept, as did Mrs Kaur that the language of Mr Singh: "I really need you to work within your budget" and Mrs Kaur's response: "I will do everything in my power to work within the means" is language suggestive of a superior speaking to their subordinate, consistent with Mr Singh and not Mrs Kaur ultimately controlling IES, but it appears reasonable to infer that the plan which Mr Singh looked forward to the implementation of was Mrs Kaur's plan and as already noted the e mail chain started with Mrs Kaur asking for Mr Singh's advice which she says would be appreciated, rather than seeking Mr Singh's approval of the sales targets and budgets. Overall therefore I am not satisfied that the e mails of 4 January 2018 show Mr Singh controlling IES.

187. Northamber also points to an e mails of 5 February 2018 from Ellen Hilton of IES ("Ms Hilton") to Midwich, a supplier of IES, in which Ms Hilton refers to "our director" being abroad, but, say Northamber, it was Mr Singh who was abroad at that time and not Mrs Kaur and this shows that the staff of IES considered that Mr Singh and not Mrs Kaur was the director of IES and/or in control of it.

188. In her first e mail sent by Ms Hilton at 11:13 on 5 February, responding to an e mail from Mr Gay of Midwich dated 2 February, saying that IES's order is on hold, due to a direct debit for £26,000 bouncing, Ms Hilton says: "I have checked with the director he has advised that he will get this sorted upon his return. He is currently away on business and not due back until 19 February …". Ms Bishop of Midwhich then e mails Ms Hilton to say that Mr Gay had forwarded Ms Hilton's e mail to her, Ms Bishop says that she will have no option but to report the default in payment to Midwich's credit insurers due to the time that it will take to get resolved which may affect the level of credit that Midwich would provide to IES going forward. Ms Hilton responds: "I would really be grateful if you could give us until next week as our director is business until then and if I have cc him in he has advised that he will sort this out upon his return, my has are tied on this as he is the only authoriser". The problem was that LBCF had frozen IES's access to funds because of problems with Genee's ledger, and as I have already mentioned it was Mr Singh who was in correspondence with LBCF and who was trying to procure the release of funds by LBCF to Genee and IES. Ms Hilton was right therefore to consider that Mr Singh was trying to sort it out but wrong to refer to Mr Singh as "our director", insofar as this gave the impression that he was a director of IES and possibly wrong to refer to him as "the only authoriser" if that meant for IES (both Mr Singh and Mrs Kaur were signatories to IES's bank account).

189. I have no evidence before me as to why Ms Hilton referred to "our director" being abroad, who she was referring to or why (if she was referring to Mr Singh) she thought that Mr Singh was a director of IES when he was not (if this is what she thought) or why she referred to him as the only authoriser. On the balance of probabilities I am satisfied that Ms Hilton was referring to Mr Singh, but the original e mail from Mr Gay of Midwich to Ms Hilton (amongst others) was sent to Ms Hilton at her e mail address ellen.hilton@geneeworld.com as was Ms Hilton's response to Mr Gay. Ms Bishop's e mail was then sent to Ms Hilton's IES e mail address. It was the evidence of Mr Singh and Mrs Kaur (which I accept) that Genee and IES shared accounts employees, of which Ms Hilton would appear to be one. I am satisfied that Ms Hilton's primary objective in her emails to Midwich was to buy time for Mr Singh to sort out the problem with LBCF so that a payment could be made to Midwich. Referring to Mr Singh as our director (which he was for Genee, but not for IES) and authoriser may have been misleading as it would give the impression that the director abroad was the director of IES, but I think it unlikely that this will have concerned Ms Hilton at the time and it was a much simpler message that she gave, which disclosed very little, rather than attempting to explain in the emails the strictly correct position that Mr Singh was trying to sort it out (even though he was not a director of IES). It would be unsafe to draw the conclusion from the e mail of 5 February 2018 that Ms Hilton or the staff of IES generally thought that Mr Singh was the, or a director of IES, or was in control of IES and I do not draw that conclusion.

Did Mrs Kaur know about the Relevant Terms of the Exclusivity Agreement?

190. Mr Singh asserted that the Exclusivity Agreement had a transition period between 1 July 2017 and 31 December 2017, during which period, Genee's customers in the UK would transfer across to Northamber, so that it was not until 31 December 2017 that Northamber would become the exclusive distributor for Genee World Products in the UK. I have found, not only that there was no transition period but that Mr Singh knew there was no transition period. It follows from this that Mr Singh knew the Relevant Terms of the Exclusivity Agreement (that Northamber would be the exclusive distributor of Genee

World Products in the UK (save for the Excluded Accounts) from 1 July 2017). It follows that I am satisfied that, if Mr Singh told his wife, Mrs Kaur about the exclusivity arrangements with Northamber under the Exclusivity Agreement, then he will have told her in substance about the Relevant Terms of the Exclusivity Agreement.

191. As to whether Mr Singh did tell Mrs Kaur about the Relevant Terms, in my judgement this depends not (or not only) upon Mrs Kaur being Mr Singh's wife but also upon the question of whether it was relevant and/or appropriate for Mr Singh to have told Mrs Kaur about the Relevant Terms, in all the circumstances.

192. Mrs Kaur says that, after 12 November 2015, when Mr Singh resigned as a director of IES and Mrs Kaur resigned as a director and company secretary of Genee, Mrs Kaur took responsibility for the control of IES and Mr Singh for the control of Genee and that they had very little to do with each other's businesses. Mrs Kaur also said that she and Mr Singh had a rule that they would not discuss business matters at home (although that appears not to have been a strict rule given that Mr Singh's email to Mrs Kaur of 28th February 2017 suggested that they should discuss the financial performance of IES at home). Mrs Kaur also says that IES moved out of the premises occupied by both Genee and IES, in 2015 to separate business premises, albeit she accepted that some staff were shared between the two companies.

193. In February 2018 changes to the ultimate shareholder of Genee were filed at Companies House, namely that:
   (a) with effect from 26 October 2017, Mr Singh had replaced Mrs Kaur as the person having significant control over Genee; and
   (b) with effect from 11 January 2018 Genee Group Limited became the person having significant control of Genee in place of Mr Singh.

194. On the face of it, when the Exclusivity Agreement was being negotiated and for a period after it was signed (ie until 26 October 2017) Mrs Kaur held at least a majority of the shares of Genee and therefore she had a direct interest in the success of Genee as its majority shareholder making it relevant and appropriate that Mr Singh should keep her informed (as on the face of it substantially the owner of Genee) about the progress being made towards agreement of the Exclusivity Agreement, its execution and its terms, including the Relevant Terms. In any event, whatever the position was in relation to the shares of Genee, Mrs Kaur had an interest in the success of Genee because she was part of the same family unit as her husband, Mr Singh and her financial well-being will have depended to an extent upon the success of Genee (including any remuneration that Mr Singh drew from it as its director). As such it would have been both relevant and appropriate for Mr Singh to have discussed with Mrs Kaur matters which would have a significant effect upon the business of Genee. The Exclusivity Agreement (including the Relevant Terms) certainly fell into that category. Further, Genee was a major supplier to IES and, under the Exclusivity Agreement it was Northamber, instead of Genee who would be supplying IES with Genee World Products. This made it even more relevant and appropriate for Mr Singh to discuss the Exclusivity Agreement with Mrs Kaur because of the effect it would have upon the business of IES. It is common ground that Northamber agreed to supply IES with Genee World Products after 1 July 2017, on advantageous terms which Mrs Kaur would, I find have been keen to secure.

195. As I will mention shortly, Mrs Kaur was copied in to correspondence taking place between Mr Phillips and Mr Singh regarding the Exclusivity Agreement. Whether or not

Mrs Kaur read that correspondence (which she denies, and I will determine shortly) the fact that she was copied into the correspondence supports my conclusion that Mr Singh thought it both relevant and appropriate that Mrs Kaur should be kept informed of the progress and content of negotiations concerning the Exclusivity Agreement, the terms of the Exclusivity Agreement (including the Relevant Terms) and the execution of that agreement.

196. I am satisfied, on the balance of probabilities, that Mr Singh and Mrs Kaur will have discussed the Exclusivity Agreement prior to it being entered into because: (a) Mrs Kaur had a financial interest in the success of Genee either directly as majority shareholder at the relevant time or as the wife of Mr Singh; and (b) the terms of the Exclusivity Agreement and its progress towards completion were of direct relevance to IES given that Northamber would replace Genee as supplier to IES of Genee World Products. I am also satisfied that Mr Singh will have told Mrs Kaur that the Exclusivity Agreement included the Relevant Terms, because Genee giving exclusivity to Northamber in relation to Genee World Products in the UK (except the Excluded Accounts) was a very important term of the Exclusivity Agreement (hence its name) and involved a substantial element of risk for Genee (in tying the success of the sale of Genee World Products in the UK firmly to the success of Northamber in selling them). In coming to these conclusions I reject the evidence of Mr Singh and Mrs Kaur that Mrs Kaur did not know about the Relevant Terms of the Exclusivity Agreement as implausible.

197. Most of the emails that passed between Mr Singh and Mr Phillips between May and July 2017 concerning the negotiation of the Exclusivity Agreement showed Mrs Kaur as Mr Singh's PA. This, says Northamber, shows Mrs Kaur's involvement in the business of Genee and more particularly that, as Mr Singh's PA, Mrs Kaur would be likely to become aware of the terms of the Exclusivity Agreement (and in particular the Relevant Terms).

198. Mrs Kaur says that Mr Singh had a PA for around 10 – 15 years but that she had recently retired and Mrs Kaur's name was put on Mr Singh's emails as his PA until a new PA could be hired. This Mrs Kaur said was done to make Mr Singh's e mails "look good" but she said that she did not carry out any of the usual functions of a PA (although she did accept that she acted as a point of contact for Mr Singh for clients of Genee who were unable to get in touch with him).

199. On 12 January 2017, Mrs Kaur sent an email to the staff of IES and Genee about the BETT show due to take place in late January 2017. The email said that a "pre-BETT" meeting would take place on 23 January at Libra house (the premises of Genee) and the email is signed off "Mandy Kaur" and under her signature appear the words "Director" and "Genee World Limited" and it was sent from the email address "mandy@Geneeworld.com". Mrs Kaur was unable to explain why the email referred to her as a director of Genee when she accepted she was not a director of Genee in January 2017.

200. I do not consider that the reference to Mrs Kaur as Mr Singh's PA in emails dated between May and July 2017 or Mrs Kaur's email of 12 January 2017 describing her as a director Genee World Limited adds materially to Northamber's case that Mrs Kaur knew about the Relevant Terms of the Exclusivity Agreement because:

(a) the copies of Mr Singh's email correspondence in the trial bundle, from around September 2017 no longer show Mr Kaur as Mr Singh's PA and, from around October 2017 a new PA, Jas Phagura appeared on Mr Singh's emails as his PA. This

is consistent with Mrs Kaur's case that the naming of her as Mr Singh's PA was a temporary arrangement;

(b) even if Mrs Kaur undertook some or all of the functions of a PA for Mr Singh, between May and July 2017 this does not mean that, by virtue of doing so she would necessarily become aware of the Relevant Terms of the Exclusivity Agreement. I come to this conclusion because I am not satisfied that, if Mrs Kaur had acted in all respects as Mr Singh's PA between May and August 2017, this would make Mr Singh consider it any more relevant or appropriate to tell Mrs Kaur about the Exclusivity agreement and/or the Relevant Terms then I have already found it was for him to do so; and

(c) Mrs Kaur was not a director of Genee in January 2017 (according to Company's House having resigned on 12 November 2015) and it has not been suggested that she acted as a shadow director or de facto director of Genee. I am satisfied that the reference in Mrs Kaur's email of 12 January 2017 to her being a director of Genee was a mistake and of no probative value therefore in demonstrating that Mrs Kaur would be any more likely to become aware of the Relevant Terms of the Exclusivity Agreement 7 months later, in July 2017. The email does however show involvement by Mrs Kaur in Genee's business, supporting my conclusion that Mr Singh would have considered it both relevant and appropriate to tell Mrs Singh about the Relevant Terms of the Exclusivity Agreement.

201. In his witness statement, Mr Phillips suggested that Mrs Kaur had been present at a meeting in Florida on 15 June 2017 when the Exclusivity Agreement was discussed. However at the start of his evidence Mr Phillips asked to carry out a correction to his witness statement, to say that the meeting in Florida on 15 June 2017 took place between himself on the one hand and Mr Singh and Mr Singh's son on the other and not Mrs Kaur.

202. Mr Phillips also refers in his witness statement to a meeting at Northamber's premises which he says was attended by Mr Singh and Mrs Kaur at which the Exclusivity Agreement was discussed. Mr Singh and Mrs Kaur accept that a meeting did take place at Northamber's offices on 5 July 2017 and that Mr Singh and Mr Phillips discussed the Exclusivity Agreement but they say that instead of being part of that meeting, Mrs Kaur (who they accept had gone to Northamber's offices with Mr Singh) had instead met with Louise Honeywill of Northamber who would become responsible for managing IES's new account with Northamber for the supply of Genee World Products and discussed arrangements for that supply.

203. Mr Phillips accepted in cross examination that Mrs Kaur did have a separate meeting with Louise Honeywill, about IES's new account with Northamber. He was unclear about how much of the meeting between himself and Mr Singh, Mrs Kaur participated in, although he thought that she was present for at least some of that meeting.

204. On 6 July 2017 Louise Honeywill sent an email to Mrs Kaur expressing excitement about the future trading relationship between Northamber and IES and referring to her discussions with Mrs Kaur. I am not satisfied that Mrs Kaur was present during any of the material discussions between Mr Singh and Mr Phillips about the Exclusivity Agreement on 5 July 2017. I find this because Mr Phillips could not recall what part of the meeting Mrs Kaur had been present for, Mrs Kaur and Mr Singh denied it and the e mail of Louise Honeywill of the following day refers to her meeting with Mrs Kaur and what was discussed but there is no document referring to Mrs Kaur being in the meeting with Mr

Phillips at which the Exclusivity Agreement was discussed. It follows that I am not satisfied that Mrs Kaur would have learned about the Relevant Terms of the Exclusivity Agreement, as a result of participating in that meeting (to the extent she was not already aware of them). I consider it likely however that either as Mr Singh and Mrs Kaur travelled to or from Northamber's offices, or after they arrived home following the meeting they will have discussed the contents of their respective meetings with Mr Phillips and Louise Honeywell including Northamber's exclusivity.

205. Northamber refer to a number of email exchanges between Mr Phillips and Mr Singh and subsequently Mr Gaut and Mr Singh concerning the Exclusivity Agreement which Mrs Kaur was copied in to. Northamber say that this demonstrates that Mrs Kaur knew about the Relevant Terms of the Exclusivity Agreement by virtue of her being copied into these emails. Mrs Kaur says that she did not read the emails both because they did not directly concern her business, IES and because her thoughts were preoccupied by her illness such as to exclude any interest she might otherwise have had in those e mails or their content.

206. Northamber refer to the following e mails and their content:

(a) an email of 19 June 2017 from Mr Singh to Mr Phillips, copied to the accountant Mr Talbot and to Mrs Kaur in which Mr Singh says: "happy to go exclusive with Northamber and confirm this" and "like you, I am very keen to get this going on 1st July".

(b) an email of 21 June 2017 from Mr Phillips to Mr Singh in which Mr Phillips sets out in the e mail a draft of the Exclusivity Agreement and Mr Singh provides his responses: Mr Phillips refers to receiving forecasts for stock required by IES in July and Mr Singh responds that Mrs Kaur is "fully aware that all orders placed with IES from 1st July will be via Northamber." The draft terms of the Exclusivity Agreement, under the heading "Exclusivity" say "Northamber will become the 100% exclusive source for all Genee World Products in the UK effective July 1 with no sales by Genee to any reseller or other party in the UK. All enquiries generated or received by Genee will be passed to and transacted via Northamber" Mr Singh responds that the only exceptions are various catalogue companies where Genee are under contractual terms with the customer to supply. The next term says: "this Exclusivity will last from July 1, 2017 – December 31, 2018" Mr Singh responds "this is fine, however regular review meetings and agreed KPIs from the outset would need to be agreed and met for each quarter"…

(c) an email of 6 July 2017 from Mr Phillips to Mr Singh copied to Mrs Kaur headed "thanks! – Northamber and Genee Exclusivity 1 July 2017" in which Mr Phillips says "delighted that our exclusivity has now started. Please see pasted below an update incorporating what we discussed. There is then set out an updated version of the draft Exclusivity Agreement. Clause 1 provides that "Northamber will become the 100% exclusive source for all Genee World Products in the UK effective July 1 with no sales by Genee to any reseller or other party in the UK. All enquiries generated or received by Genee will be passed to and transacted via Northamber. The only exception to this is a prearranged list of resellers who are under contract and currently unable to be easily swapped across. A list of these resellers will be supplied by Mr Singh no later than Monday 10 July and will form appendix A…. "This Exclusivity will last from July 1, 2017 – December 31, 2018……"

(d) an email of 12 July 2017 from Mr Phillips to Mr Singh, copied to Mrs Kaur, sending to Mr Singh (by way of attachment) a copy of the Exclusivity Agreement as signed

by Mr Phillips on behalf of Northamber for signature by Mr Singh on behalf of Genee;

(e) an email of 13 July 2017 from Mr Singh to Mr Phillips copied to Mrs Kaur enclosing a copy of the Exclusivity Agreement signed by Mr Singh on behalf of Genee;

(f) an email of 16 January 2017 from Mr Gaut to Mr Singh copied to Mrs Kaur in which Mr Gaut makes points about Northamber's target minimum order quantity for the year of £4 million in 2018 and Northamber's commitment to stock holding. Mr Singh responds that the Exclusivity Agreement is set at £4 million per year which means £1 million per quarter and "if you are not able to stick to this figure, then we need to sit down and discuss what you can achieve on a non-exclusive basis.";

(g) on 25 January 2018 Mr Phillips sent an e mail to Mr Singh, Mrs Kaur and Mr Warren, in which he referred to having wished to discuss the matters raised in that e mail over dinner that evening, but the dinner had been cancelled. Mr Phillips says: "…. We also need to understand sales out forecast urgently for [IES] as the volume is significantly below forecast for this month impacting our projected churn rate on existing stock and consequential re-order rate which impacts all of us…… I am very keen to get this process back to its best so we can maximise on our joint sales expectation and exclusivity contract together and look forward to seeing you all ";

(h) on 26 January 2008 at 10:15 Mr Singh sent an email to Mr Phillips copied to Mrs Kaur and Mr Warren in which he said: "Both [Mrs Kaur] and I have some serious concerns about how some issues are being handled since we started the relationship with Northamber. As you know our exclusivity agreement is based upon Northamber doing a minimum of £4m per year. Therefore you are required to put in purchase orders of £333,000 per month. This does not include [IES] which does not form part of the agreement.";

(i) on 26 January 2018 at 11:50 am, Mr Phillips sent an email to Mr Singh, Mrs Kaur and Mr Warren responding to Mr Singh's e mail timed at 10:15 saying: " I referenced [IES] as this was part of the stock exit that allows us to commit to stock volumes and as we are the exclusive distributor for Genee the volume done by [IES] on Genee shows that it has been a slow start to the month for Genee and actually the Northamber team and 150k generated sales is strong."; and

(j) on 27 January 2018, Mr Singh sent an email to Mr Phillips, Mrs Kaur and Mr Warren in which he said: "We need a substantial order being placed on Genee by Northamber before the end of this month. If this does not happen I am not sure how we can maintain our exclusive partnership with Northamber. We have no choice but to look for additional sources of income to support our company. No organisation of our size can survive on virtually no orders being placed on it. Please note this has nothing to do with [IES] as their revenue is not linked to your £4m MOQ. Whatever they do is extra and cannot be incorporated into your figure."

207. The email of 19 June 2017 from Mr Singh to Mr Phillips confirms that Genee would provide Northamber with exclusivity and that this should happen with effect from 1 July 2017. Whilst the email does not go into detail about what that exclusivity would be, any reader of that short email would, in my judgment, understand that Mr Singh was agreeing that Northamber would have some exclusivity in relation to Genee World Products.

208. The emails of 21 June, 6 July, 12 July and 13 July contained drafts of the Exclusivity Agreement for Mr Singh to consider (emails of 21 June and 6 July) or had attached to them the Exclusivity Agreement in final form (emails of 12 and 13 July 2017). It is clear from

each of those emails that Northamber is to be the exclusive distributor of Genee World Products in the UK from 1 July 2017 (subject to the Excluded Accounts).

209. The emails of January 2018 highlight matters that Northamber and Genee considered were going wrong with their relationship under the Exclusivity Agreement. It is clear from those emails that Northamber and Genee were unhappy at the number of sales of Genee World Products which were being achieved. Mr Phillips suggested that IES's orders had fallen off considerably, reducing Northamber sales and Mr Singh was unhappy that Northamber was ordering nothing like enough Genee World Products from Genee to meet the MOQ of £4m per annum for 2018 or (Mr Singh asserted) to enable Genee to survive. Northamber's exclusivity is mentioned throughout those emails.

210. Mrs Kaur says that she did not read the emails that she was copied into, or which were sent to her which referred to Northamber's exclusivity because they did not directly concern her or her business, IES. Whilst I accept that Mrs Kaur may not have read every line of every one of the 7 emails or the Exclusivity Agreement attached to the emails of 12 and 13 July, I find, on the balance of probabilities, that Mrs Kaur, despite her denial did read sufficient of the 7 emails sent in June and July 2017 to understand (insofar as she did not already understand) that Northamber was to become (or had become) from 1 July 2017 sole distributor of Genee World Products in the UK (save for the Excluded Accounts). I come to this conclusion of the following reasons:
    (a) I have already mentioned that, in my judgement, Mr Singh would not have copied Mrs Kaur into his email correspondence with Mr Phillips, regarding the negotiation and execution of the Exclusivity Agreement unless he thought it was relevant and appropriate that Mrs Kaur should know about the negotiations and the terms of the Exclusivity Agreement. Equally I am satisfied that Mrs Kaur would not have been copied into the email correspondence in January 2018 unless Mr Singh thought it relevant and appropriate that she should be. I note also in relation to the January 2018 emails that Mr Phillips made reference to a cancelled dinner which, it appears to have been anticipated, both Mr Singh and Mrs Kaur would attend;
    (b) I have already said (paragraphs 194 – 196 above) why it would, in my judgement, have been important for Mrs Kaur to know about and to discuss with Mr Singh: (i) the proposal that Northamber should be granted exclusivity for Genee World Products in the UK; and (ii) in due course the problems caused as a result of Northamber ordering insufficient Genee World Products from Genee, whilst at the same time Genee was tied by the Exclusivity Agreement to substantially only selling Genee World Products in the UK through Northamber. Given my conclusion that it would have been important for Mrs Kaur to know about those matters, I am satisfied that she would have read or substantially read the emails, in spite of her illness; and
    (c) in my judgment it is very clear from the content of the emails and their attachments that Northamber was being given or had been given the exclusive right to distribute Genee World Products in the UK and therefore even if Mrs Kaur only "skim read" either the emails or their attachments she would understand this.

ISSUE 7 (b) WAS THERE AN INDUCEMENT. DID MR SINGH OR IES DO ANY ACT OR PROCURE OR INDUCE GENEE TO BREACH THE EXCLUSIVITY AGREEMENT?

What amounts to inducement?

211. I have been referred to little in the way of authoritative guidance as to what amounts to "inducement". In ***OBG,*** at paragraph 36 Lord Hoffman refers to acts of encouragement, threat, persuasion and so forth". It is also common ground that procuring a breach of contract would also amount to inducement.

Did Genee breach the Exclusivity Agreement?

212. The tort of inducing a breach of contract is an accessory liability, that is the liability only arises if there is a breach of contract, which the defendant has induced. In answering Issue 4 (see paragraph 157 above) I have found that Genee was in breach of the Exclusivity Agreement to the extent that it supplied Genee World Products to IES or any other entity in the UK, other than the Excluded Accounts or Northamber, between 1 July 2017 and 11 November 2018. Although the expert witnesses (Mr Leandro for Northamber and Mr Pym for Mr Singh and IES) have produced significantly different figures for the value of sales that in their opinions were made by Genee to IES and other entities in the UK (other than Northamber and the Excluded Accounts) between 1 July 2017 and 11 November 2018, they both agree that such sales did take place. Mr Pym identifies sales from Genee to IES only from 31 March 2018 onwards. Mr Leandro says that because IES have failed to provide full disclosure of relevant documents it is possible that there may have been sales by Genee to IES of Genee World Products after 1 July 2017 but prior to 31 March 2018. He had not however seen any documents that evidenced this. Mr Leandro and Mr Pym agree that Genee made sale to UK entities other than Northamber, the Excluded Accounts and IES throughout the period 1 July 2017 to 11 November 2018.

Did Mr Singh induce Genee to breach the Exclusivity Agreement?

213. Mr Singh accepts that he was sole director of Genee and controlled it at all material times (and it is his evidence and that of Mrs Kaur that he did so to the exclusion of Mrs Kaur). Mr Brown, for Mr Singh does not contend that, insofar as Genee breached the Exclusivity Agreement, Mr Singh did not procure that it did so. Mr Brown's point on inducement of Genee, by Mr Singh is that, Mr Singh acted bona fide and within the scope of his authority as director of Genee and for that reason he is not liable for inducing Genee to breach the Exclusivity Agreement, to the extent it did so. I deal with that point in Issue 7 (c) below.

214. I am satisfied therefore that Mr Singh did induce Genee to breach the Exclusivity Agreement, to the extent that it did so between 1 July 2017 and 11 November 2018.

Did IES induce Genee to breach the Exclusivity Agreement?

215. Northamber say that IES did induce Genee to breach the Exclusivity Agreement. Paragraph 29 of the Re-Amended Particulars of Claim pleads that "The third defendant (IES) knew that, and intended that by placing orders for the Genee World Products directly with the first defendant (Genee) it would persuade, and did persuade, the first defendant to make sales other than to the claimant (Northamber) in the UK and thereby breaching its exclusivity contract with the claimant; the aim of which was to undercut the claimant and/or its resellers in terms of their respective margins and the third defendant knew that it was inducing a breach of contract and the third defendant's actions, by placing orders with the first defendant for direct supply, persuaded the first defendant to breach its agreement with

the claimant, which was intended to and is such as to amount to inducement of breach of clause 1 of the 2017 agreement [Exclusivity Agreement] and the conduct did induce a breach of contract thereby causing loss and damage to the claimant."

216. In paragraph 40 of his witness statement, Mr Henry says that "…. I believe that the third defendant induced Genee to breach its contract with Northamber… I believe that IES knew that and intended that, by placing orders with Genee world directly, and not going through Northamber, it would persuaded *[sic]* Genee world to make sales other than to Northamber, thus breaching the exclusivity provision in the agreement…. IES knew that it was inducing a breach of contract and IES's actions, by placing orders with Genee world for direct supply, persuaded Genee world to breach its agreement with Northamber, which was intended to and is such as to amount to inducement of breach of clause 1 of the July 2017 agreement and the conduct did induce a breach of contract".

217. I asked Mr Henry why he said in paragraph 40 of his witness statement that he believed that IES persuaded and induced Genee to supply Genee World Products to it in breach of the Exclusivity Agreement. Mr Henry referred to there being a close relationship between Genee and IES and asserted that IES knew that ordering Genee World Products from Genee would make Genee breach the Exclusivity Agreement. Mr Henry accepted that he did not however know why Genee had breached the Exclusivity Agreement by supplying Genee World Products to IES. Mr Henry speculated that it could be because Genee and IES wanted to achieve a better margin. I told Mr Henry that he had not answered my question, I wanted to understand why he believed that IES had persuaded or induced Genee to breach the Exclusivity Agreement. Mr Henry said that he was struggling to put into words why he believed that. Finally, after further pressing from myself Mr Henry said that the mechanism by which IES had persuaded or induced Genee to supply Genee World Products to IES was placing orders with Genee, knowing that Genee would breach the Exclusivity Agreement if it fulfilled them. I asked Mr Henry whether there was anything else he relied on for his belief, to which he replied "just that".

218. I asked Mr Falkowski whether it was Northamber's case that IES induced Genee to breach the Exclusivity Agreement by supplying Genee World Products, in the UK to entities other than IES itself. To my surprise Mr Falkowski said that that was Northamber's case. When I asked Mr Falkowski how IES had induced Genee to supply Genee World Products to entities in the UK other than itself in breach of the Exclusivity Agreement, Mr Falkowski did not answer that question, however as noted the only act of IES said to amount to persuading or inducing Genee to supply Genee World Products in the Re-Amended Particulars of Claim, in Mr Henry's witness statement and in the evidence given by Mr Henry at trial is the placing of orders by IES with Genee to supply Genee World Products to IES. I find that IES placing orders with Genee for Genee to supply Genee World Products to IES, without more cannot have acted as an inducement to Genee to breach the Exclusivity Agreement, by supplying Genee World Products to entities in the UK other than IES because those entities will have sent their own orders to Genee and as I will mention next, the evidence supports the conclusion that Genee was supplying Genee World Products to entities in the UK other than IES in breach of the Exclusivity Agreement before it supplied IES, in breach of the Exclusivity Agreement, in response to IES's orders.

219. I am also not satisfied that IES placing orders with Genee for Genee World Products, after 1 July 2017, without more (and as noted, Mr Henry accepted that there is no more)

did induce Genee to supply Genee World Products to IES in breach of the Exclusivity Agreement:

(a) whilst Mr Leandro speculated that IES may have been supplied with Genee World Products by Genee after 1 July 2017, but before 31 March 2018, this is speculation based upon what Mr Leandro sees as a failure by IES to disclose documents relevant to the question of whether Genee supplied Genee World Products to IES after 1 July 2017. The documentary evidence seen by Mr Leandro and Mr Pym (rather than the absence of it) only supports the conclusion that Genee World Products were supplied by Genee to IES on and after 31 March 2018;

(b) by 31 March 2018, according to the expert reports of both Mr Leandro and Mr Pym, Genee had already supplied a substantial amount of Genee World Products to entities in the UK other than IES. It is difficult to see in those circumstances that somehow, the purchase orders sent by IES to Genee for Genee World Products in March 2018 induced or persuaded Genee to supply Genee World Products to IES in breach of the Exclusivity Agreement, when Genee had already supplied substantial quantities of Genee World Products to other entities in the UK in breach of the Exclusivity Agreement. There is no evidence that, Genee having already breached the Exclusivity Agreement by supplying to other entities in the UK, in breach of the Exclusivity Agreement, needed any inducement or persuasion to supply IES; and

(c) the height of Northamber's case, that IES induced or persuaded Genee to breach the Exclusivity Agreement, is that IES merely placing purchase orders with Genee for Genee World Products induced or persuaded Genee to breach the Exclusivity Agreement by supplying IES. Any supplier receiving a purchase order, unless contractually bound to accept it (and there is no suggestion of that here) is free to accept it or reject it. Inducement or persuasion amounts to much more than simply giving Genee the opportunity to breach the Exclusivity Agreement, which, on the evidence is all that IES's orders did.

220. It follows that because Northamber has not proved that IES induced Genee to breach the Exclusivity Agreement (even though I have found that IES knew that satisfying the orders that IES placed with Genee, for Genee World Products, would amount to a breach of the Exclusivity Agreement by Genee) Northamber's claim against IES for inducing Genee to breach the Exclusivity Agreement fails.

ISSUE 7 (c) INSOFAR AS GENEE WAS IN BREACH, DID MR SINGH ACT BONA FIDE WITHIN THE SCOPE OF HIS AUTHORITY AS DIRECTOR AND AGENT OF GENEE?

The Rule in Said v Butt

221. In ***Said v Butt*** **[1920] 3 KB 497** at page 506 McCardie J said "if a servant acting bona fide within the scope of his authority procures or causes the breach of a contract between his employer and a third person, he does not thereby become liable to an action of tort at the suit of the person whose contract has thereby been broken." It is common ground that that statement of general principle remains good law and that the principle extends to directors of limited companies acting bona fide, within the scope of their authority, in relation to a breach of contract by the company that a director causes or procures.

222. In ***Nerijus Antuzis v DJ Houghton [2019] EWHC 843 (QB)*** Lane J at paragraph 62 said "the Said v Butt principle should be interpreted to exempt directors from personal

liability for the contractual breaches of their companies (whether through the tort of inducing breach of contract or unlawful means conspiracy) if their acts, in their capacity as directors, are not in themselves in breach of any fiduciary or other personal legal duties owed to the company."

223. Following the conclusion of the hearing before me, and whilst I was preparing this judgment, Mr Brown forwarded to me the decision of Eyre J in ***IBM United Kingdom Limited v Lzlabs GmBH and others [2022] EWHC 884 (TCC).*** At paragraphs 26 – 36 of his judgment, Eyre J analysed the rule in ***Said v Butt*** and the circumstances in which a director can be liable for inducing a breach of contract by the company of which he is a director. He concluded that analysis with the following, at paragraph 36; " In my judgement, and applying Lane J's analysis [in ***Antuzis***], the matter has to be approached on the basis that the question of whether a director acted bona fide and within the scope of his or her authority will be very dependent on the circumstances of the particular case. Regard is to be had to the directors duties to the company. The director will not have been acting bona fide if he or she was in breach of the duties set out in Section 172 [Companies Act 2006]. However the question must be considered in the round remembering that liability is to be seen as an exception to the general rule that a director will not be liable in tort for inducing the company of which he or she is a director to breach a contract. It follows that not every instance of causing a company to breach a contract or a legal obligation will involve a director in a breach of the Section 172 duties nor will every such instance cause him or her to be characterised as acting in bad faith for the purposes of the rule in ***Said v Butt*** . The key will be whether the director was properly acting to promote the success of the company taking account of the matters to which he or she is required by section 172 to have regard. In that exercise it will be necessary to consider the circumstances as a whole. Those will include the motivation of the director and the nature of the duties said to have been broken but in addition the nature of the obligations being broken by the company and the consequences of the company's breach can be relevant to the question of whether the director can properly have been acting in the interests of the company."

224. Section 172 of the Companies Act 2006 ("Section 172" and "CA 2006") provides, where relevant:

(1) A director of a company must act in the way that he considers, acting in good faith, will 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:
  (a) the likely consequences of any decision in the long-term;
  (b) the interests of the company's employees
  (c) the need to foster the company's business relationships with suppliers, customers and others;
  (d) the impact of the company's operations on the community and the environment;
  (e) the desirability of the company maintaining a reputation for high standards of business conduct; and
  (f) the need to act fairly as between members of the company

(2) ……..

(3) the duty imposed by this section has effect subject to any enactment or rule of law requiring directors in certain circumstances, to consider or act in the interests of creditors of the company.

225. Lane J in ***Antuzis*** at paragraph 120 says: "There is, plainly, a world of difference between, on the one hand, a director consciously and deliberately causing a company to breach its contract with the supplier, by not paying the supplier on time because, unusually, the company has encountered cash flow difficulties, and, on the other hand, a director of a restaurant company who decides the company should supply customers of the chain with burgers made of horse meat instead of beef, on the basis that horse meat is cheaper. In the second example, the resulting scandal, when the director's actions come to light, would be, at the very least, likely to inflict severe reputational damage on the company, which it might take years to recover from, if it recovered at all".

226. ***Antuzis*** itself was concerned with Lithuanian claimants who contended that the first defendant had employed them in an exploitative manner making them work long hours at pay below the minimum national wage and breaching their contracts of employment in the process. Trial of a preliminary issue was ordered as to whether the second and third defendants who were directors of the first defendant could be jointly and severally liable with it for breach of contract. Lane J found that the second and third defendants knew that the first defendant was breaching its contract with the claimants and they caused it to do so in order to maximise the profits that they could take out of the first defendant as its shareholders, in the process ruining the first defendant's reputation and acting contrary to the interests of its employees. Lane J found (paragraph 124) that it was beyond doubt that the second and third defendant did act in breach of Sections 172 and 174 (duty to exercise reasonable skill, care and diligence) in that what they were doing was not in the best interests of the company or its employees and they wrecked its reputation in the eyes of the community.

227. In summary taking the above authorities into account the question of whether Mr Singh was acting bona fide, within the scope of his authority as a director of Genee is to be determined in accordance with the following principles:
    (a) the general rule or starting point is that a director will not be liable for the tort of inducing the company of which they are a director to breach a contract;
    (b) Mr Singh will not be liable for inducing Genee to breach the Exclusivity Agreement if in doing so he was acting bona fide within the scope of his authority as sole director of Genee;
    (c) whether Mr Singh was acting bona fide and within the scope of his authority has to be decided after taking into account all the relevant circumstances, including his motivation for inducing Genee to breach the Exclusivity Agreement and the nature of the duties owed by Mr Singh to Genee which he is said to have breached, the focus being on Mr Singh's duties to Genee as its directors and not on matters related to the other party to the contract (Northamber); and
    (d) Mr Singh will not be acting bona fide, if he acts in breach of his duties under the 2006 Act (including Sections 172 and 174).

228. In my judgement, for the purpose of considering whether Mr Singh was acting bona fide and within the scope of his authority as a director of Genee in causing it to breach the Exclusivity Agreement, it is necessary to look at Genee's breaches of the Exclusivity Agreement in three separate time periods:
    (a) from 1 July 2017 to 31 December 2017. This is the period during which Mr Singh sought to explain that the sale of Genee World Products by Genee to entities in the UK, other than Northamber and the Excluded Accounts, did not amount to a breach of the Exclusivity Agreement at all, because the Exclusivity Agreement provided that

that period was a transition period when Genee's UK customers would migrate across to Northamber, rather than full exclusivity for supply to UK entities applying from 1 July 2017;

(b) from 1 January 2018 to 10 September 2018 (Northamber obtaining the Injunction restraining Genee from supplying Genee World Products within the UK to anyone other than Northamber and the Excluded Accounts on 10 September 2018); and

(c) from 11 September 2018 to 12 November 2018 (when Genee was placed into creditors voluntary liquidation).

229. Mr Brown says that Mr Singh: (a) was concerned about the financial viability of Genee, as a result of Northamber not ordering sufficient Genee World Products for Genee to discharge its liabilities, putting its financial future at risk and Mr Singh was therefore acting consistently with his duties to Genee in selling Genee World Products in breach of the Exclusivity Agreement (insofar as he did so); and (b) the breach of duty said to have been committed by Mr Singh of procuring that Genee sold Genee World Products is an activity falling within the normal course of its business and was therefore within the scope of Mr Singh's authority.

230. There is no pleading in Northamber's Re-Amended Particulars of Claim that Mr Singh acted outside the scope of his authority or in breach of his duties to Genee, as its sole director, in inducing Genee to breach the Exclusivity Agreement (see paragraph 215 above) and consequentially no particulars of how Northamber say that Mr Singh acted outside the scope of his authority or in breach of the duties he owed to Genee, in inducing Genee to breach the Exclusivity Agreement. Northamber's witness statements also fail to deal with those points. At the start of the trial, Mr Brown drew attention to the failure to plead that Mr Singh had acted outside the scope of his authority or in breach of any duty that he owed to Genee and suggested that Northamber's claim against Genee should be struck out for that reason. I said that I would not consider an application to strike out Northamber's claim at that stage, because there was no application before the court and Northamber had not been given notice of Mr Singh's intention to make such an application. I told Mr Brown that he could renew his application at the end of the trial but he chose not to do so. It remains the case however that Northamber has not set out in its pleading or in its evidence any basis upon which it says that Mr Singh did act outside the scope of his authority or in breach of his duties as sole shareholder of Genee, nor was this a point that was dealt with in Mr Falkowski's skeleton argument or closing argument.

1 July 2017 – 31 December 2017

231. Mr Singh's case, in his witness statement is that sales of Genee World Products, by Genee, to entities in the UK, other than Northamber and the Excluded Accounts, in the period 1 July - 31 December 2017 did not amount to a breach of the Exclusivity Agreement, because it was a transition period, or alternatively that Mr Singh wrongly believed that there was such a transition period and that the UK entities supplied during this period (other than Northamber and the Excluded Accounts) were those that had not transitioned across to Northamber. Unsurprisingly therefore (given that Northamber has not pleaded how it is alleged that Mr Singh had acted outside his authority or not bona fide in accordance with the duties he owed to Genee) Mr Singh did not put forward reasons as to why it was within the scope of his authority and consistent with his duties to Genee for him to have procured that Genee made those supplies (on the basis that those supplies did breach the Exclusivity Agreement). It was not put to Mr Singh, in cross examination, by Mr Falkowski that he

was acting outside the scope of his authority, or in breach of the duties that he owed to Genee in causing it to supply Genee World Products, in breach of the Exclusivity Agreement, at any time after 1 July 2017.

232. For the reasons explained by me in paragraph 67 above I have rejected Mr Singh's case that the Exclusivity Agreement had a transition period and in the alternative, that he genuinely believed that it did.

233. The starting point is that Mr Singh is not liable for the tort of inducing Genee to breach the Exclusivity Agreement, but if, in inducing Genee to do so, Mr Singh was not acting within the scope of his authority and bone fide and in accordance with the duties that he owed to Genee as its sole director, he will be liable to Northamber, under that tort.

234. I accept Mr Brown's point that selling Genee World Products was Genee's business and that therefore selling Genee World Products to UK entities (other than Northamber and the Excluded Accounts) was within the scope of Genee's business and consequently within the scope of Mr Singh's authority, because selling Genee World Products was Genee's business. The issue is whether Mr Singh acted in breach of his duties, as director of Genee, and in particular his duty under section 172 by doing so.

235. Mr Singh's duty under Section 172 was to act in the way that he considered, acting in good faith, will be most likely to promote the success of Genee for the benefit of its members as a whole, taking into account the specific matters mentioned in section 172 (1).

236. It is tempting to conclude that any director who knowingly induces the company of which they are a director to breach one of its contracts will necessarily not be acting in a way in which they could consider, acting in good faith, to be likely to promote the success of the company (because a company breaching a contract always exposes itself to the risk of being sued). If that were the case however then, in almost all cases where a company breaches a contract, its directors (or at least those that procured the breach) would be liable for the tort of inducing the company to breach the contract. That would significantly undermine the general principle that directors are not personally liable for the liabilities of the company of which they are directors and the rule in ***Said v Butt,*** as applied to directors (observations to that effect were made Eyre J in ***IBM***).

237. In ***Antuzis*** Lane J at paragraph 120, gave the contrasting examples of a director who caused their company not to pay a supplier on time because of temporary cash flow difficulties and a director who induced a restaurant company to purchase horse meat instead of beef because it was cheaper with all the reputational damage that would follow if the company were caught out. Lane J clearly considered that the former would not amount to a breach of duty by a director, but the latter would. In ***Antuzis*** itself Lane J found that the second and third defendant directors of the first defendant breached their duty to the first defendant in causing it to exploit its workers and breach its contract with them, including because it was contrary to the interests of the first defendant's employees (one of the considerations set out in section 172 (1)) and because of the resultant reputational damage.

238. Unfortunately the "world of difference" between the two examples given at paragraph 120 of Lane J's judgement and the facts of ***Antuzis*** itself give little guidance as to where

the dividing line may be between cases where a director will and will not be found to be liable for inducing their company to breach a contract. What is clear is that there is no bright dividing line and all depends, as Eyre J said in ***IBM*** upon all the circumstances of the case and a consideration of whether in all those circumstances the director has breached the duties that he or she owes to their company and in particular the duty under Section 172.

239. The burden falls on Northamber to prove that Mr Singh was not acting bona fide, in accordance with the duties that he owed to Genee. This issue (as is the question of whether Mr Singh was acting within the scope of his authority) is not, as I have already noted, dealt with in Northamber's Re-Amended Particulars of Claim, its witness evidence or in Mr Falkowski's skeleton argument or closing argument. More importantly it was not put to Mr Singh, in cross examination that he was not acting in accordance with the duties that he owed to Genee, in inducing it to breach the Exclusivity Agreement at any point. In those circumstances Northamber has failed to discharge the burden of proof that falls upon it to prove that, during the period 1 July 2017 – 31 December 2017, Mr Singh, in inducing or procuring that Genee breached the Exclusivity Agreement by supplying Genee World Products to entities in the UK other than Northamber and the Excluded Accounts, acted beyond the scope of his authority and/or in breach of the duties that he owed to Genee. Northamber cannot rely on any inference to be drawn from the fact that Mr Singh does not deal with the point in his evidence, because it did not plead that Mr Singh was acting outside the scope of his authority or in a way which was not bona fide in accordance with the duties that he owed to Genee. Mr Singh is not therefore liable to Northamber for inducing Genee to breach the Exclusivity Agreement during the period 1 July 2017 – 31 December 2017, to the extent that, during this period Genee supplied Genee World Products to entities in the UK other than Northamber and the Excluded Accounts.

1 January 2018 – 9 September 2018

240. For the same reasons I give in paragraph 234 above I accept that when Mr Singh caused or procured Genee to breach the Exclusivity Agreement by supplying Genee World Products to entities in the UK other than to Northamber and the Excluded Accounts in the period 1 January 2018 – 10 September 2018 he was acting within the scope of his authority.

241. Unlike the period 1 July 2017 - 31 December 2017, Mr Singh accepts that, during the period 1 January 2018 - 9 September 2018, Genee did supply Genee World Products to entities in the UK other than Northamber and the Excluded Accounts (and subject to his argument that Northamber was itself in breach of the Exclusivity Agreement which I have rejected, those supplies would be made in breach of the Exclusivity Agreement) and he provides an explanation, in his witness statement of why he caused Genee to do so. In summary Mr Singh explains that:

(a) on 8 December 2017, Mr Collett of LBCF confirmed that LBCF's credit insurer had reduced the credit insurance that it would provide for Northamber's debt from £250,000 to nil and that LBCF were not prepared to fund any more of Northamber's invoices;

(b) on 14 December 2017, Mr Singh sent an email to Mr Gaut and Mr Phillips requesting immediate payment of the outstanding account;

(c) on 18 December 2017, LBCF suspending Genee's invoice discounting facility. Mr Singh suggests that this was due to Northamber's credit limit being reduced to nil and Northamber not having immediately discharged the entire debt owed by it to Genee, when this happened;
(d) in January 2018 Mr Singh decided to require Northamber to pay, in advance for any Genee World Products that they wished to order;
(e) Northamber assured Mr Singh that they were working to increase the credit limit on the Northamber debt owed to Genee, but nothing happened;
(f) Mr Singh believes that Northamber decided, in January 2018, to stop supplying Genee World Products to resellers until Northamber's dispute with LBCF had been resolved;
(g) Genee and IES suffered significantly because of LBCF's and Northamber's actions which effectively prevented them both from trading;
(h) on 12 January 2018, LBCF made it clear that, until Northamber paid down its account to zero, clearing all outstanding invoices, no more funds would be released to Genee;
(i) Northamber only spent a total of £34,000 on Genee World Products for the whole of January 2018 and Northamber was Genee's only source of income via LBCF, by comparison Genee's overheads amounted to £150,000 per month;
(j) Genee had many resellers contact it to say that Northamber had tried to persuade them to switch their orders with Northamber from Genee World Products to other brands;
(k) on 15 February 2018 Northamber contra charged the amount owed to it by IES against the amount it owed to Genee but thereafter it still refused to supply IES with Genee World Products; and
(l) at the Oxford Meeting it was agreed that the Exclusivity Agreement should be terminated.

242. Mr Singh also, as I have noted, prior to his cross-examination by Mr Falkowski, gave evidence in chief as to the importance that he attributed to the business of Genee, that he had built up over time, how proud he was of it and how upset he was when Genee had to be placed into liquidation

243. Mr Singh was challenged in cross examination, by Mr Falkowski on his assertions that:
(a) it was due to Northamber's credit limit being reduced to nil by LBCF's credit insurer and Northamber not immediately paying all outstanding invoices from Genee, that LBCF restricted the funds that it released to both Genee and IES under their invoice discounting agreements with LBCF. Mr Falkowski suggested that LBCF restricted the release of funds to Genee and IES, because Genee had presented invoices to LBCF, to include in the invoice discounting arrangements, LBCF paid 85% of the face value of those invoices to Genee, but Genee procured that the invoices were paid into an account other than that which the invoice discounting agreement required them to be paid into (so that LBCF did not recover its 85%) with the result that LBCF made overpayments to Genee, which it sought to recover; and
(b) he had not threatened at the Oxford Meeting to place Genee into liquidation and cause a Phoenix Company to take over its business, if Northamber sought to enforce the Exclusivity Agreement and that he had not started planning to do so in March 2018 by the incorporation of G-tech.

244. I have rejected Mr Singh's case that:
(a) Northamber failed to pay monies it owed to Genee when they fell due for payment;

(b) he did not threaten at the Oxford Meeting that, if Northamber sought to enforce the Exclusivity Agreement he would wind up Genee and carry on its business through a Phoenix company. I have also rejected Mr Singh's evidence that G-tech was incorporated on 15 March 2018 so that Mr Singh's nephew, Luckveer Singh could carry out consultancy work through it. Instead I have found that G-tech was incorporated with a view to it acquiring the business of Genee, should that prove to be necessary, in order to preserve its business for the benefit of Mr Singh and his family ; and

(c) he had a real desire to preserve Genee as a corporate entity, as opposed to a desire to preserve its business for his own benefit and that of his family.

245. As already noted however, Mr Falkowski did not put it to Mr Singh that he had not acted bona fide in accordance with the duties that he owed to Genee. It is potentially open to me (as I have decided in relation to the period 1 July 2017 - 31 December 2017) to simply conclude that Northamber has not proved its case that Mr Singh did not act bona fide in accordance with the duties that he owed to Genee, because Mr Falkowski never put it to him in cross examination that he had not done so. Given however that Mr Singh has explained why he caused Genee to supply Genee World Products to UK entities other than Northamber and the Excluded Accounts, in breach of the Exclusivity Agreement in the period 1 January - 10 September 2018 (subject to his argument that Northamber was itself in breach of the Exclusivity Agreement at the time) and he was challenged on some of those assertions by Mr Falkowski, I am able to make findings as to the relevant circumstances in which Mr Singh procured that Genee breached the Exclusivity Agreement during that period and I will set out next the findings I make and the reasons for those findings.

246. As I will explain shortly in dealing with Issue 7 (h) there is no clear cut answer to the question of why LBCF restricted the advance of funds to Genee and IES under their respective invoice discounting agreements (there is no evidence to support Mr Singh's assertion, in his witness statement that LBCF refused to factor Genee's invoices to Northamber as such). In particular it was not, in my judgment, solely because: (a) LBCF's credit insurer (AIG) changed the credit insurance that it was providing to LBCF against Northamber not paying the debt owed to Genee/LBCF from £250,000 to nil (in fact the correct figure appears to be £270,000) and that Northamber did not immediately thereafter pay the entire debt owed to Genee (I have in any event found that Northamber was not obliged to do so) (Mr Singh's case); or (b) that Genee presented invoices to LBCF to factor, received 85% of the value of those invoices and then diverted the payment of those invoices away from LBCF (Northamber's case). It is unnecessary for me to decide, for present purposes whose fault it was, as between Northamber and Genee (if either or both) that LBCF restricted Genee and IES's access to funds under their invoice discounting agreement. It is common ground that it did restrict those funds and I am satisfied that the effect of LBCF doing so was to starve both Genee and IES of cash to pay their outgoings, the consequences of which, amongst other matters I deal with below.

247. Having placed the large 30 November Order for Genee World Products with Genee (£300,692.40) it is common ground that Northamber placed very few additional purchase orders thereafter and I have found that Northamber asked Mr Singh to agree at the Oxford Meeting on 27 March 2018 to purchase back from it stock which it had purchased from Genee, but had been unable to sell and in principle he agreed to do so.

248. At the Oxford Meeting, Mr Gaut's Note records Mr Singh as complaining that: (a) Genee were not receiving regular purchase orders from Northamber for Genee World Products and Genee needed regular orders each month in order to discharge its outgoings; and (b) the Exclusivity Agreement preventing Genee from factoring their debts (because it could not factor Northamber's debt) and Genee could not offer Northamber "realistic payment terms" as a result.

249. Mr Singh's complaints at the Oxford Meeting on 27 March 2018 and the strain that the lack of available cash in Genee and IES was causing for both businesses, is supported by the email correspondence passing between: Mr Singh and Northamber; and Mr Singh and LBCF from January to 27 March 2018, including, but not limited to the following:

(a) 16 January Mr Singh to Mr Gaut - Mr Singh complained that the Exclusivity Agreement was set at £4 million per year of sales or £1 million per quarter, but orders only totalling £37,000 had been received up to that point in January. Mr Singh also complains that 10 days of stock was not being held by Northamber and if Northamber was not able to achieve those figures they should discuss what could be achieved on a non-exclusive basis. He had put the account on stop because Northamber's credit limit was £270,000 from Euler but the outstanding account stood at £500,000, any new orders would have to be paid for up front;

(b) 17 January Mr Singh to Mr Collett at LBCF - Mr Singh complains that he has had very little money from the factoring facility that month and the impact on the business in terms of cash has been in excess of £400,000 and was rising every day. Mr Singh says that all of Genee's suppliers were due payment on 15 January but Genee could not meet those obligations including the Chinese supplier of the core product and there was a risk it would stop releasing product from the bonded warehouse unless payment was sent within the next 1 to 2 days;

(c) 26 January Mr Singh to Mr Phillips, Mrs Kaur and Mr Warren - that Mr Singh had clearly stated that Genee would need at least £250,000 of purchase orders per month to cover overheads however Genee had only received £34,000 of orders so far in January it was impossible for Mr Singh to run Genee on revenue that low as Northamber was Genee's main source of income in the UK. In addition Northamber owed £478,000 to Genee but £200,000 was not secured because Euler only covered £277,000. Mr Singh said that he needed Northamber to place an order for £220,000 minimum and to work within the Euler limit of £277,000;

(d) 27 January Mr Singh to Mr Phillips - that Genee needed a substantial order from Northamber by the end of January, if that did not happen he was not sure how Genee could maintain its exclusive partnership with Northamber "we have no choice but to look for additional sources of income to support our company. No organisation this size can survive having virtually no orders being placed on it.";

(e) 30 January Mrs Kaur to the employees of Genee, - their salaries for January would not reach their accounts until 1st February due to delays in processing (a similar email was sent by Mrs Kaur to IES's staff the following day) it is clear that the delay in paying the salaries was not due to delays in processing, but rather Genee and IES not having the cash to pay them;

(f) 31 January Kerry Smith of LBCF to Mr Singh– Following discussion and review within our business this afternoon, due to uncertainty over the Backbone [US company] debt and the difference in the ledgers on Genee at the current time we are unable to make any payments.";

(g) 5 February Mrs Kaur to Phillip Rowley at LBCF - £50,000 in personal funds had been sent across, they would not clear until Thursday but Genee and IES had essential payments to make, could he use his discretion to enable payments to be made;
(h) 5 February John Gay of Midwich to Ellen Hilton and Stewart Bennett– an IES direct debit for £26,000 had bounced;
(i) 15 February Mr Singh to Mr Phillips - "If you are not giving [IES] credit then I will ask them to buy products from other manufacturers where they have credit. I will discuss this with [Mrs Kaur]" ….. I expect the MOQ of £4 million to be hit as right now I am not sure how you can achieve this when you are sending me £38K of orders per month";
(j) 27 February Singh to Mr Jagger of LBCF - "As you know the wages need to go out today before 3:30pm to get into employees accounts for tomorrow morning. The wages are £76,600. We have a positive availability on [IES] and Genee. We were promised that we would get a response at midday today". Mr Jagger responded the same day to say that there was no funding available in that, whilst IES showed availability of £240,000 this was being held pursuant to the cross guarantee to recover Genee's shortfall and he was not therefore in a position to support Mr Singh's request to pay the wages;
(k) LBCF terminated IES's invoice discounting agreement on 28 February and Genee's on 2 March; and
(l) 8 March Mr Singh to Mr Gaut– Genee had terminated its invoice discounting agreement with LBCF and going forwards Genee was changing its payment terms with Northamber with immediate effect, if they were successful in securing new factors or invoice discounters he may well revert back to Northamber with alternate credit terms.

250. I am satisfied, based upon the above email correspondence and what was said by Mr Singh at the Oxford Meeting that the position in which Genee found itself in the period January – March 2018 was that:
(a) the Exclusivity Agreement only allowed Genee to supply Genee World Products to either Northamber or the Excluded Accounts in the UK;
(b) the UK amounted to the majority of Genee's sales of Genee World Products (although there were foreign sales such as to Backbone, a US company, factored through LBCF and on Mr Singh's case, NSJ);
(c) the Excluded Accounts appear to have accounted for very few sales;
(d) having placed the 30 November Order, Northamber was ordering very little from Genee thereafter (apparently around £37,000 worth of Genee World Products in January 2018);
(e) without large regular purchase orders from Northamber Genee was unlikely to be able to pay its monthly outgoings in the longer term;
(f) LBCF were not prepared to advance funds against Genee's invoices to Northamber in excess of the Euler credit insurance limit of £277,000. As a result of Northamber placing the 30 November Order with Genee and then agreeing to it all being delivered on [12 December 2017] the debt owed by Northamber to Genee in January/February 2018 substantially exceeded the Euler credit limit of £277,000 and if Northamber was to meet its MOQ of £4m by regular orders then it would continue to do so;
(g) on 18 December LBCF refused to advance any further money to Genee and IES and this remained the position or substantially the position until IES's invoice discounting agreement was terminated on 28 February and Genee's on 2 March. I explain why LBCF did so when dealing with Issue 7 h below; and

(h) as a consequence of all that Genee and IES struggled to pay their suppliers and employees leading to a need for personal funds of £50,000 to be injected to enable employees and suppliers to be paid.

251. I accept, in light of the email correspondence that I refer to in paragraph 249 and the conclusions I have reached in paragraph 250, that the financial position of Genee, was as Mr Singh described it to be at the Oxford Meeting (Mr Singh was not challenged on this in cross examination) it could not survive without substantially increased orders from Northamber, however, if it did receive substantially larger orders from Northamber then it was likely that it would only be able to factor a proportion of its invoices to Northamber and it was unlikely to have sufficient cash to enable it to provide any credit or any material amount of credit to Northamber on those orders. As Mr Singh said in his e mail of 27 January 2018 to Mr Phillips, unless Genee received a substantial order from Northamber it could not continue its exclusive partnership with Northamber and would have to look for alternative sources of income (to which could be added that even if it received a substantial order or orders from Northamber it could not supply Northamber on the existing 45 day credit terms). In all of those circumstances, Northamber has failed to satisfy me on the balance of probabilities that Mr Singh was not acting in the manner that he considered, acting in good faith was in the best interests of Genee, because Mr Singh was entitled acting in good faith in what he considered to be in the best interests of Genee to take the view that if Genee was to survive it would have to supply Genee World Products to UK entities other than Northamber and the Excluded Accounts in breach of the Exclusivity Agreement. There is no evidence that anything happened after March 2018 that changed that position.

11 September 2018 – 12 November 2018

252. In the period 11 September - 12 November 2018, if Genee breached the Exclusivity Agreement (which Mr Singh denies) it would be breaching the terms of paragraph 1 of the Injunction granted by Garnham J on 10 September 2017 which ordered that Genee "...immediately and from the date of this Order and until 31 December 2018 be restrained from supplying Genee World Products within the United Kingdom to persons other than [Northamber and the Excluded accounts]".

253. Insofar as Mr Singh procured that Genee breached the Exclusivity Agreement by causing Genee to supply Genee World Products to entities in the UK other than Northamber and the Excluded Accounts after 10 September 2018 that would not, in my judgment, be consistent with his duty under Section 172 to act in the way that he considered, acting in good faith, would be most likely to promote the success of Genee for the benefit of its members as a whole. The reason is that, Mr Singh would, by causing Genee to breach the Exclusivity Agreement by making those supplies also cause it to breach the Injunction and thereby be in contempt of court and at risk of having a fine imposed upon it, having its assets sequestrated, and would suffer reputational damage, if found out.

ISSUE 7 (d) DID MR SINGH OR IES KNOW OR BELIEVE THAT GENEE WAS ACTING IN BREACH OF THE EXCLUSIVITY AGREEMENT?

Mr Singh

254. Mr Singh clearly knew what the terms of the Exclusivity Agreement were, but the grounds upon which Mr Brown asserts that Mr Singh believed that Genee was not acting in breach of the Exclusivity Agreement (even if in fact it was) are that:

(a) there was a transition period between 1 July 2017 and 31 December 2017 during which Genee customers would transition across to Northamber so that Genee was not in breach of the Exclusivity Agreement by supplying customers who had not yet transitioned across, during that period;

(b) it was agreed at the Oxford Meeting that the Exclusivity Agreement would be terminated and so Mr Singh did not believe that Genee were acting in breach of the Exclusivity Agreement thereafter;

(c) it was agreed at the Oxford meeting that Genee would purchase back stock from Northamber and would be entitled to sell on that stock to UK entities other than Northamber and the Excluded Accounts;

(d) Mr Singh believed that Northamber breached the Exclusivity Agreement by: (i) failing to pay Genee's invoices in accordance with the agreed terms; (ii) failing to hold the agreed amount of stock; and/or (iii) applying contra charges to the sums owed by Northamber to Genee and as a result of any or all of those breaches Genee was entitled not to comply with the terms of the Exclusivity Agreement.

255. I have rejected Mr Singh's argument that the Exclusivity Agreement provided for a transition period from 7 July 2017 to 31 December 2017 and that he believed that it did, for the reasons set out in paragraph 67 above.

256. I have rejected Mr Singh's contention that it was agreed at the Oxford Meeting that the Exclusivity Agreement should be terminated (see paragraphs 130 – 142 above). As Mr Singh was at the Oxford Meeting, I am satisfied that he knew that it had not been agreed at the Oxford Meeting that the Exclusivity Agreement should be terminated. In addition the email correspondence after the Oxford Meeting, far from being consistent with it having been agreed at that meeting that the Exclusivity Agreement would be terminated, continued to refer, on Northamber's side to its right to exclusivity and Mr Singh did not assert, in response that it had been agreed that Northamber's exclusivity would come to an end. Further, whilst Mr Singh contends that his letter of 27 July 2018 (which gave 60 days' notice to terminate the Exclusivity Agreement) was written at Northamber's request pursuant to the agreement (that he says was reached at the Oxford Meeting) that the Exclusivity Agreement should be terminated, in fact the letter makes no mention of any such agreement and the giving of 60 days' notice is inconsistent with termination of the Exclusivity Agreement having been agreed at the Oxford Meeting some 4 months earlier.

257. I have found (paragraph 142) that, although it was agreed at the Oxford Meeting that Genee would purchase stock back from Northamber, this was not part of the process of an agreed termination of the Exclusivity Agreement, but rather a re-balancing of Northamber's stock so that it no longer held stock lines that it could not sell. Mr Singh was at the Oxford Meeting and would know that that was the purpose of the buy-back of stock from Genee.

258. I am not satisfied that it was agreed at the Oxford Meeting either explicitly or implicitly that Genee would be entitled to sell to UK entities (other than Northamber and the Excluded Accounts) the stock which it purchased back from Northamber. Mr Gaut's Note (of the Oxford Meeting) does not refer to any such agreement and both at the Oxford Meeting and in e mail correspondence thereafter, Northamber were continuing to maintain their right to exclusivity. Mr Singh has not in any event pointed to any sales made by Genee after 27

March 2018 and asserted that this or that sale or part of them include the sale of stock bought back by Genee from Northamber and in any event both experts agree that Genee was selling Genee World Products to UK entities other than Northamber and the Excluded Accounts before and after 27 March 2018 at much higher volumes than the £50,000 of Genee World Products which even on Mr Singh's case (disputed by Northamber) was the value of Genee World Products bought back from Northamber.

259. I have rejected Mr Singh's case that Northamber's credit terms were other than 45 days from invoice for all deliveries (except the 30 November Order where the terms were 60 days from Northamber taking delivery) for the reasons set out in paragraphs 87 - 108 above and I have found that Northamber paid within those terms for the reasons set out in paragraphs 109 - 112.

260. Mr Singh does not dispute that Northamber paid within 45 and 60 days respectively. Mr Singh's argument is that shorter credit periods applied either on the basis that Northamber agreed, in the Exclusivity Agreement to pay within 7 days any amount by which the outstanding account exceeded the credit insurance available to cover it or that he imposed shorter credit periods. I have rejected both of those arguments. Whilst it is possible that Mr Singh could have believed that the position was other than I have found it to be I am satisfied that : (a) it is sufficiently clear from the wording of clause 6.1 of the Exclusivity Agreement that Northamber is simply offered an incentive to pay within 7 days (see paragraph 89 above) for Mr Singh to know that that is what is meant by the clause; and (b) Mr Phillips e mail of 12 July 2017 was not a binding commitment to pay any balance owing by Northamber above the level of credit insurance from time to time within 7 days, for the reasons set out in paragraph 95 above and I am satisfied that Mr Singh would know that also, as demonstrated by his e mail communications with Northamber (which I refer to in paragraphs 95 (d) and 105)

261. My conclusions in paragraph 255 are supported by the facts that: (a) Genee's letter to Northamber of 27 July 2018 purporting to give notice to terminate the Exclusivity Agreement does not mention Northamber not having paid on time. The letter does mention a failure on Northamber's part to hold 10 days stock of each product line which is asserted to be a breach of the Exclusivity Agreement and it says that it was clear that Northamber would not reach the MOQ of £4m for 2018. I am satisfied that, if Mr Singh thought, on 27 July 2018 that Northamber had breaching the Exclusivity Agreement by not paying the debt it owed to Genee on time (which is his case now) then he would have mentioned it in the 27 July letter; and (b) when defending proceedings brought against him by LBCF, Mr Singh asserted that Northamber always paid its debt on time every two weeks, in contradiction of his case before this court (see paragraph 68).

262. In paragraph 110 – 121 I explain why, by a small margin, I have concluded that clause 5.4 of the Exclusivity Agreement, when properly interpreted, means that Northamber agreed to endeavour to maintain in stock a total of 10 days stock on average across the entire Genee World Product range based on historic sales (as Northamber contended) and not 10 days of stock for each product line based on historic sales (as Mr Singh contended).

263. On the basis that I have found that the meaning of clause 5.4 is not clear, there is scope for Mr Singh to have believed that it did require Northamber to endeavour to hold 10 days stock of each product line based on historic sales and certainly scope for him to believe that

Northamber was not endeavouring to do that (because Northamber accepts that it was not attempting to hold that amount of stock).

264. I am however satisfied that Mr Singh did not believe that Northamber was in breach of clause 5.4, at any point when he was causing Genee to sell Genee World Products to UK entities other than Northamber and the Excluded Accounts. I am satisfied because, the email correspondence passing between Mr Warren and Northamber and Mr Singh and Northamber shows that Northamber was providing Genee with regular details of its stock holdings and although Genee were pressing Northamber to hold more stock or more stock of particular lines, in none of that correspondence did Mr Singh or Mr Warren suggest that Northamber was breaching the Exclusivity Agreement by not endeavouring to hold 10 days of stock of each product line:

(a) 14/11/17 Mr Warren to Mr Gaut - he had received a stock report from Louise Honeywill and were surprised at the stock coverage across the range. He wanted to discuss that coverage;

(b) 22/11/17 Mr Gaut to Mr Warren - Northamber had £188,000 worth of stock which was 1 month's stock based on the last four weeks of sales. Northamber had only agreed to hold 10 days stock and he attached an inventory report. Mr Gaut's assertion was only correct (that Northamber had 1 month's stock) on the basis that that was the average stock that it held across all product lines and not for each product line. Mr Gaut's assertion was not challenged in any document I have seen;

(c) 22/11/17 Mr Singh to Mr Phillips - he noted that Northamber had only purchased £47,000 of Genee World Products so far for that month and that many product lines have little or no stock. Mr Singh did not suggest that this was a breach of the Exclusivity Agreement, but if, as Mr Singh asserts, he believed Northamber had an obligation under the Exclusivity Agreement to hold 10 days of stock for each product line then I would expect him to say that holding little or no stock for some product lines was a breach of the Exclusivity Agreement;

(d) 22/11/17 Mr Gaut to Mr Singh – Northamber hold £188,000 in inventory with a further £192,000 to be delivered this month. We have stock on all key lines (note not all lines);

(e) 27/11/17 Mr Warren to Mr Gaut - Mr Warren produces a report as to where he believes stock levels should be to "send the right message to the market" (not to comply with the Exclusivity Agreement);

(f) 30/11/17 Mr Gaut to Mr Singh attaching the 30 November Order for £250,000 (net of VAT). Mr Gaut says that this would take stock days to 55 at the end of the year. This calculation was again based upon sales on average across all product lines;

(g) 15/12/17 Mr Gaut to Mr Singh - you asked us to increase our stock holding significantly from 22 to 55 days. Mr Singh did not challenge Mr Gaut's assertion that stock had increased from 22 to 55 days (only true if based upon average stock holdings across all product lines, not of each product line);

(h) 16/1/18 Mr Gaut to Mr Singh "The contract is also very clear on Northamber's commitment to stockholding "Northamber will endeavour to maintain 10 days stock at run rate levels to maximise cash available to fund reseller credit days". Mr Singh responds to that point by saying that "…in terms of stock, we are expecting you to hold a minimum of 10 days stock so as not to let our customers down. After that what stock. you hold is your decision." As at this point in time the parties were clearly in dispute, Mr Singh was complaining about Northamber not buying more stock and Mr Singh knew that Northamber were not holding 10 days stock of all product lines based on historic sales I would expect Mr Singh to assert that Northamber was failing to

comply with the Exclusivity Agreement by not doing so, if he believed that that was its contractual obligation;

(i) 13/2/18 Mr Singh to Mr Phillips - Mr Singh said that he noticed that there was no stock held on many lines but he does not assert that that was a breach of the Exclusivity Agreement; and

(j) 15/2/18 Mr Singh to Mr Phillips - I need to see every single product we mass-produce being kept in stock by Northamber….". Again no suggestion of a breach of contract. Mr Phillips responds that Northamber is still holding £300,000 worth of Genee stock which it bought at Mr Singh's request and all teams were focused on clearing that stock. He says "it is unreasonable and unfair to comment that we aren't holding stock especially when our contract says 10 days stock and our total stock level is far over this!". Again Mr Singh does not challenge the assertion that Northamber was holding stock well in excess of its contractual obligations, but what Mr Phillips said was only true if the Exclusivity Agreement provided that Northamber must endeavour to hold 10 days of stock on average across all product lines.

265. Mr Gaut's Note of the Oxford Meeting is the first reference to Mr Singh talking about Northamber holding 10 days stock for each product line. Mr Gaut's note refers to Mr Henry saying that Northamber's contractual commitment was to hold 10 days' worth of total inventory to which Mr Singh responded that Northamber "should" hold 10 days of stock on every product line, that Mr Henry produced a copy of the Exclusivity Agreement and drew Mr Singh's attention to clause 5.4 and then all are recorded as having agreed that the contract stated that 10 days overall stockholding was required. Mr Singh disputed that that last point had been agreed but I find that Mr Gaut's Note is a fair summary of what was agreed (including that point).

266. I have dealt, in paragraphs 125-127 above with Mr Singh's case that Northamber acted in breach of the Exclusivity Agreement by applying set offs against the monies owed by Northamber to Genee, I concluded that each set off that Northamber applied was carried out in accordance with the terms of the Exclusivity Agreement. I am satisfied that Mr Singh would know that because the provisions of the Exclusivity Agreement that gave Northamber those rights of set off are clear.

267. It follows from the above that Mr Singh knew that Genee was acting in breach of the Exclusivity Agreement by supplying Genee World Products to entities in the UK other than Northamber and the Excluded Accounts, after 1 July 2017.

IES

268. I have found that Mrs Kaur (contrary to her evidence) did know that Northamber had exclusivity on the sale of Genee World Products in the UK, pursuant to the Exclusivity Agreement and that this would mean that Genee would be acting in breach of the Exclusivity Agreement by supplying Genee World Products to IES, if Northamber was entitled to enforce its exclusivity as against Genee .

269. It has not been asserted by Mrs Kaur that Mr Singh or anyone else told her that Genee no longer had an obligation under the Exclusivity Agreement to supply Genee World Products exclusively to Northamber and no other entity in the UK (other than the Excluded Accounts). Further, I have found that Mr Singh did not in fact believe that Genee would not be acting in breach of the Exclusivity Agreement by supplying Genee World Products

to IES and other UK entities (other than Northamber and the Excluded Entities) after 1 July 2017. I am satisfied therefore that Mr Singh would not have told Mrs Kaur that Genee would not be breaching the Exclusivity Agreement by supplying Genee World Products to IES after 1 July 2017 and he does not assert that he did so.

270. As a result of the knowledge that Mrs Kaur had that Genee had agreed, by the Exclusivity Agreement to supply Genee World Products exclusively to Northamber in the UK after 1 July 2017 (save for the Excluded Accounts of which IES was not one) and her having no reason to believe that that agreement did not remain in force, at all times after 1 July 2017, I am satisfied that Mrs Kaur knew or believed that Genee would be acting in breach of the Exclusivity Agreement by supplying Genee World Products to IES after 1 July 2017. Mrs Kaur was at all relevant times the sole director of IES, and it follows that IES knew that Genee would be acting in breach of the Exclusivity Agreement by supplying Genee World Products to IES after 1 July 2017.

ISSUE 7 (e) DID MR SINGH OR IES HAVE AN HONEST BELIEF THAT PLACING THE ORDERS WITH GENEE WOULD NOT AMOUNT TO A BREACH OF CONTRACT?

271. The placing of orders by IES with Genee did not amount to a breach of the Exclusivity Agreement or any other contract, it is the supplying of Genee World Products by Genee to IES after 1 July 2017, in response to orders placed by IES which amounted to a breach, by Genee of the Exclusivity Agreement. I have found that Mr Singh and Mrs Kaur (and therefore IES) knew or believed that Genee would be acting in breach of the Exclusivity Agreement if it supplied Genee World Products to UK entities other than Northamber or the Excluded Accounts after 1 July 2017, in response to orders it received.

ISSUE 7 (F) WAS THERE BLIND EYE KNOWLEDG BY IES?

272. I have found (paragraph 270) that Mrs Kaur and therefore IES knew that Genee would be acting in breach of the Exclusivity Agreement by supplying Genee World Products to IES after 1 July 2017. If I am wrong and Mrs Kaur did not know that Genee would be acting in breach of the Exclusivity Agreement by supplying Genee World Products to IES after 2017, then Mrs Kaur had "blind eye" knowledge in that she knew that the Exclusivity Agreement contained an agreement by Genee that Northamber would have some exclusivity in relation to Genee World Products and she had no reason to suppose that that agreement was no longer in force but she did not enquire (she gives no evidence that she did) into whether the supply of Genee World Products by Genee to IES would be a breach of the Exclusivity Agreement.

ISSUE 7 (g) DID MR SINGH OR IES HAVE AN INTENTION TO PROCURE A BREACH OF THE EXCLUSIVITY AGREEMENT EITHER AS AN END IN ITSELF, OR AS A MEANS TO AN END?

273. In ***OBG*** Lord Hoffman at paragraphs 42 and 43 said as follows:

42. "The next question is what counts as an intention to procure a breach of contract. It is necessary for this purpose to distinguish between ends, means and consequences. If someone knowingly causes a breach of contract, it does not normally matter that it is the means by which he intends to achieve some further end or even that he would rather have

been able to achieve that end without causing a breach. Mr Gye would very likely have preferred to obtain Mrs Wagner's services without her having to break her contract……It is usually to achieve the further end of securing economic advantage to themselves….

43. On the other hand, if the breach of contract is neither an end in itself nor a means to an end, but merely a foreseeable consequence, then in my opinion it cannot for this purpose be said to have been intended. That, I think, is what judges and writers mean when they say that the claimant must have "targeted" or "aimed at". In my opinion the majority of the Court of Appeal was wrong to have allowed the action in Miller v Bassey to proceed. Miss Bassey had broken her contract to perform for the recording company and it was a foreseeable consequence that the recording company would have to break its contracts with the accompanying musicians, but those breaches of contract were neither an end desired by Miss Bassey nor a means of achieving that end."

274. The reference to Mr Gye and Mrs Wagner is to the case of ***Lumley v Gye [1853] 2 E & B 216*** and the reference to Millar v Bassey is to the Court of Appeal decision in ***Millar v Bassey and others EMLR CA [1994] 44.***

275. ***Lumley v Gye*** is considered to be the earliest example of a claim for inducing a breach of contract. The claimant owned an opera house and the defendant owned another opera house which was in competition with it. The claimant entered into a contract with a famous opera singer to perform at his opera house. The defendant thereafter entered into a separate contract with the opera singer to perform at his opera house and as a result of that the opera singer breached her contract with the claimant, in order to perform her contract with the defendant. The claimant successfully sued the defendant for inducing the opera singer to breach her contract with the claimant.

276. In ***Millar v Bassey*** the first defendant, a famous singer entered into a contract with the second defendant to record an album. The majority of the claimants were musicians also employed by the second defendant, to work on the album. The first defendant refused to perform her contract with the second defendant as a result of which the second defendant refused to perform its contract with the claimants. The first defendant applied to strike out the claim against her on the basis that she had not intended to cause the second defendant to breach its contract with the claimants and her actions were not targeted at the claimants. The Court of Appeal allowed the claimants appeal on the basis that there were important questions about the scope of the tort which it was not appropriate to determine before trial when there were important factual issues that also needed to be resolved.

277. The distinction made by Lord Hoffman, in ***OBG*** was therefore between: (a) the defendant in ***Lumley v Gye*** who wanted the opera singer to sing at his opera house and entered into a contract with the opera singer for her to do so, knowing that in order to honour her contract with him, by singing at his opera house, the singer would have to breach her contract with the claimant (the singer breaching her contract with the claimant was therefore a means to the defendant's end of the singer singing at his opera house); and ***Millar v Bassey*** where the first defendant breached her contract with the second defendant and it was foreseeable that the second defendant would, as a result breach its contract with the claimant musicians, but the first defendant's purpose or aim was not to cause the second defendant to breach its contract with the claimant musicians, nor was it necessary for the second defendant to breach its contracts with the claimant musicians in order for the first defendant to achieve her aim of not performing her contract with the second defendant. It was merely a foreseeable consequence that the second defendant would breach its contracts

with the claimant musicians, because without the first defendant performing her contract with the second defendant, the second defendant would have no need of the claimant musicians' services to work on an album, which could not now be produced.

278. Mr Brown says that the evidence shows that Mr Singh wanted the Exclusivity Agreement to be a success it was problems caused by the withdrawal of Northamber's credit limit by LBCF's insurer, which Mr Singh was attempting to ameliorate by supplying Genee World Products to entities in the UK in breach of the Exclusivity Agreement. So the breach of the Exclusivity Agreement was not an end that Mr Singh desired and Northamber has not demonstrated what end Mr Singh intended if its case is that Mr Singh induced Genee to breach the Exclusivity Agreement as a means to an end.

279. I have found that (see paragraph 251 above) Northamber has not satisfied me that Mr Singh was not acting in the manner that he considered, acting in good faith was in the best interests of Genee, for the period 1 January to 9 September 2018, because he was entitled to take the view that, if Genee was to survive, it would have to supply Genee World Products to UK entities other than Northamber and the Excluded Accounts and therefore act in breach of the Exclusivity Agreement.

280. However even if Mr Singh was acting in the best interests of Genee in procuring that it breached the Exclusivity Agreement, that does not mean that he did not cause it to breach the Exclusivity Agreement as a means to an end, namely to try to ensure its survival. The distinction between ***Lumley v Gye*** and ***Millar v Bassey*** is that: (a) in ***Lumley v Gye***, in order for the opera singer to sing at the defendant's opera house she had to breach her contract with the claimant and when the defendant entered into a contract with her to sing at his opera house he knew that she would have to breach her contract with the claimant in order to comply with her contract with him. The singer breaching her contract with the claimant was a necessary means to the end of the singer performing at the defendant's opera house; and (b) in ***Millar v Bass*****ey** the second defendant did not have to breach its contract with the claimant musicians as a result of the first defendant breaching her contract with the second defendant, it was merely a foreseeable result of her doing so.

281. In this case the survival of Genee was, I am prepared to accept Mr Singh's aim, but Mr Singh went about achieving that aim by supplying Genee World Products to entities in the UK other than Northamber and the Excluded Accounts, in breach of the Exclusivity Agreement. Breach of the Exclusivity Agreement was therefore the means to the end of Genee's survival.

282. As for IES, Mrs Kaur says in paragraph 74 of her trial witness statement that she received an e mail form Mr Hall stating that IES's credit facility had been withdrawn (Mr Hall's e mail of 23 February 2018, see paragraph 158 (j) above). IES, under the direction of Mrs Kaur may well have placed orders with Genee because Northamber was refusing to supply it with Genee World Products on credit and that refusal may well have been objectively unreasonable and based on a misunderstanding by Mr Hall of the state on the account between IES and Northamber (see paragraphs 161 - 162 above) however, if I had found that the placing of orders direct by IES with Genee did induce Genee to breach the Exclusivity Agreement (which I have not) then the placing of such orders by IES, when I have found that Mrs Kaur knew that satisfying those orders would result in Genee breaching the Exclusivity Agreement, means that Genee breaching the Exclusivity Agreement was a means to an end. The end was IES being supplied with Genee World

Products in order to enable it to supply its customer's orders, the means was for Genee to breach the Exclusivity Agreement by supplying those goods to IES, IES could not get those goods unless Genee breached the Exclusivity Agreement.

ISSUE 7(h) INSOFAR AS MR SINGH OR IES DID PROCURE ANY BREACH OF THE EXCLUSIVITY AGREEMENT, BY GENEE WAS MR SINGH AND/OR IES JUSTIFIED IN DOING SO?

The Legal Principles

283. Mr Brown says, on behalf of Mr Singh and Mr Skeate says, on behalf of IES that, insofar as they may have induced Genee to breach the Exclusivity Agreement, they had a lawful justification for doing so.

284. Mr Brown refers to paragraph 193 of the judgment of the House of Lords in ***OBG*** and the comments of Lord Hodge in the Scottish Outer House in ***Global Resources Group v Mackay [2008] CSOH 148*** to support his assertion that justification can be a defence to a claim in the tort of inducing a breach of contract and as to the circumstances in which that defence will apply.

285. At paragraph 193 of ***OBG***, Lord Nicholls said "For completeness I mention, but without elaboration, that a defence of justification may be available to a defendant in inducement tort cases. A defendant may, for instance, interfere with another's contract in order to protect an equal or superior right of his own as ***in Edwin & Partners v First National Finance Corporation plc [1989] 1 WLR 225***."

286. In ***Global Resources Group***, Lord Hodge said "… If A has a lawful justification for inducing B to break his contract with C, that may provide a defence against damage or liability. Thus a father may seek to prevent his minor son from entering into what he perceives as an unwise marriage: ***Findlay v Blaycock*** (above). A's pursuit of his own economic advantages is not of itself a justification. Although the House of Lords did not discuss this fifth characteristic in ***OBG Ltd*** it is clear from other cases that lawful justification can provide a defence see ***Glamorgan Coal v South Wales Miners Federation*** referred to in paragraph 9 above. For example in ***Edwin Hill & Partners v First National Finance Corp***, the Court of Appeal held that a security holder was justified in protecting its security for the repayment of a loan to make the dismissal and replacement of a developer's architects a condition of the provision of further finance to the developer who was otherwise unable to repay his loan or complete the development."

287. **OBG** is binding upon me, but Lord Nicholls specifically declined to give guidance upon the circumstances in which the defence of justification may be available, merely citing the example of ***Edwin & Partners*** where the bank was seeking to protect its security. ***Global Resources Group*** is a persuasive authority, in that case Lord Hodge confirmed the pursuit of the tortfeasor's own economic advantage would not avail the tortfeasor of the defence of justification, but gave little other guidance as to the circumstances in which it would apply (other than the case of a security holder protecting its security as in ***Edwin & Partners***).

Mr Singh and IES's Submissions on Justification

288. Mr Brown says the defence of justification would apply, if Mr Singh would otherwise be liable for inducing Genee to breach the Exclusivity Agreement, because Genee was being starved of cash that it needed to pay its debts and run its business, as a result of LBCF restricting the release of funds to it under its invoice discounting agreement. Mr Brown says that it is Northamber's fault that LBCF restricted the release of funds to Genee because LBCF's credit insurer, AIG reduced its cover for the debt owed by Northamber to Genee to nil and Northamber thereafter ought to have, but did not pay off the debt that it owed to Genee in full (as Mr Phillips had agreed it would, just before the Exclusivity Agreement was signed on behalf of Genee by Mr Singh).

289. Mr Skeate says that the defence of justification is available to IES, insofar as IES induced Genee to breach the Exclusivity Agreement, by placing orders with Genee for Genee World Products, because IES did so in circumstances where IES was being starved of cash by LBCF, under its invoice discounting agreement with LBCF (because LBCF believed that IES had guaranteed the debt owed to it by Genee) and Northamber refused to supply IES with Genee World Products even after the whole of the overdue debt owed by IES to Northamber was discharged, on 15 February 2018. IES were left with no choice therefore (Mr Skeate says) other than to order Genee World Products direct from Genee in order to be able to fulfil orders that it had received from its customers for Genee World Products.

290. There is a dispute between, on the one hand Genee and IES and on the other Northamber as to why LBCF restricted the release of funds to Genee and IES:
   (a) Mr Singh and IES say that LBCF restricted the release of funds to Genee/IES as a result of LBCF's credit insurer, AIG withdrawing credit insurance for the debt owed by Northamber to Genee and that thereafter Northamber ought to have but did not discharge the entire debt that it owed to Genee (which Genee assigned to LBCF); and
   (b) Northamber say that LBCF restricted the advance of funds to Genee/IES because Genee had factored invoices with LBCF, received 85% of their face value from LBCF but then, in breach of the invoice discounting agreement, collected payment of those invoices into a separate account when they should have been collected into a trust account for the benefit of LBCF, this resulted in LBCF not being reimbursed the monies that it had advanced to Genee under the invoice discounting agreement, creating an overpayment which LBCF sought to recover.

291. It is common ground that LBCF restricted funds that it released to: (a) Genee in December 2017 and into 2018 because of issues with the debtor ledger that was assigned to LBCF by Genee; and (b) IES, because LBCF believed that IES had guaranteed the money owed to LBCF by Genee and LBCF looked at the overall position on the Genee and IES ledgers to determine whether it would release funds and if so how much to both Genee and IES, treating their separate ledgers as in effect one ledger in deciding what funds it would release.

My Approach to the issue

292. I will approach issue 7 (h) as follows:
   (a) the trial bundle contains a considerable amount of e mail correspondence between Mr Singh and various employees of LBCF, I will set out in summary, in chronological

order, the content of that e mail correspondence, so far as relevant (together with some relevant correspondence between Mr Singh and Mr Gaut of Northamber and relevant events occurring around the date of that correspondence);

(b) I will draw such conclusions as I can as to why LBCF restricted the advance of funds to Genee/IES;

(c) I will summarise the findings that I have already made as to: (i) Mr Singh's assertion that Mr Phillips promised that Northamber would pay off any debt that it owed to Genee in excess of the credit insurance limit on Northamber's debt; and (ii) Northamber's refusal to supply Genee World Products to IES on credit; and

(d) I will then consider whether those circumstances are such that Mr Singh or IES could rely upon the defence of justification, insofar as they induced Genee to breach its contract with Northamber.

E Mails regarding the LBCF facilities

293. The relevant e mail correspondence and events, in summary are:

(a) 7/12/17, Mr Collett of LBCF to Mr Singh - LBCF would be claiming back from Genee funds advanced to Genee on invoices which Genee had not advised LBCF should not be factored by it;

(b) 8/12/17 Mr Collett to Mr Singh - in August, AIG (LBCF's credit insurer) had agreed to provide a maximum credit limit for Northamber of £330,000 against the £650,000 requested, but since August 2017 Northamber's interim accounts had been reviewed which showed a deteriorating financial position, as a result of which AIG were unwilling to provide any credit protection for LBCF for Northamber's debt;

(c) 11/12/17 Northamber agreed to call for delivery of the whole of the 30 November Order which resulted in an increase of £300,000 in the debt owed by Northamber to Genee increasing it to around £640,000;

(d) 14/12/17, Mr Singh to Mr Gaut of Northamber – the account stood at £640,000 against a Euler credit limit of £277,000 (Euler having replaced AIG as credit insurer) he would have to put the account on stop. He asked that Northamber pay £360,000 tomorrow to bring the account into line (£640,000 - £360,000 = £280,000 - so this meant broadly down to the Euler credit insurance limit of £277,000);

(e) 15/12/17, Mr Gaut to Mr Singh - early shipment of the 30 November Order had exaggerated the credit limit problem;

(f) 18/12/17 Mr Collett to Mr Singh - "I have now received the reconciliation to date for the Genee facility and the issue is much greater than first thought….. Given the persistent non-notification of excluded debtors and the lack of reconciliation being completed your side, the ledgers have drifted considerably out of kilter, so much so that….your hardcopy ledger provided was £741,000 however the debtors balance on the [LBCF] system was £933,000. As such this means that an adjustment is required of £192,050.28 to bring back into line. I appreciate this is a substantial sum, however we need to come to arrangements to either repay the balance, or by ratcheting back over a period."

(g) 18/12/17 Mr Singh to Mr Collett - there is no way that LBCF could have over funded by £192,000, Barry Talbot, the accountant would have picked it up when doing the management accounts, he suggested that the issue was parked until Barry had a chance to look into it;

(h) 17/1/18 Mr Collett to Mr Singh - although he had received a list of payments that had to be made by both Genee and IES, only £2,000 was available to draw down for both companies;

(i) 17/12/17 Mr Singh to Mr Collett - Genee had had very little from the factoring facility this month, it was supposed to have £65,000 available, that had disappeared due to a timing issue on receipt of payment from Backbone (a US customer of Genee). The impact on the business of LBCF withholding drawdown of funds was around £400,000, rising every day. Genee had not been able to pay suppliers on 15 January including the Chinese supplier of Genee World Products. The reserves made by LBCF which were reducing funds available to draw down, were unjustified;

(j) 17/12/17 Mr Collett to Mr Singh - he did not agree that the reserves were unjustified, the reserves were for the elements of the Backbone and Northamber debts which were in excess of the Euler credit limits and the £200,000 difference between LBCF and Genee's ledgers which was undisputable;

(k) 26/1/18 Hill Dickinson gave notice to Northamber that Genee had assigned the debt owing to Genee by Northamber, to LBCF;

(l) 31/1/18 Mr Singh to Mr Collett, if the IES ledger were allowed to pay the £91,500 that it owed to Northamber this would bring down the contra charge being applied by Northamber to Genee and have a positive effect on Genee's ledger;

(m) 31/1/18 Kerry Smith of LBCF to Mr Singh - "…you are aware we have expressed our concerns over the Northamber offset, uncertainty over the Backbone debt and the difference in the ledgers on Genee world and therefore at the current time we are unable to make any payments…….. the release of the over credit limit reserve for Northamber … will not provide any availability on the facility. The facility is £396,000 overpaid so please see my calculation below of the availability position tomorrow…. (£224,000)… Given the correspondence between our solicitors and Northamber, we are not able to reduce the £199,000 contra reserve until we have clarity on the position. With regards to drawdown on [IES], we are unable to allow payments to be made due to cross corporate guarantees we hold between Genee and [IES].";

(n) 2/2/18 Barry Talbot to Mrs Kaur - the over funding has happened for three main reasons: 1. Pro forma invoices have been funded – this is a system and processes issue between sales processing your end and Lloyds finance; 2. Backbone - funds were received towards an order then the whole order was invoice financed. Also Jim (US agent) has handled money and offset his commission. As far as the bank are concerned the money should have come from Backbone direct. 3. Northamber - funds were paid direct into your bank account and not paid over to Lloyds for invoices that have been financed….";

(o) 4/2/18 Mr Singh to Mick Jagger of LBCF – sending an official complaint. Euler offered credit insurance for Northamber's debt of £330,000, Mr Collett said AIG would go to £350,000, Mr Singh wanted to get £500,000 and Mr Collett was confident that this could be obtained from AIG. Based upon that Mr Singh had released additional stock. In the event Mr Collett could not get AIG to agree to provide any credit insurance leading to an overpayment of £178,000 on the account. Monies paid by Northamber in respect of pro forma invoices were in error paid into the trust account. Mr Collett said that he would refund these monies to Genee, but then he said that credit would not allow it;

(p) 9/2/18 LBCF reject a proposal that Genee/IES would discharge part of the debt owed to LBCF by Genee changing to an alternative invoice discounter, leaving LBCF to collect out debts assigned to it and provide personal guarantees for any shortfall;

(q) 10/2/18 Kerry Smith to Mr Singh - the overpayment of £27,889.35 includes the balance of the Northamber debt, above the credit limit of £172,468.36 plus a

reconciliation difference of £30,000 as a result of Genee including pro forma invoices amongst invoices funded by LBCF;

(r) 15/2/18 Northamber sets off the overdue debt of £137,332.32 owed to it by IES against the debt it owed to Genee;

(s) 27/2/18 Mr Jagger to Mr Singh – the uncollectable portions of the Northamber and Backbone debts are £144,000 and $122,000 respectively. There is no funding available in Genee. IES shows current availability of £240,000 but this is held under the cross guarantee;

(t) 27/2/18 Mrs Kaur to Mr Jagger - LBCF have no right to hold IES's ledger under the cross guarantee (the cross guarantee refers to IEL, not IES). Mrs Kaur requests immediate confirmation that the IES ledger would be released with immediate effect; and

(u) 2/3/18 LBCF demand immediate payment of the £233,416.98 owed to it by Genee.

294. I draw the following conclusions from the email correspondence referred to above as to why LBCF were restricting funds released by it to Genee and IES:

(a) LBCF applied reserves to Genee's invoice discounting ledger where it considered that there was a risk that debts which have been assigned to it would not be collected, in whole or in part. Applying these reserves reduced the funds available to Genee (and IES) to drawdown under their invoice discounting agreements by the amount of the reserves;

(b) LBCF applied reserves for, amongst other things: (i) the difference between the debts owed by Northamber and Backbone and the credit insurance provided for those debts. In respect of Northamber, this reserve would reduce over time after 11 December 2017, as Northamber paid down the debt it owed to Genee and ordered very little Genee World Stock; and (ii) when it appeared that Northamber intended to apply a set off of the overdue debt owed to it by IES against the debt owed by it by Genee, LBCF applied a reserve equivalent to the set off claimed by Northamber and when Northamber subsequently did set off £137,332.32 on 15 February 2018 the funds available to drawdown by Genee/IES were permanently reduced by that amount. The amount of this reserve increased over time, up to 15 February 2018, as the overdue debt owed by IES to Northamber increased up to 15 February 2018;

(c) for some debts, Genee both received payment from the supplier direct and assigned those same debts to LBCF (receiving 85% of their face value from LBCF). This meant that the amount on LBCF's ledger of debts assigned to by Genee was higher than Genee's ledger showed the debt owed by the relevant debtor to be. The difference was around £200,000. LBCF sought to recover that shortfall by reducing the funds it made available to Genee and IES to drawdown; and

(d) the combination of (a) – (c) meant that the ledgers that LBCF operated on a combined basis for Genee and IES showed very little if any funding was available to Genee/IES from around 7 December 2017 onwards.

295. In his email of 4 February 2018 to Mr Jagger, Mr Singh said that, based upon Mr Collett's confidence that he could obtain credit insurance cover of £500,000 from AIG, Mr Singh had released additional stock. If this is meant to relate to the agreement that Northamber would call for delivery of the whole of the 30 November Order, on 11 December 2017, then it is not true, because Mr Collett had already advised Mr Singh, by his email dated 8 December 2017 that AIG were unwilling to provide any credit insurance for Northamber's debt.

296. I have rejected Mr Singh's assertion that Mr Phillips agreed, just before Mr Singh signed the Exclusivity Agreement, that Northamber would pay off any debt that it owed to Genee which was in excess of the limit on the credit insurance from time to time that was available to cover Northamber's debt to Genee (see paragraph 95 above). I have found (see paragraph 161 above) that, on 23 February 2018, Mr Hall of Northamber cancelled IES's credit account with Northamber, he did so on the basis that IES owed Northamber £169,278.44 and that, of that total amount, £137,332.32 was overdue for payment. In fact the debt owed by IES to Northamber had, by that date been reduced to £31,945.82 none of which was overdue for payment, because, on 15 February 2018, Northamber had applied a set off of £137,332.32 against the debt that it owed to Genee. IES did not point out this error on the part of Mr Hall.

Was Mr Singh Justified in Inducing Genee to Breach the Exclusivity Agreement?

297. Justification focuses on whether a defendant who induces a contracting party to breach their contract is justified in doing so. In the Scottish case of ***Findley v Blaycock***, the father who induced his son to breach a contract for marriage was found to be justified in doing so to save his son from an unwise marriage (it was a moral duty). In ***Edwin & Partners*** the bank, seeking to protect its right to be repaid a loan it had made to a developer was justified in requiring the developer (as a condition of the bank advanced further funds in order to enable the development to be completed) to employ a different architect, thereby breaching the contract that the developer had with the existing architect.

298. I have already made findings as to why Mr Singh induced Genee to breach the Exclusivity Agreement, in considering whether, in doing so, Mr Singh was acting in what he considered, acting bone fide, to be in the best interests of Genee. That analysis concentrated on Mr Singh's duties to Genee, rather than upon whether Mr Singh was justified in inducing Genee to breach the Exclusivity Agreement.

299. In ***Edwin & Partners***, the bank was acting in its own interests, to preserve the value of its security granted to it by the borrower, and made it a condition of further advances that the architect was changed. The Court of Appeal considered that the bank was justified in insisting on the architect being changed, notwithstanding that that would require the developer to breach its contract with the architect, because the bank was seeking to protect its own contractual rights (the security granted to it by the developer). In inducing Genee to breach the Exclusivity Agreement, Mr Singh was not seeking to protect any contractual rights of his own.

300. The position of Mr Singh is perhaps more like that of the father in ***Findlay v Blaycock*** who was seeking to save his son from an unwise marriage by inducing the son to breach his marriage contract, a moral obligation. Mr Singh says that Genee had to breach the Exclusivity Agreement in order to survive financially. I have found that Mr Singh was acting consistently with duties that he owed to Genee to act in its best interests by inducing it to sell Genee World Products to entities in the UK other than Northamber and the Excluded Accounts, in breach of the Exclusivity Agreement, between 1 January 2018 and 9 September 2018 (or at least that Northamber have not proved that he was not). I do not consider however that Mr Singh can make out the defence of justification in that period because I have also found (paragraphs 65 above) that Mr Singh was not really interested in preserving Genee as a corporate entity but rather the business that Genee was carrying on and he was interested in that because of the financial benefit that he considered that he

and his family would derive from that business. As Lord Hodge made clear in ***Global Resources Group***, pursuit by the tortfeasors of their own economic interests is not a justification for inducing a contracting party to breach their contract and, in my judgment, economic self-interest was overwhelmingly Mr Singh's reason for inducing Genee to breach the Exclusivity Agreement.

301. If I am wrong and the defence of justification is available to Mr Singh, for the period 1 January 2018 to 9 September 2018, then is not available to him after 10 September 2018, when the Injunction was granted which restrained Genee from supplying Genee World Products in breach of the Exclusivity agreement because, in my judgement, inducing Genee to breach the Exclusivity Agreement, in breach of the Injunction cannot be lawfully justified.

IES

302. As for IES, Mrs Kaur says that IES needed to obtain Genee World Products to supply to its customers and Northamber was unwilling to supply Genee World Products to IES on credit. Unlike in ***Edwin & Partners,*** IES was not seeking to uphold its own contractual rights but rather (at best) to avoid breaching contracts with its customers. I do not consider that avoiding breaching contracts with its own customers could be a lawful justification for IES inducing Genee to breach the Exclusivity Agreement (had I found that it did induce Genee to breach the Exclusivity Agreement, which I have not). Even if it could be, I am not satisfied, merely because IES has produced some orders dated around March 2018, addressed to it for Genee World Products, that IES has proved that it would have breached contracts with its customers if Genee had not supplied it with Genee World Products after 23 February 2018. In any event, it appears that Northamber was willing to supply Genee World Products to IES without credit or to supply customers direct, on credit (with the profit accruing to IES) which Mrs Kaur refused. Further IES never went back to Mr Hall after he sent his email on 23 February 2018 to challenge his assertion that IES owed Northamber £169,278.44 and that, of that total amount, £137,332.32 was overdue for payment. It is not clear therefore that, had it been pointed out to Mr Hall that IES only owed £31,945.82 on 23 February, none of which was overdue for payment, that Mr Hall would have maintained Northamber's refusal to supply Genee World Products on credit to IES.

303. In my judgement, the placing of orders for Genee World Products, by IES directly with Genee was again predominantly aimed at the pursuit by IES of its own economic interests in obtaining Genee World Products to supply to its customers at a profit, which would not be, in my judgement, a lawful justification, had I have found that the placing orders by IES with Genee for Genee World Products did amount to IES inducing Genee to breach the Exclusivity Agreement (which I found it did not).

ISSUE 8 NORTHAMBER'S CLAIM FOR CONSPIRACY

304. Counsel agree the legal principles that apply to the tort of conspiracy and I summarise those principles as follows:
   (a) there are two types of actionable conspiracy, unlawful means conspiracy and conspiracy to injure by lawful means;
   (b) unlawful means conspiracy requires there to be:

(i) a combination of two or more people;
(ii) unlawful action pursued by the conspirators;
(iii) an intention to injure the claimant (which need not be the predominant purpose, it is sufficient that the conspirators seek to benefit at the claimant's expense); and
(iv) damages suffered by the claimant;

(c) conspiracy to injure by lawful means requires there to be:
(j) a combination of two or more people ;
(ii) lawful action pursued by the conspirators;
(iii) the predominant purpose of the conspiracy is to injure the claimant; and
(iv) damages suffered by the claimant.

305. Mr Brown says that:
(a) any claim for unlawful means conspiracy is circular because Northamber has to prove that Mr Singh and/or IES induced Genee to breach the Exclusivity Agreement. This is because Northamber relies upon Mr Singh and/or IES having induced Genee to breach the Exclusivity Agreement as the "unlawful means" element of unlawful means conspiracy;
(b) in fact the case put forward by Northamber alleges two separate acts of unlawfulness, namely: (i) an alleged breach of the Exclusivity Agreement by Genee; and (ii) Mr Singh and/or IES inducing Genee to breach the Exclusivity Agreement. The alleged conspiracy, says Mr Brown must be to carry out the same unlawful act; and
(c) if the claim is for lawful means conspiracy, then Northamber has no real prospect of establishing that the predominant purpose of any conspiracy between Genee and/or Mr Singh and/or IES was to injure Northamber, as an end in itself.

306. Mr Falkowski accepts that the unlawful means that he relies on, for the purposes of the alleged unlawful means conspiracy is inducing Genee to breach the Exclusivity Agreement.

307. Whilst issue 8 is split into parts 8 (a) – (e) I do not propose to deal with all those issues because, I am able to conclude (without having to deal with all those issues) that Northamber has not proved its claim that Genee and/or Mr Singh and/or IES have committed the torts of either unlawful means conspiracy or lawful means conspiracy.

308. I am not satisfied that Northamber has proved that Genee/or Mr Singh and/or IES have engaged in unlawful means conspiracy because:
(a) I have found that IES did not induce Genee to breach the Exclusivity Agreement. IES has not therefore engaged in unlawful means itself and Northamber has not asserted that IES somehow acted in concert with Mr Singh in connection with his inducing Genee to breach the Exclusivity Agreement, beyond the placing of orders with Genee which I have found did not amount to inducing Genee to breach the Exclusivity Agreement; and
(b) although I have found that Mr Singh did induce Genee to breach the Exclusivity Agreement in relation to any supplies that Genee made to UK entities other than Northamber and the Excluded Accounts after 10 September 2018 and until 12 November 2018, I accept Mr Brown's point that, in order for there to be an unlawful means conspiracy, the unlawful means of the conspirators must be the same unlawful act. I have found that Mr Singh induced Genee to breach the Exclusivity Agreement, and that Genee breached the Exclusivity Agreement (Genee could not induce itself

to do so) so there can have been no conspiracy between Genee and Mr Singh to use the same unlawful means.

309. I am also not satisfied that Genee and/or Mr Singh and/or IES engaged in a lawful means conspiracy because I am not satisfied that the predominant purpose of Genee breaching the Exclusivity Agreement, from the perspective of Genee and/or Mr Singh and/or IES was to injure Northamber as an end in itself. I am not satisfied of this because:

(a) I have found that Mr Singh caused Genee to supply Genee World Products to UK entities other than Northamber and the Excluded Accounts, in breach of the Exclusivity Agreement in an attempt to enable it to survive (see paragraph 245 above). Even if I am wrong about that and supplying Genee World Products to UK entities in breach of the Exclusivity Agreement was not essential to Genee's survival, then I am satisfied that Mr Singh caused Genee to breach the Exclusivity Agreement in order to improve Genee's financial performance for the financial benefit of Mr Singh and his family and not predominantly to injure Northamber (see paragraph 230); and

(b) I have found (paragraph 282 above) that IES placed orders with Genee for Genee World Products predominantly because it wanted to supply its customers with Genee World Products and needed credit to purchase them and therefore it was in its own financial interests to do so and I am not therefore satisfied that the predominant purpose of IES placing those orders was to injure Northamber.

ISSUE 9 – WHAT LOSS HAS NORTHAMBER SUFFERED AS A RESULT OF ANY INDUCEMENT OF BREACH OF CONTRACT OR CONSPIRACY BY MR SINGH AND/OR IES?

310. I have found that, if and to the extent that Genee sold Genee World Products in breach of the Exclusivity Agreement, during the period 11 September 2018 (the day after grant of the Injunction by Garnham J) to 12 November 2018 (date of the resolution to wind up Genee) Mr Singh induced Genee to commit that breach of contract (not acting bona fide, within the scope of his authority as sole director of Genee).

311. Mr Singh says that Genee did not breach the injunction granted by Garnham J on 10 September 2018 by supplying Genee World Products, in breach of the Exclusivity Agreement and he is not therefore liable for inducing it to do so. However, in explaining why I have come to the conclusion that Mr Singh was not an honest witness I have referred to two issues which are or may be relevant to the question of whether Genee breached the Exclusivity Agreement between 10 September 2018 and 12 November 2018, in spite of Mr Singh's denial, namely:

(a) at paragraphs 69 - 71 above I refer to Mr Singh's evidence, given in cross examination, that sales invoices addressed to IES, dated 30 September 2018, originally entered in Genee's Sage records but deleted from those records were entered in error by a graduate trainee called Kaljit Singh. I noted that that explanation given by Mr Singh, in cross examination contradicted the explanation he gave to Mr Pym (Mr Singh and IES 's expert forensic accountant) for the deletion of the sales invoices addressed to IES from Genee's Sage records, namely that Genee "routinely raised sales invoices on receipt of firm orders from customers which was done to track the sales pipeline…". I concluded that those invoices were deleted from Genee's Sage records in order to hide the fact that Genee had sold Genee World

Products to IES after Garnham J had granted the Injunction to Northamber, on 10 September 2018 prohibiting Genee from supplying Genee World Products within the UK to persons other than Northamber and the Excluded Accounts (which did not include IES); and

(b) at paragraph 72 – 76 above I noted that Mr Singh had explained to Mr Pym that sales recorded as sales by Genee to Capital Link were in substance sales by Genee to NSJ, a company based in Vietnam. Mr Pym records Mr Singh as having told him that all of the goods were delivered by the manufacturer in China to NSJ in Vietnam direct and that it was NSJ who proposed involving Capital Link in the arrangements for the sale of goods to NSJ, because NSJ could not arrange the letters of credit that Genee wanted, but Capital Link could. However, when Mr Singh produced an invoice from Genee to Capital Link dated 31 July 2018 and an invoice from Capital Link to NSJ for the same goods, it was apparent that Genee charged Capital Link US$401,940 for the same goods as Capital Link then charged NSJ US$869,749 for. I found that Mr Singh's evidence that Capital Link only became involved at NSJ's suggestion, in order to facilitate the provision of letters of credit was untrue, given that Capital Link applied a mark-up of over 100% to the price at which it purchased the goods from Genee, when selling them to NSJ. I concluded that, Capital Link was purchasing Genee World Products from Genee and selling them on to NSJ at a substantial profit as stand-alone transactions, rather than Capital Link merely acting as some sort of financial facilitator (by providing letters of credit) for what in substance was a transaction between Genee and NSJ.

312. The purpose of the reports of Mr Leandro (forensic accountant instructed by Northamber) and Mr Pym (forensic accountant instructed by Mr Singh and IES) were for them to express their opinions as to the value of Genee World Products supplied by Genee in breach of the Exclusivity Agreement and to calculate the losses suffered by Northamber as a result of any such breaches of the Exclusivity Agreement by Genee. Neither expert addressed specifically the period 11 September 2018 to 12 November 2018 which I have found to be the period for which Mr Singh is liable for inducing Genee to breach the Exclusivity Agreement, if and to the extent that Genee, during that period, supplied Genee World Products to UK entities other than Northamber and the Excluded Accounts.

313. Mr Pym and Mr Leandro disagree about:

(a) the treatment of sales invoices deleted from Genee's Sage records: (i) Mr Leandro has included all invoices which were entered as sales invoices in Genee sales records but then deleted, as completed sales; and (ii) Mr Pym accepted Mr Singh's explanation that the sales invoices deleted from Genee's Sage records did not represent actual sales, but were merely a means of keeping track of the sales pipeline. Mr Pym did not therefore include any of the deleted invoices in his figures;

(b) which supplies of Genee World Products should be regarded as supplies to UK entities, as opposed to foreign entities for the purpose of the Exclusivity Agreement: (i) Mr Leandro treated every sale where no satisfactory evidence was produced that the purchaser was not a UK entity as a sale to a UK entity. For example Mr Leandro treated the supply of Genee World Products to Capital Link as a supply to a UK entity even though the invoices were in US$ he noted that, at the relevant time Capital Link was a company incorporated in England and Wales having its registered office in Cardiff; and (ii) Mr Pym treated any sales in a currency other than £ Sterling as a sale

to a non-UK entity and excluded those sales from his calculations. Mr Pym therefore excluded the sales to Capital Link because the sales were in US$; and

(c) what Northamber is entitled to recover in damage for the Genee World Products that were sold in breach of the Exclusivity Agreement by Genee: (i) Mr Leandro calculates Northamber's loss at 25% of the value of Genee's invoices for goods that he considers were sold in breach of the Exclusivity Agreement. This calculation is based upon clause 9.2 of the Exclusivity Agreement; and (ii) Mr Pym calculated Northamber's loss of profit at 10.4% of the value of Genee's sales in breach of the Exclusivity Agreement being his calculation of the average profit made by Northamber net of VAT.

314. I propose to approach the question of what (if any) damages Northamber is entitled to recover from Mr Singh as follows:

(a) I will determine if Genee sales to Capital Link were sales made in breach of the Exclusivity Agreement;

(b) I will determine the value of sales by Genee to UK entities in breach of the Exclusivity Agreement for the period 9 September 2018 to 12 Northamber 2018; and

(c) I will determine what damages Northamber is entitled to recover from Genee for those sales which I find Genee made in breach of the Exclusivity Agreement during the period 11 September 2018 to 12 November 2018.

Genee's sales to Capital Link

315. I have already found that the sales by Genee to Capital Link were genuine arm's length sales by Genee to Capital Link and then by Capital Link to NSJ, rather than simply some financing arrangement of what in substance was a sale by Genee to NSJ in Vietnam (as Mr Singh suggested) and I approach the question of whether sales by Genee to Capital Link were sales made in breach of the Exclusivity Agreement, on that basis.

316. Capital Link was, at the relevant time, a limited company incorporated in England and Wales having its registered office in Cardiff.

317. Clause 1 of the Exclusivity Agreement provides that "Northamber will become the 100% exclusive source for all Genee World Products in the UK effective July 1 with no sales by Genee to any reseller or other party in the UK." Clause 1 a. provides that the Excluded Accounts are the only exceptions to this.

318. Clause 5 of the Exclusivity Agreement provides that: "1. Northamber will purchase stock from [Genee's] bonded warehouse; 2. Northamber will purchase stock for delivery to Northamber's warehouse for run rate stock; 3. Northamber will order stock directly from the Genee bonded warehouse to be shipped directly to resellers or end users for projects, bids, or where urgency is required and Northamber do not have the item in stock".

319. I refer in paragraph 118 above to the principles applicable to construing contractual term. I will apply those principles in determining, objectively, if it was intended by Northamber and Genee that sales to Capital Link would fall within clause 1 of the Exclusivity Agreement.

320. The Exclusivity Agreement was drafted by Mr Phillips with some input from Mr Henry and is (in my judgement) poorly drafted. The first part of clause 1 says that "Northamber will become the 100% exclusive source for all Genee World Products in the UK effective July 1". This may either mean that Northamber is to have the exclusive right to supply Genee World Products: (a) to customers based in the UK; or (b) to be delivered within the UK. I consider that that wording slightly favours the later interpretation as the first part of clause 1 focuses on the delivery of the Genee World Products. The second part of clause 1 refers to there being "no sales by Genee to any reseller or other party in the UK". Again this could either refer to where the customer is based or where the delivery is to be made, but slightly favours the former interpretation because it focusses on the customer (reseller or other party in the UK) and not the place of delivery. Of course in the vast majority of cases there will be no difference between where the customer is based and where delivery is to be made, but in the case of Capital Link there is a difference.

321. In my judgement, for the reasons that follow, any sales by Genee to Capital Link between 11 September 2018 and 12 November 2018 were not sales made in breach of clause 1 of the Exclusivity Agreement.

322. The meaning of clause 1 when read as a whole is uncertain and therefore I consider that I am justified in considering other relevant clauses of the Exclusivity Agreement and the context in which the Exclusivity Agreement was agreed and the circumstances known to the parties at that time, to consider their true intention.

323. Clause 5 provides for two means by which Genee will supply Genee World Products to Northamber and Northamber will supply Genee World Products to its customers: (i) Genee would supply to Northamber for it to hold in its warehouse based in the UK to deliver to customers and Northamber agreed to endeavour to hold at least 10 days stock at run rate levels at its warehouse; and (ii) Northamber could ask Genee to arrange for Genee World Products to be delivered direct from the bonded warehouse in the UK (where they were held, until released, to the order of Hitevision, the Chinese manufacturer, in the circumstances set out in clause 5.3).

324. On the available evidence Northamber only ever delivered to addresses in the UK from its warehouse and Genee World Products could only be delivered to addresses in the UK from the bonded warehouse, because, in that case, those goods had to be cleared through customs, for release out of the bonded warehouse for deliver to addresses in the UK.

325. The four telesales heads who were to be jointly funded by Genee and Northamber and were based at Northamber's premises, in accordance with clause 3.2 of the Exclusivity agreement, on the evidence, only marketed to resellers for supply to end-users based in the UK.

326. Clause 1 of the Exclusivity Agreement, whatever its precise meaning, restricted Northamber's exclusivity to the UK and given what I have said in paragraphs 322 - 325 above I consider that the likely intention of Genee and Northamber, when the Exclusivity Agreement was entered into, was that Northamber would have exclusivity for the supply of Genee World Products to addresses of resellers and end users in the UK, rather than its exclusivity being determined by where the customer was based. In coming to that conclusion, I consider that neither party could have intended that Genee would be entitled

to deliver goods to a customer outside the UK who then exported them back into the UK to their reseller customer based in the UK.

327. Genee arranged delivery to NSJ (Capital Link's customer) direct from the manufacturer, Hitevision, in China, it is unlikely that Genee or Northamber would have intended that Capital Link should become a customer of Northamber, with Hitevision delivering direct to NSJ from China. Those goods would never enter either the bonded warehouse or Northamber's warehouse to which clause 5 refers and no purpose would be served by interposing Northamber as a purchaser from Genee who sold to Capital Link who sold to NSJ, other than to enable Northamber to profit from those arrangements. Genee would still need to arrange for Hitevision to supply direct to NSJ in Vietnam and none of the advantages of entering into the Exclusivity Agreement would apply to those sales (Northamber would not hold stock in their warehouse to allow for swifter supply and would not be arranging for delivery to NSJ).

The Value of Sales by Genee to "UK Entities" 11/9/18-12/11/18

328. Mr Leandro includes, at Appendix 4 to his report dated 11 April 2022 a schedule of 17 invoices dated 30 September 2018 addressed to IES all of which he says were included in Genee's Sage records but later deleted. The 17 invoices total £586,750.98.

329. In his report dated 20 June 2022, Mr Pym says that Genee's Sage data shows sales of £603,706.98 for September 2018 of which £586,780.98 (£488,959.15 net of VAT) have been deleted from Genee's Sage records. Mr Pym therefore agrees Mr Leandro's figure for IES invoices deleted from Genee's Sage records for September 2018.

330. The difference of £16,956 between £603,706.98 and £586,780.98 consists of the following invoices :
   (a) Demo Stock Order - £14,374.80;
   (b) Citreon Van registration LG62 YVR - £900;
   (c) Fixtures and Fittings for Libra House - £685.20;
   (d) Linde Forklift - £600;
   (e) Servers, telephone and broadband - £300;
   (f) 3M Wall Plate - £84; and
   (g) Carriage - £12

331. Mr Leandro included Demo Stock in his figures for sales of Genee World Products by Genee to IES. I agree that Demo stock should be included in the figure for sales of Genee World Products by Genee to IES. It appears tolerably clear that any stock sold by Genee to IES would, on the balance of probabilities be Genee World Products, quite what use Genee made of that stock before selling it to IES or IES made of it thereafter, to demonstrate to customers or potential customers or otherwise, does not alter what I find to be that fact.

332. The invoice for the Demo Stock is dated 12 September 2018 and should therefore be added to the sales of Genee World Products by Genee to IES during the period 11 September 2018 to 12 November 2018, giving a total of £601,125.80 including VAT and £491,354.75 excluding VAT. None of the other invoices (a) – (g) are for Genee World Products and they should not therefore be included.

333. Mr Leandro identifies in his report a number of "factors" that he says may mean that additional Genee World Products were sold by Genee in breach of the Exclusivity Agreement. In some cases he says that he requires further information/documents in order to be able to establish whether there should be additions made (which information/documents he never received). An example of this is that Mr Leandro says that there appears to be data missing from Genee's Sage records which may indicate additional sales, but he accepts that without further information he is unable to quantify the value of any such sales. Mr Leandro also considered it to be his task to calculate the value of sales of Genee World Products by Genee for the period up to 31 December 2018. Mr Leandro notes the absence of details of any sales after the end of September 2018 and makes additions to his calculations for sales from the beginning of October 2018 to 31 December 2018 by extrapolating sales of Genee World Products made in previous periods and applying them to that period.

334. I am not satisfied that Northamber has proved, on the balance of probabilities, that any of the factors that Mr Leandro identifies as potentially indicating that Genee has made additional sales of Genee World Products after September 2018 actually are additional sales. In any event, Mr Leandro has either been unable to suggest any value for those sales or he has provided an estimate based upon past sales which I consider provides no firm basis for a calculation particularly when they ignore: (a) the existence of the Injunction, from 10 September 2018 (which may have resulted in Genee not supplying Genee World Products other than to Mrs Kaur's company, IES for a limited period); and (b) the liquidation of Genee on 12 November 2018.

335. I find that Northamber has only proved a value of sales by Genee of Genee World Products in breach of the Exclusivity Agreement in the period 9 September 2018 to 12 November 2018 of £601,125.80 including VAT and £491,354.75 excluding VAT.

Northamber's Loss

336. Mr Leandro calculates Northamber's loss at 25% of lost sales in accordance with clause 9.2 of the Exclusivity Agreement. Applying clause 9.2 of the Exclusivity Agreement is the correct approach, if Northamber's claim against Mr Singh were a claim in contract, where the measure of damages can be determined in accordance with the contract itself. Northamber's claim against Mr Singh is however in tort. The measure of damages in tort is the loss that Northamber actually sustained as a result of Mr Singh inducing Genee to breach the Exclusivity Agreement. That is the profit which Northamber would have made if Genee had not supplied Genee World Products to IES.

337. Mr Brown suggests that, as Northamber had difficulties purchasing Genee World Products from Genee (because of the limit on credit insurance for its debt) it is by no means certain that Northamber would have been able to purchase Genee World products from Genee and supply them on to IES, if IES had not bought them directly from Genee. It is also true that Northamber had withdrawn IES's credit account by Mr Hall's e mail of 23 February 2018, but I have found that, had Mr Hall been aware, when he sent his email on 23 February to Mrs Kaur, that Northamber had set off £137,332.32 of the debt owing by IES to Northamber and that the balance of £31,945.82 was not yet due for payment he would not have withdrawn IES's credit facilities with Northamber (see paragraph 162 (b) above). I also noted that IES did not point out to Mr Hall his errors, but merely ordered Genee World Products direct from Genee.

338. I find that, on the balance of probabilities, at least during the period after 10 September 2018 (when the injunction was granted) and until 12 November 2018 (when Genee went into creditors voluntary liquidation) had Genee refused to supply IES with Genee World Products, because of the existence of the Injunction, then Genee/IES/Northamber would have agreed a basis upon which IES was supplied with Genee World Products and Northamber made its usual margin upon that supply. I find this because it would have been in the commercial interests of all three parties to agree to such an arrangement.

339. I find that the actual margin that Northamber would have made on the supply of Genee World Products to IES would have been 5%. I come to this conclusion because emails passed between Northamber and Genee at or about the time that the Exclusivity Agreement was signed in which it was agreed that Northamber would charge IES for the supply of Genee World Products cost plus 5% and on the evidence this is what Northamber did charge IES during the period that it supplied IES.

340. Northamber has not proved that Genee supplied Genee World Products to any party other than IES, in breach of the Exclusivity Agreement, in the period 11 September 2018 to 12 November 2018 and has only proved that Genee supplied Genee World Products to the value of £491,354.75 excluding VAT, during this period. Northamber's recoverable loss from Mr Singh is therefore £24,567.74 (that is 5% of £491,354.75 on the basis that Genee would have charged Northamber what it charged IES for the supply of the same Genee World Products and Northamber would have added its margin of 5% to what it charged IES).