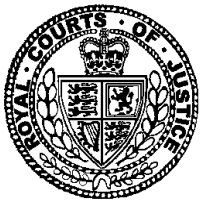

Neutral Citation Number: [2022] EWHC 721 (Ch)

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Claim No: BL-2020-001439

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
Mr M H Rosen QC sitting as a Judge of the Chancery Division

BETWEEN:

(1) QUANTUM CARE LIMITED
(2) GURPREET GILL MAAG **Claimants**

-and-

LALIT MODI **Defendant**

JUDGMENT dated 30 March 2022

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(1) Introduction

1. In 2007 the Defendant to these proceedings Mr Lalit Modi, who now lives in London, was the vice-president of the Board of Cricket Control of India and instrumental in the foundation of its financially successful 'twenty20' cricket tournament, called the Indian Premier League. Mr Modi regards himself as a business visionary, and by 2017 had set

out to launch a new venture in the global provision of single-dose radiation treatments for cancer, called Ion Care.

2. The First Claimant ("Quantum") is a company incorporated in the British Virgin Islands as one of the investment vehicles of the Second Claimant Mrs Maag, who with her husband Mr Daniel Maag, a Swiss banking professional, is based in Singapore.

3. In these proceedings Quantum seeks against Mr Modi the sum of $800,000 still outstanding in respect of its investment in a Swiss company, Ion Care AG, in November 2018, by way of contractual repayment or damages in deceit inducing that investment, together with consequential loss for the large profits which it claims it would have made on an alternative investment had it not been so induced. The deceit does not relate to the technical or commercial prospects for that business, but as to whether a large number of individuals (some of particular significance as explained below) were or had promised to become involved in various crucial capacities in Ion Care's proposed business.

4. The trial of liability and causation took place in person over 6 days between 22 February and 3 March 2022, the quantification of any consequential loss to be addressed if necessary at a separate and subsequent stage. Mrs Maag and her husband gave evidence and were cross-examined, as did and were Mr Modi, his son Ruchir Modi and their financial consultant, Munesh Khanna. A witness statement of another employee, Akshay Sahai, was also adduced for Mr Modi and not challenged.

5. Quantum was represented by Anna Dilnot QC instructed by Reynolds Porter Chamberlain, having assumed what was previously Mrs Maag's personal claim for damages by amendments in late 2021; and Mr Modi was represented by Jonathan Price of counsel, instructed by BlackLion Law. I am grateful to all for their assistance, although this was rather hampered in some respects by the form of electronic presentation of many thousands of pages of documents, some very lengthy and/or in message trails, many of which were inessential and even distracting.

6. Quantum's claim in deceit turns largely on what was said and presented by Mr Modi to Mr and Mrs Maag at and following a late-night meeting in his hotel suite in Dubai on 13/14 April 2018, nearly 4 years ago. One document on which they heavily rely, a so-called 'Investor Pitch Deck', was extracted by the Maags from Ion Care's online 'Drop Box' in early December 2018, and its use at the 13/14 April 2018 meeting is disputed.

The other documents and circumstances are therefore critical in assessing whether they have proved the fraud by Mr Modi alleged.

7. In that regard, both sides made some extravagant claims, of varying significance as mentioned in my review below, and sorting the wheat from the chaff was not always made easy. I note at the outset however that both sides exhibited in their different ways some fluid meanings for terms such as 'commitment' and advanced various other incongruously naïve assertions.

(2) The dispute

8. Quantum was formed as a special purpose vehicle on 4 July 2018 and is wholly owned by another company incorporated in the BVI, Tamares Business Limited. Its sole director has at all material times been and remains Mrs Maag, who is also a director and sole shareholder of Tamares.

9. Mrs Maag is also an Indian national, a venture capitalist who has invested for the past decade or so through offshore SPVs in some 20 start-up and early-stage companies (including 'ONE Championship', which has apparently grown to prominence as a multibillion-dollar business). At the time of Quantum's investment into Ion Care in November 2018, Mrs Maag's portfolio included 6 investments in the combined amount of over $10 million.

10. Mr Modi set up Ion Care in early 2016, inspired by his wife's long-term struggle with cancer, to own and operate outpatient oncology treatment centres situated worldwide in order to provide advanced non-invasive image guided single-dose radiotherapy ('SDRT'). This treatment had been developed by the Champalimaud Centre for the Unknown ('CCU') based in Lisbon, Portugal, and in particular by Dr Carlo Greco and Professor Zvi Fuks then of CCU.

11. On 7 June 2017, Ion Care entered into binding heads of terms with CCU for an exclusive licence to use the SDRT treatment, in return for substantial sums of money. The Ion Care business was constituted by a number of different companies in a number of different jurisdictions, including Ion Care Pte Limited, incorporated in Singapore on 29 April 2017, and its subsequent parent company Ion Care AG, registered in Switzerland on 30 July 2018, which acquired 100% of the shares in Ion Care Singapore on 15 November 2018.

12. On 13 April 2018, now nearly 4 years ago, Mr and Mrs Maag having just arrived from Singapore, encountered Mr Modi at the Four Seasons Hotel in Dubai, where they were all staying. Mrs Maag seems to have known Mr Modi well and they referred to each other warmly as friends. Mr Modi invited the Maags to meet with him in his hotel suite after dinner that evening. At that meeting, lasting into the small hours, the Maags say that Mr Modi gave them a presentation in order to introduce the business of Ion Care and invite an investment of $2 million in a first 'friends and family round' of fundraising, to which in principle they agreed.

13. Quantum's case is that the documents presented and oral statements made by Mr Modi at that meeting and reinforced subsequently were to the effect that many celebrated, wealthy and influential individuals whom he identified had agreed to act in due course variously as 'patrons', 'leaders' (whether board members or otherwise), and 'brand ambassadors' of Ion Care, some of whom had also made substantial commitments to the business by way of assigning land for treatment centres in the UAE and/or Antigua, and investing funds amounting to $260 million, as part of a 'rolling close' to follow the first 'friends and family' round – and were knowingly false.

14. Quantum alleges that many of the numerous individuals allegedly identified by Mr Modi as supportive in their different ways during the meeting – whom it is unnecessary to list comprehensively in this judgment - had not in fact agreed to be patrons of Ion Care, nor (save for Dr Greco and Professor Fuks as Quantum now concedes) to participate in its management or leadership, nor to become brand ambassadors, nor had any 'committed' to any future funding,

15. After considering an Information Memorandum sent by Mr Khanna to the Maags a few days later on 16 April 2018, and other exchanges and other steps often in writing, Unum in Infinitum Inc (an Anguillan company owned by Mrs Maag) eventually acquired shares in the Swiss parent company Ion Care AG and entered into a share agreement with Minalani, Ruchir and his sister Aliya Modi, and Dr Greco; and the first half of Quantum's investment, $1 million, was paid to Ion Care AG on 13 November 2018. For that purpose, Mrs Maag had caused Quantum to be incorporated on 4 July 2018 and on or around 29 July 2018 its parent company Tamares borrowed $2 million for the investment from Dunbridge Investments Ltd, another BVI company, owned by an (unidentified) uncle of hers.

16. Ion Care sought to find a number of sites for locating treatment centres, all requiring substantial funding and connected to Mr Modi's alleged supportive individuals, in particular at:

    (a) the Medanta hospital in Mumbai on which Ruchir Modi and other Indian participants were working;

    (b) Abu Dhabi, introduced by the office of Sheikh Nahyan bin Mubarak Al Nahyan, the Minister of Culture and Knowledge Development of the UAE;

    (c) Thailand, whose former Prime Minister Dr Thaksin Shinawatra was also extensively referred to; and

    (d) Antigua, at a proposed resort on a former naval base introduced by the office of the Prime Minister Gaston Browne (allegedly Mr Modi's 'dear friend, like a brother') and the subject of a memorandum of understanding dated 25 May 2018.

17. According to the Maags, but without documentary corroboration, Mr Modi had told them at the 13/14 April 2018 meeting that Sheikh Nahyan had committed to fund $100 million, Dr Shinawatra $60 million, and others in total $100 million in a subsequent investment round or rounds.

18. Quantum says that the remaining $1 million from Dunbridge's loan was set aside until May 2019 and so the $2 million could and was not used for the purpose of any other investment opportunities of Mrs Maag, for which it did not have other funds available and which have emerged as highly successful businesses - in particular a company called Livspace, to which she was introduced in September 2018, or alternatively a company called B1T (in which another Singaporean company owned by Mrs Maag, Illume Holding Pte Ltd, made an investment of only $50,000 on 6 October 2018).

19. While Mr Modi says that he does not have a clear recollection of the 13/14 April 2018 Meeting, he denies making the alleged misrepresentations to Mr and Mrs Maag, saying that he did no more than refer to tentative funding opportunities and individuals whom he did or was to approach in due course. In any event he contends that Maags knew that Ion Care was at an early stage of development and that they spent months following the 13/14 April 2018 Meeting considering the opportunity and involving themselves in the business before committing to Quantum's investment.

20. As for Quantum's alleged consequential loss, Mr Modi advances a number of countervailing considerations on causation as to why Quantum did not suffer any since, among other things (a) it was used as a one-off vehicle to hold the shares in Ion Care and would not have been the vehicle which would have been used to invest in either Livspace or B1T; and (b) Mrs Maag would in any event have been unlikely to invest (through any SPV) in either Livspace or B1T to the extent of $2 million (more than she generally invested in any business apart from Ion Care) but if she wished to, she has not proved that no other funds were available.

21. Shortly following Quantum's investment into Ion Care, Mrs Minalini Modi died in December 2018. Her family were deeply affected and Mr Modi's active involvement in Ion Care virtually ended. By April 2019, Ion Care had run out of funds with which to meet its expenses, and had not been able to develop any outpatient treatment centres which would have allowed it to generate revenue.

22. On 14 April 2019, Mr and Mrs Maag attended a meeting at Mr Modi's house in London with him, Ruchir Modi, Dr Greco and another investor (apparently one of India's largest drinks bottlers) Ravi Jaipuria; and in essence Mr Modi agreed to repay Quantum its $1 million investment if no viable business plan was produced by 1 May 2019.

23. No viable business plan materialised by May 2019 or at all, and the Maags sought the repayment by Mr Modi of Quantum's $1 million investment. WhatsApp messages with Ruchir show some discussion of an additional payment of interest at Mr Modi's 'discretion' and a claim for deduction of expenses allegedly incurred for the Maags, but both suggestions were seemingly dropped and on 9 July 2019 Mr Modi (via a company named Camara Exim Limited) repaid $200,000 to Tamares, as what Ruchir called a first tranche.

24. Mr Modi and Ruchir intimated further repayments but then broke off further contact and nothing more was forthcoming. The parties' relationship was breaking down and then turned sour. On 7 October 2019, Mr Modi sent a message to Mrs Maag by WhatsApp saying in part: 'Hurt u. I will never. It's been rough. U will get paid. Thou investments go sour. But I said I will make good. I will let you know when. But assume this to be my last message if u EVER THREATEN my family again. I will personally finish u off… U talk anything to anyone bad about me and my family. Then your only RECOURSE IF

ANY IS COURTS…. Be nice and cordial and the world is for u from me. But threaten and talk then my boot is for u...'.

25. Mrs Maag's response of the same date claimed that Mr Modi had 'falsely inflated the perceptions surrounding Ion Care to attract investors' and could not 'live up to [his] grandiose ideas about the business model of Ion Care [or his] commitments of returning funds by 1 May 2019 or even the next assigned timeline of 1 June 2019 …'.

26. The grant of probate for the late Mrs Modi, the delays in which Mr Modi blamed in evidence for his failure to repay more of the $1 million, was granted in November 2019, but that made no difference. Mrs Maag says that she received a series of telephone calls by an unknown person telling her to 'back off' or she would be 'taught a lesson' and submitted a police complaint.

27. A few months later, on 14 February 2020 Clyde & Co the then solicitors on behalf of Mrs Maag and Quantum wrote to Mr Modi seeking repayment of the balance of $800,000 and interest, mistakenly claimed at 8% pa under the Late Payment of Commercial Debts (Interest) Act 1998, which does not apply, and not mentioning any contractual interest. A subsequent letter from Clyde & Co dated 1 May 2020 marked the escalation of the dispute between the parties by alleging deceit. Ion Care went into bankruptcy soon after.

28. As regards the outstanding repayment of the $800,000, Mr Modi denies any intention to enter into contractual relations or any consideration (by way of forbearance to sue or otherwise) for his promise, or sufficient certainty of the allegedly contractual terms. His position is that he merely offered to return Quantum's money if and when he could and after the deduction of expenses 'as a gesture of goodwill' and 'out of compassion'.

(3) The issues and law on deceit

29. In October 2020 Quantum (and Mrs Maag personally at that stage) issued these proceedings against Mr Modi through Reynolds Porter Chamberlain, recently amended in December 2021. The principal issues now to be determined in relation to the deceit claim are:

    (a) whether and what misrepresentations were made by Mr Modi (about patrons, leaders, funders and ambassadors) orally and in writing in particular at the 13/14 April 2018 meeting in Dubai;

(b) whether Quantum relied on any of those misrepresentations when it invested $1 million in Ion Care and set aside a further $1 million for that purpose in mid-November 2018; and

(c) whether but for Mr Modi's misrepresentations, Quantum would have invested all or some of the $2 million into Livspace or B1T, for which it had no other resources.

30. Whether or not Mr Modi made actionable misrepresentations depends mainly on what he stated, by the documents he presented and orally and was believed and relied on by the Maags. If the Court concludes that such statements were to the effect that the individuals to whom he referred had agreed variously to participate the management of Ion Care provide the business with funding, or to be patrons or brand ambassadors, that was in large part false and he would have known it.

31. It is sufficient for this judgment to summarise as the legal principles under English law which both sides agree are applicable to the deceit claim against Mr Modi by Quantum. In short this requires for its success that (a) the defendant made a representation of present fact which was false; (b) the defendant knew that the representation was made and that it was untrue, or was reckless as to its truth or falsity; (c) the defendant intended that the representation would induce the claimant to act or refrain from acting; (d) the claimant was in fact induced by the representation to act or refrain from acting; and (e) the claimant thereby suffered loss.

32. The state of mind that must be shown on the part of the maker of the representation is that when he made the representation: (a) he made it knowingly; (b) without belief in its truth; or (c) careless as to whether it was true or false. Recklessness is itself treated as a species of dishonest knowledge, because in both cases, there is an absence of belief in truth. The representor must have understood not only that he was making the representation, but also that the representation had the false meaning alleged, in other words, that he intended his statement to be understood by the representee and to rely on the representation in the sense in which it was in fact false.

33. As it was put in *Eco Three Capital Limited* v *Ludsin Overseas Limited* [2013] EWCA Civ 413 per Jackson LJ at [78], such an intention is not a free standing or separate element of the tort of deceit: it is merely a compendious way of describing the two mental elements of the tort, namely knowledge of falsity and an intention that the claimant should rely upon the misrepresentation. The requisite intention is proved not only where

it is established that the defendant positively intended the claimant to act upon the misrepresentation, but also where he appreciated it was likely that the claimant would so act.

34. The burden is upon a claimant to establish that she was induced to act or not to act by the relevant misrepresentation and as a result sustained loss, that is, that the misrepresentation materially influenced her decision to make the contract, in the sense that it was actively present in her mind, but not so as to satisfy a 'but for' test: *BV Nederlandse Industrie van Eiprodukten v Rembrandt Enterprises Inc* [2020] QB 551.

35. However, Quantum rely heavily on the well-established principle that when a representor makes a fraudulent misrepresentation capable of founding a claim in deceit, there is a rebuttable presumption that he intends the representee to rely on it: see *Goose v Wilson Sanford and Co* [2001] 1 Ll Rep PN 189, per Morritt LJ: 'If a fraudulent misrepresentation is found to have been made it will give rise to a rebuttable presumption of fact that the representor intended the representee to act in reliance on it ... There is obvious sense in such presumption for if the representor did not intend the representee to act on the faith of his statement why did he lie.'

36. So too, if the other elements of the tort are established, the law will not inquire into the reasonableness or otherwise of the representee in relying upon the representor's fraudulent misrepresentation. A person acting fraudulently who dishonestly makes a representation with the intent that it should be acted upon, cannot be heard to say that reliance upon it was unreasonable or unforeseeable; and cannot evade liability by pointing to the representee's negligence in failing to establish the truth or his gullibility, or folly. Similarly, a representee has no duty to be careful, suspicious or diligent in research: *Hayward v Zurich Insurance Co Plc* [2017] AC 142 per Lord Clarke at [39].

37. Thus when the defendant has made a fraudulent misrepresentation which he intended the claimant to act upon, then, if the representation is of such a nature that it would be likely to play a part in the decision of a reasonable person to enter into a transaction, the law presumes rebuttably that the claimant did in fact rely upon the representation: see *Dadourian* and *Ross River Ltd v Cambridge City Football Club* [2008] 1 All ER 1004, per Briggs J at [241]. In such a case, the evidential burden will shift to the representor to show, if he can, that in fact the representee was not influenced by the representation. It has been said that in a fraud case, the evidential presumption of inducement is very

difficult to rebut: see *Hayward* at [36]-[37] and *Chitty on Contracts* 34th edition at para 9-048 – 'the inference of inducement is particularly strong where the misrepresentation was fraudulent' - confirmed in *BV Nederlandse Industrie* per Teare J at [104] and in the Court of Appeal at [44].

38. As for consequential loss, Quantum's case is that but for the false representations made by Mr Modi, Quantum would have invested $2 million in a company called LivSpace, alternatively, in a company called B1T. When fraud is proved, the claimant is entitled to damages for any loss which flows from that fraud even if the loss could not have been foreseen by the defendant: see *Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd* [1997] AC 254, per Lord Browne-Wilkinson at 263 and *Chitty* at 9-064: 'Thus the claimant may recover not only the difference between the price paid and the value of what he received but also expenditure wasted in reliance on the contract and compensation for other opportunities passed over in reliance on it'.

39. Damages for lost opportunity may be recovered even though they may have to be discounted on the ground that it was not certain that the claimant would have been able to take up the opportunity: *4Eng Ltd v Harper* [2008] Ch 9. In assessing the value of a lost opportunity, the relevant counterfactual is the position that the claimant would have been in had she not relied on the representation and this can include profits that the claimant would have made from entering into a different transaction.

40. The relevant principles were summarised in *Palliser Ltd v Fate Ltd* [2019] EWHC 43 (QB) at [27] thus: 'The correct picture of the law on proof in relation to damages is therefore that where the uncertainty is as to past fact, the 'all or nothing balance of probabilities' test applies. Where the uncertainty is as to the future, proportionate damages are appropriate. Where the uncertainty is as to hypothetical events, the correct test to be applied depends on the nature of the uncertainty: if it is uncertainty as to what the claimant would have done, the all or nothing balance of probabilities test applies; if it is as to what a third party would have done, damages are assessed proportionately according to the chances.'

41. According to *McGregor on Damages* at para 10-048 ff, in the case of an opportunity allegedly lost as a result of the defendant's deceit – for which 'the duty is not one that requires proof of a monetary loss but that the essence of the breach of duty includes depriving the claimant of the chance or opportunity of securing a favourable outcome' -

a claimant will only succeed if it is shown, on the balance of probabilities, that the claimant has lost the particular chance, save that where causation depends on the hypothetical actions of a third party, a real and substantial chance need only be shown; and the lost chance must be quantified by assessing the likelihood of the chance eventuating and equating that likelihood to a percentage as regards recovery - from being too speculative to have a money value put on it (so 0%) to being a virtual certainty such that it is appropriate to award the full value (100%).

42. In the present case many of the authorities cited by the parties were unnecessary, since Quantum's alleged loss of opportunity of profits had there been no putative deceit depended not on Mrs Maag's past record, so it alleged, of successful investment but instead on the two specific alternative investments which she claimed to have lost (and which, in my judgment, required commensurate, specific evidence). But some reference to two of them, as will emerge, is relevant.

43. First, in the leading case of *Allied Maples Group Ltd v Simmons & Simmons* [1995] 1 WLR 1602, Stuart-Smith LJ explained at 1604-1611 the distinction between: (a) when causation depends upon the answer to the hypothetical question of what the claimant would have done if there had been no wrongdoing, and the claimant must prove what she would have done on the balance of probabilities; and (b) when causation depends on the hypothetical actions of a third party (whether in addition to action by the claimant, or independently of it), and the claimant need only show that he had a real or substantial chance of the third party acting in such a way as to benefit him.

44. Secondly, in *Parabola Investments Ltd v Browallia Cal Ltd* [2011] QB 47, the Court of Appeal accepted that a claimant did not need to be able to identify a specific alternative transaction which would necessarily have been profitable, and the court could proceed on the basis of the evidence available to it. Toulson LJ stated at [22]: *'*Some claims for consequential loss are capable of being established with precision (for example, expenses incurred prior to the date of trial). Other forms of consequential loss are not capable of similarly precise calculation because they involve the attempted measurement of things which would or might have happened (or might not have happened) but for the defendant's wrongful conduct, as distinct from things which have happened. In such a situation the law does not require a claimant to perform the impossible, nor does it apply the balance of probability test to the measurement of the loss.'

45. The Court of Appeal accordingly upheld the first instance decision in *Parabola* [2009] 1492 (Comm) EWHC, in which Flaux J had stated at [147] that '… each case depends upon its own facts. Obviously there will be cases where, on the evidence, it is not possible for the claimant to show on a balance of probabilities that any alternative transaction or business would have been profitable…. However, where, on a balance, the court concludes that some profits would have been made from an alternative transaction or transactions, which the claimant would have entered but for the fraud, then the court can and should award damages for such loss of profits, if necessary discounting the amount recovered to reflect the element of risk…'.

(4) Some further background

46. From the documents Mr Modi appears to have begun Ion Care with a Mr Rafat Rizvi in early 2016 as a business to exploit the SDRT treatment developed by Dr Greco, who had treated Mrs Modi for cancer at CCU from in or around 2011. On 31August 2016 Dr Greco was appointed as Ion Care Limited's 'Chief of Innovation and Development' at an annual salary of $6 million, plus bonus and shares, plus bonus, most of which were deferred pending commencement of operations; and on 21 May 2017, Ion Care also entered into an employment agreement with Professor Zvi Fuks of CCU, pursuant to which he was to be its 'Scientific Director' for 3 years at an annual salary of $2 million which was again largely deferred.

47. From October 2016, Ion Care retained the services of Shor Consultancy LLC to seek investment and explore the setting up of a treatment centre in the UAE and otherwise looked at the possibilities for treatment centres in India, Antigua, Thailand and elsewhere, and collaborations with other healthcare providers; and from at least April 2017 investment proposal documents, referred to Ion Care's 'medical leadership and management teams' led by Dr Greco and Professor Fuks, and 'supervisory and executive boards' which included Sheikh Nahyan and Dr Shinawatra.

48. Ion Care Singapore, incorporated on 29 April 2017, entered into binding heads of terms on 6 June 2017 with CCU to collaborate and licence treatment centres outside Portugal in return for paying CCU biannual fees commencing at $4 million per annum from January 2017 and rising to $13 million p.a. for 2019-2022.

49. Mr Rizvi until about June 2017, then Mr Latif, and then Mr Khanna from about August 2017, assisted Mr Modi in communicating with potential investors and collaborators, developing Ion Care's investment proposal documents with the assistance of a Faisal Sharif in IT, and dealing with the detail of Ion Care's finances and corporate structure. In July 2017 additions were made to the 'scientific and corporate leadership' in the 'Introduction to Ion Care' document including a Mr Matteo Pellegrini, who was a senior executive at Philip Morris known to Mr Modi, and who was according to its filings, appointed a director of Ion Care Singapore.

50. Out of various investment prospects identified in documents, only a UAE-based business called Ellington appears to have provided funds. By 5 October 2017, Ellington had made payments totalling some $3,747,872 on behalf of Ion Care, principally payments to the CCU and to Dr Greco and Professor Fuks for their salaries.

51. In December 2017, Ruchir Modi was appointed a director of Ion Care Singapore and he and Mr Khanna led negotiations with the Medanta hospital. In the meantime, the proposal for a treatment centre in the UAE was put on hold and the attempted involvement of a Mr Steven Bird in Ion Care failed, after he expressed concern that a proposed Antigua project was not viable he no longer believed he was the right person to support 'a complex and challenging healthcare project' in January 2018.

52. On 4 March 2018, an agreement was reached with the Medanta hospital for an Ion Care treatment centre there. Ion Care was required to spend substantial sums on setting up the facility paying for 'brand new, state of the art' equipment and providing the required personnel and in due course revenue was to be shared 70/30. On 14 April 2018 (the day of Mr Modi's meeting in Dubai with the Maags) Ion Care Singapore entered into an agreement to borrow EUR 500,000 from Mr Jaipuria (which sum he advanced on 20 April 2018).

53. For their parts Sheikh Nahyan and Dr Shinawatra were copied into at least an email from Mr Modi to Mr Rizvi dated 26 August 2016 referring to the Medanta hospital in Delhi and setting up a collaborative effort with the CCU; in June 2017 Dr Shinawatra (who was also copied in to a then proposal with CCU) was referred to in Ion Care's cash flow projections as 'board chairman' at a salary of $1 million (which again does not appear to have been paid); and later, in April 2018, various draft share certificates in Ion Care

Singapore were produced in the names of Sheikh Nahyan and Dr Shinawatra (although never it seems issued).

54. So it seems, as the Claimant points out, that by the time Mr Modi introduced Ion Care to Mr and Mrs Maag in the Dubai hotel on 13/14 April 2018, he had been trying to launch it for approximately two years and had in use various investment proposal documents to seek the extensive funding needed, but seems only to have obtained advances from Ellington and Mr Jaipuria. In the meantime, Ion Care had already incurred large debts and ongoing contractual obligations required for collaboration with CCU and its personnel, and for the Medanta hospital centre and would be necessary also for any of the other treatment centres which had been floated and might be pursued.

(5) Various aspects of the evidence

55. WhatsApp messages between Mr Modi and Mrs Maag show that the meeting to which he invited the Maags in the Four Seasons DIFC hotel in Dubai on 13 April 2018 lasted some 3 hours starting after 10 pm (not 4 hours as the Maags had claimed). It is common ground that Mr Modi used some presentation documents. There is an issue as to whether these included slides on a laptop, which Mr Modi said he did not use when travelling; and whilst Mr Khanna said that he was briefly introduced by Mr Modi to the Maags during the meeting, Mr and Mrs Maag both deny that.

56. The documents identified by the Maags in these proceedings as having been presented by Mr Modi for Ion Care (both as a business and a charitable foundation) are said by them to have been:

    (a) an 'investor pitch deck' (or 'IPD') of 215 pages, some of them (see pages 38-42) virtually blank apart from a template headings or palpably inapplicable or incomplete but including the names, photographs and brief biographies of many important individuals, 8 featured as 'patrons' (including the Deputy Prime Minister of the UAE, not to be confused by the similarity of his name with Sheikh Nahyan) and 22 in a 'leadership team', 9 with assigned roles commencing with Sheikh Nahyan and Dr Shinawatra as 'co-chairs and trustees'; and

    (b) a 'leadership board' (or 'LB') of magazine covers or publicity photographs for some 50 individuals many famous, commencing with Sheikh Nahyan, Dr

Shinawatara and the former secretary-general of the United Nations Kofi Annan, and about one third of them behind a heading 'brand ambassadors' including media, fashion and sporting celebrities such as Roger Federer from tennis and Cristiano Ronaldo from football; together with

(c) some hard copy drawings and/or plans for a proposed resort in Antigua which was to include an Ion Care treatment centre at a former naval base, 'Camp Blizzard'.

57. Mr and Mrs Maag say they took away a single stapled hard copy of the IPD and LB or extracts, which was subsequently discarded or mislaid in their Singapore office. Both the full IPD and the LB relied on by Quantum (downloaded from the Ion Care Drop Box in early December 2018) were electronically dated in early May 2018.

58. Mr Modi gave an account of the meeting in his witness statements, but said that he did not have a clear recollection of it; it 'was not a planned meeting so anything I did show them would have been on an informal basis'; and what he showed included 'photographs of the front pages of well-known publications … and photos of various celebrities, including Roger Federer and Cristiano Ronaldo, who were described as 'brand ambassadors' - which appears likely to have been all or some of the LB.

59. Before turning to various considerations going to the likelihood of Mr Modi having presented the IPD to Mr and Mrs Maag, and making thereby and/or orally the oral misrepresentations alleged and denied as to the patrons, leaders, executives and ambassadors of Ion Care, and commitments to its treatment centre locations and funding, I should summarise my opinions of the testimony at trial.

60. Mr Modi was in short an unreliable witness. Apart from his very poor recall (which I thought genuine) he tended to speeches regarding his aspirations and the closeness of his friendships with innumerable famous people, rather than attempting to focus on objective reality, with which his relationship seemed fluid and sometimes even distant or at least secondary. He seemed to have little if any grasp of the detail or contemporaneous documentation. Ruchir Modi and Mr Khanna were very different and I have no reason to doubt that both honestly sought to assist the court on matters of fact, making appropriate qualifications and concessions, especially given the passage of time and their subordination to Mr Modi.

61. Mr and Mrs Maag were both impressive people, clearly experienced and sensible in business. However, to some extent, Mrs Maag veered between dogmatism on aspects which accorded with the central scenario and agenda for Quantum's deceit damages claim, and a rather disdainful vagueness on other relevant matters; and Mr Maag was prone to avoiding direct questions and going beyond the precise and into the pedantic, for example repeatedly wishing to stress that his wife and not he owned Quantum and other relevant companies.

62. I was not persuaded by their joint insistence that at the end of 13/14 April 2018 meeting, Mrs Maag was already 'committed' (seemingly more than an agreement merely 'in principle') to a financial investment which got going only months later, in July to November 2018, and after many subsequent inquiries and other steps. Indeed, the deceit claim which later emerged may have involved some uncertainty and confusion all round as to what a 'commitment' on both sides, and by third parties, may have meant. As an aside, I may add that neither Mr nor Mrs Maag seemed to me at all gullible and despite Mr Modi's past achievements and connections, I would expect them to have taken some of his possible boasts and 'puffs' (as I did) with at least a pinch of salt.

63. Accordingly, on matters of undocumented detail regarding the 13/14 April 2018 meeting, I am on the whole not content to rely only on Quantum's witness evidence. For example, it is more likely that Mr Modi did not use a laptop and that Mr Khanna was briefly at the meeting.

64. I must also bear in mind that what in testimony the Maags called Mrs Maag's 'oral contract' to invest $2 million in Ion Care (valued at 2%) at the end of the 13/14 April 2018 meeting, flew in the face of commercial plausibility and the contemporaneous documents, which they were unable to satisfactorily explain in cross-examination.

65. Thus immediately after the meeting

    (a) on 14 April 2018, Mr Maag messaged Mr Modi to say that he would write shortly about the investment and asked whether there was a 'pitch book' and in response to the Information Memorandum then provided by Mr Khanna on 16 April 2018, and with Mr Maag's detailed questions, he wrote on 22 April 2018 that 'we are evaluating an investment of up to 2%'; and

(b) on 27 April 2018 Mr Maag similarly wrote to Dr Greco saying 'I am considering an investment into Ion Care'.

66. Similarly and later, in an email of 24 May 2018 Mr Maag told Mr Khanna 'Once we have the PPM we will have it vetted by our lawyer and will then be in a position to take a final call'. Even in June 2018 Dr Greco still referred to Mr Maag as 'a potential investor' reporting to Mr Modi and Mr Khanna that Mr Maag had told him that 'he is willing to finalise his decision within the next two weeks'. (After a subsequent meeting with Mr Maag, Dr Greco reported further that he had answered all questions put to him and that they still wanted to know more about the business model.)

67. Before further addressing the documents, it is perhaps convenient to refer here insofar as necessary to Quantum's continuing complaints as regards Mr Modi's disclosure (despite conceding that some are 'to an extent water under the bridge by this stage'). It maintains that there must have been further documents which would shed light on the genesis, date and purpose of the presentation to Mr and Mrs Maag at the 13/14 April 2018 meeting and undisclosed attachments to emails between, among others, Messrs Modi, Khanna and Sharif and files transferred via 'WeTransfer'.

68. Perhaps most significantly Quantum alleged to the end that missing WhatsApp messages between Mr Modi and his son Ruchir had been deliberately deleted by them to conceal a fraudulent conspiracy. I reject that allegation. The explanation given by them to the effect that they regularly deleted all WhatsApp messages between them because they were so voluminous as to exhaust the storage on their smartphones, does not seem to me inherently implausible. Many other WhatsApp messages of theirs were disclosed which were relevant and sometimes adverse to Mr Modi's defence. Moreover as I have said Ruchir Modi acknowledged the deficiencies in his evidence and I do not consider that he was a dishonest witness. Quantum's overstatement of the position is material to the strength of its claim in deceit.

69. It is nonetheless not difficult to accept that, from such disclosure as has been provided, some of it extensive, the documents presented by Mr Modi at the 13/14 April 2018 meeting included the IPD or extracts - or something so similar as for present purposes to be sufficiently evidenced by the IPD. I qualify that because of Mr Modi's counsel's careful analysis of all the other available electronic versions of draft pitch decks (and

information memoranda) cast some doubt on the exact document used at the 13/14 April 2018, especially if as I find it was only in hard copy and was capable of being stapled.

70. However, and after all, the IPD's electronic name refers to it as version 1F March 2018 (although created in early May) and the earlier versions (although 1E is not available) were used for pitches and included updates by Mr Shariff and copied by him with explanations to Mr Modi. The suggestion in Mr Modi's opening that such a document ceased to be used after 2017 and/or was replaced for initial pitches by the form of information memorandum seems to me very unlikely. The Ion Care drop box or 'document reservoir' as at early December 2018 included a 'presentation' folder and an 'information memorandum' folder, the latter containing only the IPD and a presentation which Mr Modi made via the 'FT' – the Financial Times.

71. This IPD is more likely to have been available in some form and used at the 13/14 April 2018 meeting, than the only alternative proposed (and then only at trial) namely some information memorandum, whether that of 38 pages sent by Mr Khanna to the Maags a few days later, as they were told was instructed by Mr Modi at the meeting, or the longer 84 pages (with more about Ion Care's plans, especially in Antigua) also in evidence.

72. The Claimant also relied on the Information Memorandum of 16 April 2018 as part of the alleged reinforcement of the misrepresentations at the 13/14 April 2018 meeting. It seems a more complete and focussed document than the IPD and ends with 3 pages of 'Ion Care Group Management', 'Board of Directors' and 'Founders & Other Shareholders'. Neither Sheikh Nahyan nor Dr Shinawatra are mentioned as shareholders; 10% is allocated to 'UAE investor' (probably Ellington) and other documents refer to 10% strategic shareholdings.

73. As I have said, Mr Maag raised numerous inquiries by email about this Information Memorandum and may have spoken subsequently with Mr Khanna about, among other things, shareholders. The Maags claim that they understood that Sheikh Nahyan (for £100 million), Dr Shinawatra (for $60 million) and others for $100 million were and remained committed to investing in a subsequent subscription round, after 'friends and family'. But there was no good evidence as to any later conversations on this subject with Mr Modi and/or Mr Khanna and as I shall mention later, some references (and omissions) in documents tend against it.

74. As for the 'Group Management' and 'Board of Directors', the latter is criticised for identifying as compliance and legal advisers respectively Ronald Noble (former secretary-general of Interpol) and Natasha Kohne of Akin Gump and Harish Salve, an Indian QC who was also included in the 'leadership team' in the IPD, but Mr Modi said that they were all approached and the lawyers at least may well have previously advised him on other matters (see as regards Mr Salve further below).

75. 'The Board of Directors' had 3 rows of 4 directors each, Sheikh Nahyan (misspelt, as are several names in Ion Care documents) as the first and Mr Pellegrini as the last. But clearly visible at the bottom of the (whole) page is the legend '*Proposed' and Mr and Mrs Maag came to know who were the directors and knew that most of the non-Modi individuals had not been appointed. Their case that they were misled into believing that Sheikh Nahyan and others outside the Modi group including Dr Shinawatra had agreed to be appointed later is evidentially thin, at the very least.

76. As for Mr Pellegrini, the Claimants rely heavily on exchanges with him and others in which he and they say that they had no involvement in Ion Care, but none of them gave testimony or were subject even to hearsay notices. The danger in this sort of untested 'evidence' is obvious. It may well be that some of Mr Modi's former friends and contacts have scattered and would rather not have to be tested in their recollection. In Mr Pellegrini's case he was appointed a director and indeed there were messages to him from which it can be inferred that was not a mistake, or without his consent.

77. For what it is worth, the purported or proposed Ion Care leader and adviser Mr Salve replied to Quantum's similar enquiry: '…I now recall that Mr. Lalit Modi was promoting some health care centre. I checked with him on the telephone, and he confirmed it was his entity. However there was no question of my being associated with it in any "leadership" role. Mr Modi is an old friend and a client – beyond which I have had no association with his business activities'.

78. Be that as it may, whilst it is plausible that Mr Modi referred to Sheikh Nahyan, Dr Shinawatra, Mr Browne, Mr Annan and other politicians and even royalty during what was obviously a first, preliminary meeting, and it is not impossible that he said that Sheikh Nahyan and/or Mr Browne among others had 'assigned' land in their countries for use as possible treatment centres, I am not at all satisfied that he stated orally that

Sheikh Nahyan had 'committed' $100 million and Dr Shinawatra $60 million as alleged in paragraph 21 of the Particulars of Claim.

79. Mr and Mrs Maag's say-so as to non-specific conversations, after so much time and incident later, and after their risky investment went so wrong and Mr Modi welched on his promise of repayment, is not enough; and there is no direct or indirect support for it in the many subsequent emails and WhatsApp messages addressing all aspects including any funding in the offing and the like, some assisted by the Maags.

80. The fact that the hard copy stapled pack of the IPD and LB taken away by the Maags from the 13/14 April 2018 was later discarded or mislaid may be symptomatic of how unimportant it had become. It is also relevant that they eventually withdrew their allegations that Mr Modi had misrepresented the roles of Dr Greco and Professor Fuks and in the end, moreover, did not put to Mr Modi in cross-examination any alleged misrepresentations subsequent to the 13/14 April 2018 meeting.

81. In fact, despite opportunities over some months to check or inquire on the progress of specific future investment promises of the sort intimated at their first, preliminary meeting with Mr Modi, the Maags do not appear to have done so.

    (a) One possible reason in general is that they were aware, as they said regarding Mrs Maag's own 'commitment' to investing £2 million into Ion Care, that nothing was sure until signature.

    (b) Another is that the relation between Mr Modi's social connections with the rich and famous and concluded business, however widespread, was manifestly less than specific and was imprecise.

    (c) A third, with regard to political leaders, was the risk of, and the indelicacy of asking about, possible conflicts of interest were they personally indeed to invest in a business which might be 'assigned' land by their governments and/or (as with Mr Browne and Antigua) enter into commercial relations.

82. Mr Modi probably did know and had approached for Ion Care most if not all of the 30 'patrons' and 'leaders' to whom he may have referred at the 13/14 April 2018 meeting, including Sheikh Nahyan, Dr Shinawatra, Mr Browne and Mr Annan. He even knew some of the 'brand ambassadors' identified in the last third of the LB such as Messrs Federer and Ronaldo and the fashion model Naomi Campbell, although he admitted that he had not (yet) approached them to assist in Ion Care (or its related charitable

foundation). I do not necessarily accept that his protestation that 'the personalities mentioned were [merely] illustrative of the kinds of person [he] envisaged in' the various roles, save as to a hit list of 'brand ambassadors', may smack suspiciously of a con-man's excuse.

83. In his confused account of what was vision and what was reality, it emerged as unlikely that Sheikh Nahyan or Dr Shinawatra had definitively agreed to lead Ion Care as the Maags claim was represented to them. Mr Modi seemed to take the fact that they did not object to his telling them or their underlings about Ion Care's plans, and had assisted in for example arranging possible site visits, connoted such support. That is a long way from any patronage, leadership or funding commitment, or even an agreement in principle, although that does not mean that Mr Modi's vision for Ion Care could never have succeeded and some out of the many targeted notables eventually come on board.

84. Mr Modi did not put much of a positive evidential case in relation to the allegations of misrepresentation in the IPD, other than saying for example that at the initial meeting on 13/14 April 2018 that he and the Maags had a 'general discussion about the vision and strategy for the Ion Care business...This was a start-up, a vision, a plan for how we wanted it to be. Any investor, particularly one like Mrs Maag who claims she is a highly experienced investor in start-ups, should recognise that'. Indeed that meeting was obviously only the start of a more formal process in which significant matters and conditions would be investigated and discussed before any 'commitment'.

85. Given Mr Modi's way of socialising/dealing, it would have been wholly unrealistic to take it that everyone or anyone mentioned by him (he would say because he thought they would probably later participate) was already bound to participate. I consider it probably true, for example, that Sheikh Nahyan's staff had shown him and/or his staff possible sites in Abu Dhabi, as Mr Browne's had shown him Camp Blizzard in Antigua, whatever 'assigning' land may have meant to him and them if indeed he ever used that term in discussions with the Maags.

86. Mr Modi seemed to me indeed predominantly aspirational and however shrewd, inclined to the emotional as well as the grand, and not always very practical. Mr and Mrs Maag are confident, intelligent people. They were unlikely to be seriously misled by what I might call Mr Modi's 'adoption' for Ion Care of so many famous people, simply because he believed as he said that they or some of them would probably support Ion Care later.

87. One striking reference by their counsel at trial was to Mr Modi's announcement by WhatsApp on 31 August 2018 regarding the death of his alleged friend Mr Annan, whom he called an 'Ion Care board member/trustee'; but whilst consistent with Mr Modi having previously so misdescribed Mr Annan, Mr and Mrs Maag could certainly not have believed that Mr Annan was bound to participate once he was deceased.

88. Whilst it was said on behalf of Mr Modi and by him and his witnesses' statements that there was a crucial distinction between the Ion Care business and its charitable foundation, that was barely advanced at the trial. Instead the suggestion was made in the opening on behalf of Mr Modi that the documents presented by him at the 13/14 April 2018 meeting were more likely to have been information memoranda than the IPD. Both of these points, with respect, appear to be lawyers' constructs, and were entirely unsupported by the evidence once tested.

(6) The elements of the deceit damages claim

89. The above represents merely an overarching summary of what in my judgment were some of the most telling aspects of the evidence on liability for deceit. Given what I have said about that, and despite the plethora of other details in Quantum's lengthy submissions (all of which I have carefully considered but which are not necessary here further to recite), I do not consider that Quantum has proved that Mr Modi made material misrepresentations with the meanings it alleges, or that he intended or that the Maags understood such to be the meanings.

90. As for the questions of reliance and causation of the consequential losses of profit claimed (as opposed to contractual repayment by Mr Modi of the balance of $800,000 out of the $1 million invested by Quantum), it is inappropriate in the light of my above finding to rehearse extensively all the arguments. However in case I am wrong and Mr Modi did make the misrepresentations alleged, they were false when made but I am doubtful that they were relied on when Quantum invested in Ion Care and/or caused Quantum not to invest all or part of $2 million as it would otherwise have done in Livspace or alternatively B1T.

91. As regards reliance, I have reminded myself that in a case of deceit, there is a presumption of reliance, and the burden lies on Mr Modi to rebut it. This is not an easy exercise on the hypothetical assumption that Mr Modi made the misrepresentations, contrary to my

finding, but in the light of the history which I have summarised, I would be tempted to find that burden discharged.

92. Whilst Mr Modi's case before trial may have exaggerated the extent to which Mr and Mrs Maag were actively involved in the development of Ion Care from April to November 2018, they had access to its staff, provisional accounts and other information, contact with third parties such as Dr Greco and Ravi Jaipuria, and knew who managed Ion Care and who else was intending to invest at that initial stage (Ellington and Mr Jaipuria through RJ Corporation) without expressing any apparent concern as to who else from any large and hopeful earlier pool might (still) be in the pipeline for later management and leadership or brand roles and/or share investment.

93. At trial there was some focus on details of this. For example, to go to certain aspects discussed above:-

    (a) In Mr Khanna's line-by-line email response on 25 April 2018 to Mr Maag's inquiries of 22 April 2018, in answer to the question about equity, he asked: 'Can I discuss this with you may help it easier to clarify' but there was no evidence as to such a discussion. As regards valuation, he wrote: 'All existing shareholders … Greco sweat of 10%. Therefore 30% of equity is sweat equity/strategic equity (this is Carlo, Sheikh Nahyan, Dr T Shin)'. This suggests that Sheikh Nahyan and Dr Shinawatra were not making a financial investment in return for shares but again this does not seem to have been pursued.

    (b) The agenda for a call between Mr Maag and Mr Modi on 13 August 2018 has no mention of Patrons, Leaders, Brand ambassadors or subsequent shareholders; and in October 2018 Mr Maag was sending out versions of the Information Memoranda himself, telling Mr Khanna 'I need to send out something quick, will then base it on the previous one and shorten it significantly. I can still use yours later but this means there is no rush for you to prepare a new one'.

94. As for Quantum's attempted rebuttal of Mr Modi's case on its non-reliance, I am doubtful that, as well as declining to supply a copy of Ion Care's agreement with the CCU prior to Quantum's investment, Mr Modi and/or Mr Khanna told Mr and Mrs Maag that NDAs were in place with individuals named by him at the 13/14 April 2018 meeting. That makes little sense, given the reference already allegedly made to them, and would not

prevent further and updated information if still relevant from the first, preliminary meeting with Mr Modi (but not his staff) months earlier.

95. Turning to Quantum's claims for alleged consequential loss of profits on alternative investments, the opportunity regarding LivSpace said to be a successful early-stage business providing housing and design solutions to the Indian middle-class market, apparently arose through Livspace's founder, Mr Anuj Srivastava, who was another friend of Mrs Maag to whom she had in 2017, expressed an interest in investing.

96. Quantum says that in August or September 2018, Mr Srivastava offered Mrs Maag a chance to participate in LivSpace's Series C funding round which closed in October presenting her with an investor deck, and saying that the minimum investment was $2 million, which she says she was unable to raise because she had committed all her available liquidity, that is $2 million, to Ion Care. Mr Srivastava has confirmed (again, not in a witness statement or hearsay notice) that he offered Mrs Maag the opportunity to invest in autumn 2018, and has supplied a copy of the investor deck which Mrs Maag did not retain.

97. The alternative B1T opportunity seemingly arose after Livspace's Series C investment round had closed, B1T having interests in blockchain related companies and crypto currencies, which operates in a similar way to a diversified fund. On 8 October 2018 Mr Maag was sent an investor deck by the founder of B1T, Mr Utsav Somani. After reviewing the material and speaking with Mr Somani, Mrs Maag decided to invest $50,000 held by another Singapore company which she owned, Illume, whose business was to provide consultancy services, and did so on 16 October 2018. A valuation dated 26 January 2022 shows a 3.4 x increase in value.

98. Whilst I would be prepared to proceed on the basis that, if Mrs Maag had decided to invest in Livspace or to invest more in B1T, she might hypothetically have formed and used Quantum for that purpose rather than one of her other existing companies or a new SPV, I am sceptical as to the likelihood of this. Quantum has provided no detailed accounts nor corroboration for the finances of Mrs Maag's other offshore companies and their investments.

99. Mrs Maag said that the maximum amount she typically invested in any one start-up was approximately $100,000 to $1.25 million and that prior to Tamares' loan from Dunbridge, she had borrowed for investment from another uncle, and that the Maags and

their companies own resources in 2018 did not allow for further investments. But among other things, it is unclear whether she would have had and used $2 million or any other necessary sum (a) in addition to the Dunbridge loan or (b) as an alternative use of that loan (which restricted other investments) if not for investment in Ion Care or (c) from other profits or Mr Maag's salary and bonus or at all. This seems to me too speculative to found a sufficient case on causation as regards these two alleged lost investment opportunities.

(7) The claim in contract

100. As mentioned above, it is common ground that a meeting took place at Mr Modi's home on 14 April 2019 (exactly one year after the fateful Dubai meeting) according to Mr Modi's defence, in order to discuss among other things Quantum's investment in Ion Care 'which by this time had failed to attract sufficient other investment to become viable'. Quantum alleges that an oral contract was made at the meeting to the effect that unless Mr Modi produced a viable business plan for Ion Care by 1 May 2019, he would repay the $1 million invested by Quantum in Ion Care AG and interest; and following repayment, Unum would return the shares it had acquired in Ion Care AG and Mrs Maag would resign as a director of Ion Care Holding AG.

101. It is also common ground that $200,000 out of the $1 million invested by Quantum in Ion Care was repaid on Mr Modi's behalf via Tamares in July 2019, and it is also common ground that the remaining $800,000 has not been repaid. On Quantum's case, that sum accrues or should accrue interest with which I deal below.

102. The main issues raised by the Defence are (a) whether the words spoken were too uncertain to have contractual effect; (b) whether what was offered by Mr Modi and accepted by Mrs Maag had contractual effect, or was merely a matter of goodwill; and (c) whether there was any consideration provided for the contract.

103. Again there is no dispute as to the applicable legal principles, sufficiently summarised in *Chitty on Contracts*, 34th Ed by reference to numerous authorities:

    (a) an agreement may lack contractual force because it is so vague or uncertain that no definite meaning can be given to it without adding further terms. According to Chitty at 4-185 'The courts are reluctant to reach such a conclusion, particularly where the parties have acted on the agreement';

(b) in ordinary commercial transactions it is not normally necessary to prove that the parties to an express agreement in fact intended to create legal relations. The onus of proving that there is no such intention, including in the case of an oral contract is on the party who asserts that no legal effect is intended, and the onus is a heavy one. In deciding whether the onus has been discharged, the courts will be influenced by the importance of the agreement to the parties, and by the fact that one of them acted in reliance on it; and

(c) in relation to an alleged agreement that interest be paid, but without specifying a precise rate, the standard of a reasonable commercial rate can be used, which rate is capable of ascertainment by reference to objective criteria: *Chitty* at 4-188. In any event, any vagueness in one of the terms of the agreement does not itself necessarily vitiate the agreement as a whole and where the vague term relates only to a subsidiary point, there is no practical difficulty in enforcing the rest of the agreement: *Chitty* at 4-192.

104. Mr Modi's first witness statement said that he did not recall what led up to the meeting, but (at para 43) 'At some point I know they were wanting their money back. I do not remember when and I do not remember the exact words I used. I said something to the effect that if they do not want to go forward in any manner then I would return their money back when I could after any expenses incurred. I said it out of compassion.' Ruchir Modi's recollection in his witness statement was that Mr Modi said 'if I can, one day I will make this investment right to you because it hasn't proceeded as per my vision'.

105. Ruchir Modi had by then given up on the Medanta hospital proposal but he and Mr and Mrs Maag explored further commercial opportunities for Ion Care until 31 May 2019, when Mr Maag emailed Ruchir and Mr Modi seeking the agreed return of the $1 million. He referred to the transfer back of the shares in Ion Care AG by Unum, and Mrs Maag being willing to resign her board position. The same day, Ruchir Modi replied via WhatsApp saying he had spoken with Mr Modi who was ready to begin returning the funds.

106. Mr Maag chased for payment over the course of June 2019 and indicated that Mrs Maag was prepared to accept the return of capital without interest which was 'at Mr Modi's discretion'. On 9 July 2019, Ruchir arranged the payment of $200,000 to Tamares (to which he referred as a 'first tranche'). On 31 July 2019, Ruchir informed Mr Maag that

he was sending a further $100,000, but also indicated that he wanted to deduct some of the Maags' travel expenses paid by Ion Care.

107. Mr Maag rejected that and Ruchir (who seemed to regret in his evidence that he had asked for it) informed the Maags that the transfer of $100,000 had been made. It was not, despite Mr Maag saying that the money was required for the purposes of making another investment (to which Mr Maag had allegedly committed on the faith of Mr Modi's promise to repay) and Ruchir and Mr Modi ceased normal communications with the Maags after August 2019.

108. Cross-examination based on the documents rebutted any factual basis for Mr Modi's defence to the contractual claim for the balance of $800,000 in principal. That obligation was certain. The promise was not gratuitous, out of good will or compassion. The consideration was forbearance to sue (for which no explicit threat nor preceding contractual relation with Mr Modi personally was necessary) as well as Mrs Maag's reciprocal promise to resign and transfer Unum's shareholding in Ion Care.

109. The claim to contractual interest is another matter. I am not satisfied that Mr Modi also promised to pay interest and, in contrast with the principal, that is inconsistent with the subsequent written exchanges in which Mr Maag recognised that this was a matter for Mr Modi's discretion and did not pursue it, up to and including the Clyde & Co letters in early 2020.

110. I should say as a footnote that Quantum has no entitlement to interest as claimed on a compound, equitable basis or as damages for deceit, which will be dismissed on liability grounds as above. The loss of use of the $2 million did not result in any interest liability on the Dunbridge loan (presumably as an alternative to some other start up or early stage investment), since Mrs Maag stated that the written term for 7.5% pa interest (prior to Dunbridge's 25% profit participation) was only to apply if Tamares through Quantum made a gain on the Ion Care investment, which of course it did not.

(8) Conclusions

111. Quantum took on a heavy burden in seeking to establish a difficult case in deceit and which can now be seen as unlikely, not only in many particular respects but also examined in the round. Its evidence was manifestly not sound enough for that task.

112. For the reasons which I have endeavoured to summarise, I therefore decline to find that Mr Modi made actionable misrepresentations as alleged to Mr and Mrs Maag, and Quantum's deceit claim against him falls to be dismissed. Even if that were wrong, apart from its $1 million investment which is subject to Mr Modi's contractual promise of repayment (now to be the subject of judgment) I am not persuaded that it suffered any recoverable loss.

113. There will be judgment for Quantum against Mr Modi for the balance of $800,000 owing under his contract, and interest as claimed under section 35A of the Senior Courts Act at the simple rate of 6% per annum from 1 June 2019. Quantum's claims otherwise fail, including for the avoidance of doubt, the claims for interest at any higher rate and/or compounded and whether by way of damages for deceit or under contract.

114. The parties should submit any consequential applications, including applications for costs, with written submissions in support, by 4 pm on 12 April 2022.
