Neutral Citation Number: [2023] EWHC 2277 (Ch)

Claim No: CR-2021-000377

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (Ch D)
IN THE MATTER OF SOLID STAR LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1 NL
Date: 20 September 2023

Before:

MR DAVID REES KC
(Sitting as a Deputy Judge of the High Court)

- -

Between :

QUEENSGATE PLACE LIMITED

Petitioner

(1) SOLID STAR LIMITED
(IN LIQUIDATION)
(2) VIKING WORLD INVESTMENTS SA
(3) PRAKASH BHUNDIA
(4) MINESH BHUNDIA

Respondents

- -

Fenner Moeran KC (instructed by **Setfords Solicitors**) for the **Petitioner**
The First Respondent did not appear and was not represented
The Second Respondent was represented by its director, the **Third Respondent**
The Third Respondent appeared in person
Ms Sarah Bayliss and **Mr James Kane** (instructed by **Spencer West LLP**) for the **Fourth Respondent**

Hearing dates: 28 February, 1-3 March, 7-8 March 2023

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I direct that no official shorthand note shall be taken of this Judgment and that copies of this Judgment as handed down may be treated as authentic.

David Rees KC, Deputy High Court Judge

Mr David Rees KC :

Introduction

1. There is before me a petition under section 994 of the Companies Act 2006 in relation to the affairs of a company, Solid Star Ltd ("**SSL**"). The petitioner, Queensgate Place Ltd ("**QPL**") is an Isle of Man registered company and the beneficial owner of 50% of the shares in SSL. SSL which is now in insolvent liquidation is the First Respondent to the petition but has taken no part in the proceedings. The Second Respondent, Viking World Investments SA ("**Viking**") is a Panamanian registered company and the beneficial owner of the other 50% of the shares in SSL. The Third and Fourth Respondents, Mr Prakash Bhundia and Mr Minesh Bhundia were at the material times the directors of SSL. To avoid confusion I will refer to the Third and Fourth Respondents in this judgment by their given names. In doing so, I intend no disrespect.

2. As I explain in greater detail below, the petition alleges that the management of the affairs of SSL have caused unfair prejudice to QPL. Although the relief originally sought in the petition was rather more wide-ranging, the principal relief that QPL now seeks are orders under section 996 of the Companies Act 2006 requiring Viking, Prakash and Minesh to buy out QPL's shares in SSL. The hearing before me related only to issues of liability. In the light of the findings that I make below there will need to be a further hearing to determine issues of quantum.

3. QPL was represented before me by Mr Fenner Moeran KC and Minesh was represented by Ms Sarah Bayliss and Mr James Kane. Prakash is a bankrupt pursuant to an order made on 8 June 2022 and appeared as a litigant in person. He also represented Viking. He is the sole director of this company, and I understand that under Panamanian law bankruptcy does not terminate a director's appointment. As I have already mentioned, SSL, although formally a party, played no role in the proceedings. For completeness, I record that permission was given to the petitioner to continue the proceedings against SSL by an order made under section 130 of the Insolvency Act 1986 dated 17 January 2023. I am extremely grateful to counsel and to Prakash for their detailed and helpful submissions, both written and oral.

4. Over the course of the hearing I heard oral evidence from four witnesses of fact and an expert valuer. These witnesses were:

   (1) Mr Attahiru Bafarawa (often known, and referred to in this judgment as "**Alhaji**"). Until around 2017 he was the beneficial owner of QPL;

(2) Mr Sagir Bafawara (referred to in this judgment as "**Sagir**"). He became the beneficial owner of QPL in around 2017-2018. Since 2019 he has also been the sole director of this company;

(3) Prakash;

(4) Minesh; and

(5) Mr Richard Alford MRICS of Copping Joyce who provided expert valuation evidence on behalf of the petitioner.

Background

5. Underlying these proceedings is the development of a hotel in the Kensington area of London into a number of flats and mews houses. The hotel, known as the John Howard Hotel ("**the Hotel**"), was situated at 3, 4 and 5 Queens Gate, London SW7 5EH and at that time was owned by a company Phoenix Hotels Ltd ("**PHL**") which was itself owned by Viking. From about 2000 Alhaji was one of the regular guests at the hotel. Alhaji was a politician in Nigeria; and at that time was the Governor of Sokoto State in that country. It is common ground that a friendly relationship developed between Alhaji and Prakash and, in about 2003, Prakash approached Alhaji with a business proposition; suggesting that they should enter into a joint venture for the purchase of the Hotel from PHL and redevelop it into residential flats for sale.

6. Alhaji agreed and a structure for the joint venture was devised. The joint venture was to be between Viking, a company owned by Prakash, but in which other members of the Bhundia family including Minesh are now said to have had an interest, and QPL which was incorporated on 25 September 2003 in the Isle of Man and which at that time was beneficially owned by Alhaji. SSL was to be the joint venture vehicle and Viking and QPL were each to be entitled to 50% of the shareholding. For reasons that have never fully been explained, at all material times only 25% of the shares in SSL have been registered in QPL's name and 75% of the shares have been registered in that of Viking. It is however common ground between the parties that, beneficially, the shares have at all times belonged 50% to QPL and 50% to Viking.

The Shareholders' Agreement

7. The agreement between QPL and Viking was set out in a shareholders' agreement dated 6 January 2004 ("**the Shareholders' Agreement**"). The key terms of the Shareholders' Agreement are as follows:

(1) The parties were each to have a 50% shareholding in SSL;

(2) Any funding required by SSL was to be provided as follows:

a) First, as shareholder loans in the sum of £3.5 million each provided by QPL and Viking, the amounts of the respective loans being equal in amount;

b) Second, by bank loans;

c) Third, out of the cash resources of SSL generated by its investments and profits;

(3) The parties' loan accounts were, at all times, to be in proportion to their shareholding in SSL;

(4) Unless agreed otherwise the parties should be entitled to a management fee of £6,000 per month.

8. Prakash was to be responsible for the day to day management of the joint venture and he and Minesh were appointed as the directors of SSL. Neither QPL nor Alhaji were represented on the board of SSL.

The Development

9. SSL bought the Hotel from PHL. The Hotel finally ceased trading in around 2011 and shortly thereafter redevelopment began.

10. The development took a number of years to complete. Following the financial crash of 2008 funding became difficult. In addition to bank borrowing, a further source of funding was obtained through a loan (eventually totalling around £1.6M) which was obtained from a subsidiary of the Quatari Diar Real Investment Company ("QD") who wanted to enter into a planning swap with SSL.

11. However, the finances of SSL during this period are opaque and as I describe below, there appears to have been a pattern of behaviour whereby costs and payments associated with the development were met by a number of companies owned or controlled by Prakash or members of his family without any proper records being kept of these liabilities.

12. In all twenty units were completed – 18 flats and 2 mews properties. It seems that the properties were largely completed by around 2014, although Alhaji (and thus QPL) did not become aware of this until early 2017. By that stage thirteen properties had already been sold and seven properties remained in SSL's ownership.

The 2017 Contract

13. A meeting took place between Prakash and Alhaji in April 2017 to discuss the realisation of the profits of the joint venture. An agreement was reached for an *in specie* distribution of the remaining properties together with some balancing payments and payments for costs, and this was reflected in a written agreement dated 24 April 2017 ("**the 2017 Contract**"). This provided as follows:

> *"THIS AGREEMENT IS MADE ON 24th April 2017.*
> *BETWEEN:*
> *(a) PRAKASH BHUNDIA (PB)… representing VIKING WORLD INVESTMENTS SA (VIKING)*
> *(b) ALHAJI BAFARAWA (ABAF)…. Representing Queensgate Place Ltd (QUEENSGATE)*
> *IT IS AGREED AS FOLLOWS:*
> *1. Whereas PB and ABAF are the beneficial owners of VIKING and QUEENSGATE respectively, Viking and Queensgate own 100% of SOLID STAR LIMITED.*
> *2. SOLID STAR LIMITED holds unencumbered property valued at £22,175,000.*
> *1. Pursuant to a meeting on 12 April 2017 and ongoing discussions regarding the split of assets in Solid Star Limited, it was agreed by ABAF and PB that the split of properties should be in accordance with the schedule enclosed.*
> *2. Portfolio A for VIKING will be Flat 4J, 6B, 6C and 6F. Total value of £10,575,000.*
> *3. Portfolio B for QUEENSGATE will be 22 Mews, 4A, 5A and 6A. Total value will be £11,600,000.*
> *4. In addition expenses amounting to £620,000 (primarily for sec 106 payments due by Solid Star Ltd) would be split equally between Viking and Queensgate.*
> *5. The above results in a balance due of £1,335,000 from Queensgate to Viking. This amount will be remitted to VIKING or as directed to equalise the account between the two parties.*
> *7. Solid Star will ensure the transfer of Portfolio B to KERF PROPERTIES Limited which is a UK company wholly owned by Queensgate.*
> *8. Both PB and ABAF will take all actions necessary to complete the above."*

14. It will be noted that although there were only seven unsold properties remaining at this stage, eight properties are mentioned in the agreement. It appears that one of the properties that was allocated to Viking under the 2017 Contract (Flat 6F which became Flat 6, 6 Queen's Gate) had in fact already been sold in 2015.

15. The difference in value between the two companies' property portfolios under the 2017 Contract is put at £1,025,000 (QPL having the more valuable portfolio). There are also said to be £620,000 of outstanding costs that needed to be met (primarily payments due from SSL under a planning agreement under section 106 of the Town and Country Planning Act 1990). The agreement states

that there would therefore be a balancing payment from QPL to Viking in the sum of £1,335,000 (that is to say £1,025,000 for the difference in value between the two property portfolios and £310,000 for its share of the outstanding payments). Mr Moeran for SSL makes the point that this was a miscalculation, and that as the total difference in value between the two property portfolios was £1,025,000, the balancing payment due should have been one half of this sum, that is to say £512,500. Under cross-examination Prakash accepted the mathematics of Mr Moeran's position, but claimed that notwithstanding this QPL had agreed to pay the full amount of £1,025,000 although he could not explain why this should be the case.

16. A further curious feature of this agreement is that although it makes no reference to other liabilities of SSL it is clear that some existed. It is clear that at least £1.6M was still owed to QD and other sums in unpaid tax were owed to HMRC. Prakash has also claimed that further sums were owed to other companies controlled or owned by him in respect of liabilities that they had paid on behalf of SLL. One of the oddities of this case is that by 2017 neither QPL nor SSL had bank accounts. QPL never had an account and SSL's bank account was closed in 2013. Therefore, all payments to and from these companies had to be routed via third parties (often connected companies), and this has made events harder to unpick.

17. At some point between April and August 2017 Alhaji caused a payment to be made of £368,685 on behalf of QPL. This payment appears to have been intended to reflect QPL's one half share of the £620,000 said to have been owed by SSL and which was due under the 2017 Contract. These funds were transferred in a number of payments in US dollars from an account in Dubai belonging to a third party. The reason why the payment was in a larger amount than the £310,000 owed by QPL may have been something to do with the fact that the payments were originally made in a different currency. The recipient of this payment was not SSL, but Crane Court Properties Ltd ("**Crane Court**"), a company of which Prakash and Minesh were at material times directors and in which Prakash had a majority shareholding.

18. The remaining terms of the 2017 Contract were never carried out, although the reasons why this happened are contentious.

Issues with QPL

19. In around July 2017 issues arose with the structure behind QPL. Prior to this Alhaji was the underlying beneficial owner of this company, although the shareholding was held by two nominee shareholders resident in Cyprus. These individuals were also the directors of QPL. In 2017 the Isle of Man Beneficial Ownership Act 2017 came into force which introduced new requirements to ascertain the underlying beneficial ownership of Isle of Man registered

companies. The registered agent of the Company in the Isle of Man became aware that allegations of corruption had been made against Alhaji in Nigeria and threatened to withdraw facilities for QPL.

20. There was then a sudden change in the shareholders, directors and secretary of QPL. The shares in QPL were transferred to Sagir on 24 July 2017 and two UK resident individuals, Temi and Olisa Ugboma were appointed as directors on 18 August 2017. A new secretary was also appointed. However, these events do not appear to have been registered with the Isle of Man companies register until late 2019. There was also a lack of clarity by Alhaji and Sagir in their evidence as to precisely when the underlying beneficial ownership in the shares in QPL passed to Sagir.

21. Following his appointment as a director of QPL, Mr Temi Ugboma, as Mr Moeran accepted in his submissions, proved very much to be a loose cannon. Shortly after his appointment Mr Ugboma applied to dissolve QPL, although this did not come to pass. He interposed himself in the negotiations regarding the division of profits from SSL and purported to repudiate the 2017 Contract. I am satisfied that Mr Ugboma made clear to Prakash (ostensibly on behalf of QPL) that he did not consider the 2017 Contract to be binding. Indeed in an e-mail of 19 February 2018 Mr Ugboma went so far as to assert in the face of Prakash's statement that the 2017 Contract was a settlement agreement settling all matters between the two shareholders of SSL: "In answer to your client's ludicrous claim, all that I can offer is this. Such deal was never struck".

22. Prakash describes Mr Ugboma's conduct during this period as bullying and rude and it is clear from the correspondence that this was indeed the case. Mr Ugboma's e-mails contrast very poorly with those from Prakash or his lawyers in reply, replete as they are with colourful language and peppered with allegations of theft, embezzlement and blackmail. During this period a number of alternative offers for the distribution of profits from SSL to QPL were made by Prakash on behalf of Viking, but these were not acceptable to Mr Ugboma.

23. Mr Ugboma was eventually removed as a director of QPL. The precise manner in which this was achieved is not wholly clear. I have seen a resolution signed by Sagir as sole shareholder of the company on 1 November 2019 removing both Temi and Olisa Ugboma as directors. However, the Notice of Change of Directors filed in the Isle of Man records that they resigned on 20 December 2019. Since 20 December 2019 the directors of QPL have been Sagir, Stuart Corran and Nicholas Smith.

The Sales of the Properties

24. In the meantime matters had developed. Unknown to QPL, Alhaji and Sagir, Prakash on behalf of SSL had sold the seven remaining properties. The following table sets out the dates of sale, the agreed purchase price and the purchaser.

Property	**Date of grant of Lease**	**Date of registration**	**Sale Price**	**Purchaser**
23 Queen's Gate Mews	Freehold	15 February 2019	£4,200,000	Property X1 Ltd
Flat 9, 5 Queen's Gate	29 January 2019	28 February 2019	£1,440,000	Property X1 Ltd
Flat 1, 4 Queen's Gate	1 May 2019	16 May 2019	£1,175,000	Jenmark Property Services Ltd
Flat 2, 6 Queen's Gate	17 February 2020	5 March 2020	£2,500,000	Property X1 Ltd
Flat 3, 6 Queen's Gate	17 February 2020	5 March 2020	£1,000,000	Property X1 Ltd
Flat 1, 5 Queen's Gate	29 October 2020	23 November 2020	£1,440,000	Property X1 Ltd
Flat 1, 6 Queen's Gate	29 October 2020	23 November 2020	£1,237,500	Property X1 Ltd

25. The two purchasers of these properties, Jenmark Property Services Ltd ("Jenmark") and Property X1 Ltd ("PX1") are both companies connected to Prakash.

(1) PX1 is a UK company incorporated on 11 December 2017. Until his bankruptcy Prakash was the sole director of this company. PX1 is 100% owned by Viking Property Management Services Ltd. This is a UK company of which Prakash was the director and in respect of which he is a person with significant control.

(2) Jenmark is a UK Company. Its directors are Bharat and Amit Bhundia, who are respectively, the brother and nephew of Prakash and Minesh. Jenmark is 100% owned by Jenmark Management Ltd which is in turn owned by Bharat Bhundia and Zulfikar Dhanani.

26. The price ostensibly obtained for each of these sales is criticised by QPL. Moreover, in respect of the sales to PX1, the purchase price was not in fact paid to SSL. Instead in each case PX1 raised funds by charging the properties and (it is said by Prakash) these funds were used to discharge liabilities of SSL. However, it is accepted that the liabilities said to have been discharged amount only to a portion of the agreed purchase price; the balance has never been paid.

The Lazuli Claim

27. In May 2022 it came to the attention of QPL that on 29 March 2022 judgment had been given by Mr John Martin QC sitting as a deputy High Court Judge in *Lazuli Properties Ltd & Others v Prakash Bhundia & Others* [2022] EWHC 758 (Ch), ("**the Lazuli Claim**") a claim in the Business and Properties Court brought by Lazuli Properties Ltd ("**Lazuli**") and others ("**the Lazuli Claimants**") against four defendants one of whom was SSL. The other defendants to the Lazuli Claim were Prakash, Crane Court and a further company European Trade and Finance Limited ("**ETFL**"). Prakash is the sole shareholder of ETFL and was its director until his bankruptcy. Minesh had also been a director of ETFL but resigned from this role in 2015.

28. The Lazuli Claim arose out of an entirely separate joint venture property development arrangement conducted by Prakash and companies connected with him from about 2007 onwards along with the Lazuli Claimants. This joint venture was to be conducted through Crane Court, and it appears to have been Prakash's case within the Lazuli Claim that (a) SSL belonged to him and (b) either it or he would hold a two thirds (rounded to 65%) shareholding in Crane Court. This was not in fact the case as it is common ground before me that QPL has a 50% interest in SSL and the 65% shareholding in Crane Court has always been in the name of Prakash rather than SSL. The precise details of the Lazuli Claim are complex and I do not need to deal with them in any detail in this judgment. However, the outcome of the decision is that the four defendants, including SSL were held to be liable to the Lazuli Claimants for various sums. SSL is jointly and severally liable (together with Prakash and Crane Court) under paragraphs 2 and 3 of the order in the Lazuli Claim for sums totalling

£1,792,963.28 and jointly and severally liable with all the other defendants for the Lazuli Claimant's costs. As at 2 March 2023 SSL's liability under the order in the Lazuli Claim stood at £3,218,779.98. This sum includes a payment on account of the Lazuli Claimants' costs which had been ordered, but it does not include the balance that will be due upon those costs being assessed.

29. Following the Lazuli judgment, freezing orders were obtained against Prakash and SSL. Prakash was made bankrupt on 8 June 2022 and a winding up order made against SSL on 7 September 2022.

The Current Position

30. Thus, although SSL developed the Hotel and sold all 20 of the units created by the development, it is now in insolvent winding-up. Meanwhile QPL, despite having loaned an initial £3.5M under the Shareholders' Agreement and having paid a further £368,685 ostensibly pursuant to the 2017 Contract, has not received any significant distribution from SSL. This outcome is said by QPL to arise from the fact that Prakash and Minesh have conducted the affairs of SSL in a manner which has caused QPL unfair prejudice.

The Law

31. Submissions on the law came principally from Mr Moeran KC on behalf of QPL, and from Ms Bayliss and Mr Kane on behalf of Minesh. As a litigant in person Prakash's submissions were largely focussed on matters of fact. Whilst there were obvious differences in emphasis between the parties' submissions I did not detect there to be a great difference between the parties on the underlying general principles.

(1) Directors' Duties

32. The statutory duties owed by directors of companies were undisputed and are to be found in the Companies Act 2006. They include the following:

    (1) A duty to act in accordance with the constitution of the company and to only exercise his powers for the purposes for which they are conferred (s. 171 CA 2006).

    (2) A duty to act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole (s. 172 CA 2006).

    (3) A duty to exercise independent judgment (s 173 CA 2006).

(4) A duty to act with reasonable care, skill and diligence (s 174 CA 2006). This duty requires the director to act with the care, skill and diligence that would be exercised by a reasonably diligent person with:

> "(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and
>
> (b) the general knowledge, skill and experience that the director has"

(5) A duty to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (s 175 CA 2006).

(6) A duty not to accept a benefit from third parties (s 176 CA 2006).

(7) A duty to declare any interest in any proposed transaction or arrangement with the company in which he is any way interested (s 177 CA 2006).

(8) A duty to prepare annual accounts (s 394 CA 2006). This duty does not apply if the company is exempt from this obligation by virtue of s 394A CA 2006, however SSL was not so exempt. These accounts must be approved by the board of directors and signed on behalf of the board by a director of the company (s 414 CA 2006). However, the directors must not approve the accounts unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit and loss of the company.

(2) Unfair Prejudice

33. Section 994(1) CA 2006 provides that:

> "(1) A member of a company may apply to the court by petition for an order under this Part on the ground—
>
> (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
>
> (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial."

QPL relies only on ground (a), that is to say that the company's affairs have been conducted in a manner that is unfairly prejudicial to its (QPL's) interests.

34. Where the court is satisfied that the petition is well founded then it may make such order as it thinks fit for giving relief in respect of the matters complained of (s 996(1) CA 2006). Subsection 996(2) provides:

> "(2) Without prejudice to the generality of subsection (1), the court's order may—
>
> (a) regulate the conduct of the company's affairs in the future;
>
> (b) require the company—
>
> (i) to refrain from doing or continuing an act complained of, or
>
> (ii) to do an act that the petitioner has complained it has omitted to do;
>
> (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
>
> (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;
>
> (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly."

35. Thus, in order to establish liability in this case, QPL needs to establish that:

(1) The conduct complained of consists of the conduct of the company's affairs or an "act or omission of the company (including an act or omission on its behalf)"; and

(2) QPL's interests (or those of the shareholders generally) have been (a) prejudiced, (b) unfairly.

36. The requirement that the prejudice should be suffered by the petitioner as a member is one that "should not be too narrowly or technically construed" (*O'Neill v Phillips* [1991] 1 WLR 1092 at 1105G per Lord Hoffmann) and it is, for example, sufficient if the petitioner has suffered prejudice "in some capacity connected with his shareholding, such as that of a lender under a loan made as part of the same investment as the acquisition of shares" (*Re Tobian Properties Ltd* [2013] Bus LR 753 per Arden LJ at [12]). What amounts to "prejudice" is a matter of fact, but will encompass financial loss.

> "Prejudice will certainly encompass damage to the financial position of a member. The prejudice may be damage to the value of his shares but may also extend to other financial damage which in the circumstances of the case is bound up with his position as a member. So, for example, removal from participation in the management of a company and the resulting loss of income or profits from the company in the form of remuneration will constitute prejudice in those cases where the members have rights recognised in equity if not at law, to participate in that way. Similarly, damage to the financial position of a member in relation to a debt due to him from the company can in the appropriate circumstances amount to prejudice. The prejudice must be to the petitioner in his capacity as a member but this is not to be strictly confined to damage to the value of his shareholding. Moreover, prejudice need not be financial in character. A disregard of the rights of a member as such, without any financial consequences, may amount to prejudice falling within the section."

Re Coroin Ltd [2012] EWHC 2343 (Ch) per David Richards J at [630].

37. The concept of fairness must be applied judicially and the content which it is given by the courts must be based on rational principles (*O'Neill v Phillips* [1999] 1 WLR 1092 per Lord Hoffmann at 1098E). Lord Hoffmann continued at 1098F to 1099B.

> "Although fairness is a notion which can be applied to all kinds of activities its content will depend upon the context in which it is being used. Conduct which is perfectly fair between competing businessmen may not be fair between members of a family. In some sports it may require, at best, observance of the rules, in others ("it's not cricket") it may be unfair in some circumstances to take advantage of them. All is said to be fair in love and war. So the context and background are very important.
>
> In the case of section 459, the background has the following two features. First, a company is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality. The terms of the association are contained in the articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed. Secondly, company law has developed seamlessly from the law of partnership, which was treated by equity, like the Roman societas, as a contract of good faith. One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it

considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.

The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith."

38. The importance of the directors' statutory duties in assessing unfairness was explained by the Court of Appeal in *Re Tobian Properties Ltd* [2013] Bus LR 753. At [22] Arden LJ at stated:

"One of the most important matters to which the courts will have regard is thus the terms on which the parties agreed to do business together. These are commonly found in the company's articles. They also include any applicable rights conferred by statute. In addition, the terms on which the parties agreed to do business together include by implication an agreement that any party who is a director will perform his duties as a director. Primary among these duties are the seven duties now codified in sections 171 to 177 of the Companies Act 2006 . Under these duties, a director must act in the way which he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. There is also the well known duty to avoid conflicts of interest and duty: a director must avoid a situation in which he has an interest which conflicts with that of the company. Six out of seven of these duties are fiduciary duties, that is, duties imposed by law on persons who exercise powers for the benefit of others. Non-compliance by the respondent shareholders with their duties will generally indicate that unfair prejudice has occurred."

(3) Causation

39. It is necessary that there must be a causative link between the conduct that is being impugned and the prejudice said to have been suffered by the petitioner (*Re BSB Holdings Ltd (No 2)* [1996] 1 BCLC 155; *Irvine v Irvine (No 1)* [2007] 1 BCLC 349 at [256]). The implications of this requirement in the context of an insolvent company were explained by the Court of Appeal in *Re Tobian Properties Ltd* at [11] to [12].

"11. Shares in an insolvent company in liquidation are clearly valueless unless the value of any claims which the company has against the respondents to the petition will eliminate the deficiency and produce a

> surplus for members. Section 994 of the Companies Act 2006 requires the petitioner to show that the respondent's wrongful acts have caused him prejudice in his capacity as a member. If the company is insolvent, that means that-in general-the petitioner must show that his shares would have had a value but for the wrongdoing of the respondents.
>
> 12. There is a qualification to this requirement: the courts take a wide view of prejudice suffered by a shareholder. Where, for instance, the shares are worthless but the petitioner has suffered prejudice in some capacity connected with his shareholding, such as that of a lender under a loan made as part of the same investment as the acquisition of shares, unfair prejudice proceedings may be brought: *Gamlestaden Fastigheter AB v Baltic Partners Ltd* [2007] Bus LR 1521."

40. Where the allegation is that a breach of a director's fiduciary duty has occurred, Ms Bayliss and Mr Kane argue that the test that the petitioner must meet to show that the conduct caused the relevant prejudice is at least as stringent as that set for breach of fiduciary duty by Lord Browne-Wilkinson in *Target Holdings Ltd v Redferns* [1996] AC 421 at 432:

> "[A fiduciary] is not responsible for damage not caused by his wrong or to pay by way of compensation more than the loss suffered from such wrong."

Where the relevant breach is an omission, they argue that the test must be at least as stringent as that set out by Hoffmann LJ in *Bishopgate Investment Management Ltd v Maxwell* [1994] 1 All ER 261 at 264:

> "In cases in which the alleged breach is an omission, the plaintiff must prove that compliance would have prevented the damage. If it would have happened anyway, the plaintiff has failed to prove his case."

I do not understand Mr Moeran to dissent from these propositions.

Some observations on the witnesses

41. As I have already mentioned I heard oral evidence from Sagir and Alhaji on behalf of QPL and from Prakash and Minesh. I also heard oral evidence from Mr Alford, QPL's expert witness.

42. Sagir was relied upon by QPL as its principal witness, providing a witness statement setting out the background to the case. He had also provided evidence in support of earlier applications for freezing orders. Although he is now the sole shareholder in QPL and is one of its directors, his evidence was limited in its usefulness, in that he had little direct knowledge of the history of QPL and

SSL. He had been only about 19 years old in 2003 when the initial discussions between his father and Prakash that led to the setting up of SSL took place. Under cross-examination he accepted that most of his knowledge on matters between 2003 and 2019 was derived from information from his father. Moreover, although Alhaji's witness statement suggested that Sagir had been responsible for most of the liaison between the Bafarawa family and Mr Ugboma, and Sagir's second witness statement had set out a history of offers made by in 2018 / 2019 by Prakash / Viking with a view to renegotiating the 2017 Contract under cross-examination Sagir proved to have a poor recollection of events involving Mr Ugboma and the various offers that were made. Sagir did not appear to have been kept informed by Mr Ugboma of what was taking place and could not recall when he first saw a number of relevant documents. Indeed he was unable to recall whether he had even seen certain documents prior to making his witness statement in December 2022.

43. Likewise Alhaji's recollection of certain events under cross-examination seemed poor. He was unable to recall whether or not he was aware that in 2017 discussions had been taking place to enable a division of the remaining properties within SSL between QPL and Viking to take place nor was he able to recall whether or not he had ever received questions from the compliance officer of QPL's agents asking him whether he had been accused of corruption in Nigeria. Like Sagir he was unclear whether he had been aware at the time of the various offers made by Prakash / Viking between 2018 and 2019.

44. I was left with the overall impression that Sagir had very limited knowledge of matters prior to about 2019, and that neither he nor his father were frank in their evidence in relation to the role played by Mr Ugboma between 2017 and 2019. I was struck that despite their evidence being that beneficial ownership in QPL had passed to Sagir in 2017, it was Alhaji and not Sagir who conducted the further discussions with Prakash in 2019 about a split of the remaining assets within the company. I have therefore treated the evidence of both Sagir and Alhaji with some caution, although it is fair to say that they have no independent knowledge on a number important points concerning the actions of Prakash and their evidence is based on the available documentation.

45. Prakash, as a litigant in person, was sworn at the outset of proceedings and I have treated everything that he told me, both from the witness box and in submissions as having been given under oath. He is a Chartered Accountant by training although I do not understand him to have practised as such for many years. He is clearly an intelligent and articulate individual, and was always ready with an explanation for events. However, the difficulty that I have found with his evidence is that there are significant parts thereof (in particular in relation to the movement of funds between the various companies that he controlled) where little or no contemporaneous documentation has been

disclosed to back up or corroborate what are effectively bare assertions on his part as to what took place. His evidence is conflicting in places and significant parts of his explanations rely upon recent schedules that he prepared and disclosed shortly before, or during, the hearing and which are not backed by any disclosure of underlying documents. I have therefore considered it necessary to approach Prakash's evidence with considerable caution and to rely where possible on such contemporaneous documents as exist. In the absence of such documents I have found myself unable to accept Prakash's evidence on a number of issues.

46. The final witness of fact was Minesh. On the whole I found him to be a truthful witness, although seeking to minimise his role in the events that have led to this litigation. Indeed in his closing submissions Mr Moeran KC went so far as to describe Minesh as "surprisingly honest". Whilst there were some points upon which I had reservations I have largely been able to accept Minesh's evidence.

QPL's complaints

47. The key actions which the QPL contends have caused it unfair prejudice can be summarised as the following:

    (1) That contrary to the Shareholders' Agreement Viking failed to introduce capital into SSL by way of loan;

    (2) That SSL did not repay the shareholder loans *pari passu*, instead favouring Viking;

    (3) That management fees owed to QPL under the Shareholders' Agreement were not paid.

    (4) That properties belonging to SSL were sold at an undervalue to companies connected with Prakash or other members of the Bhundia family, and in the case of the sales to PX1 SSL also failed to obtain the payment of the purchase price that had been agreed;

    (5) That the payments made on behalf of QPL pursuant to the 2017 Contract were not applied for the benefit of SSL; and

    (6) That SSL became involved in a further unrelated joint venture agreement with third parties which led to the Lazuli Claim and the substantial judgment entered against SSL.

48. I will consider each of these allegations in turn initially looking at them from the perspective of Prakash who (it is common ground) was in *de facto* control of SSL throughout the events in question with a view to determining which of them can be said to found unfair prejudice to QPL or the members of SSL in

general. I will then turn to consider the role of Minesh in relation to those matters that I have found (in relation to Prakash at least) to have caused unfair prejudice. However before doing so I will make some more general observations on the manner in which Prakash ran SSL.

Prakash's Control of SSL

49. One of the difficulties at the heart of this case is the absence of proper management accounts for SSL and the corresponding details of its finances. Despite SSL being a joint venture vehicle which undertook a development costing many millions of pounds and which should have realised a substantial profit for its members, it is impossible to pin down from the documents available to me what actually happened to its funds. The major difficulty is that despite Prakash's background as a Chartered Accountant, he has clearly treated the funds of a number of companies which he controls or in which he has an interest as a single pot, from which payments can be made at will without any regard as to whether the payment being made is properly a liability of the company whose money is being used to pay it and without any adequate records being kept of such transactions. It is highly surprising that at the trial of this petition, the only available accounts for SSL are those filed at Companies House and that from y/e 30 June 2012 onwards those accounts are in abbreviated form, such that it is not possible to see to whom or by whom the company was owed money.

50. The basis on which inter-company payments were made by Prakash was raised by me in the course of Prakash's evidence:

> "Q. Is it your evidence that effectively during the development, payments were made willy-nilly by [PHL], by Viking, by SSL, whoever had the cash in hand at that particular moment?
>
> A. Yeah. I mean generally SSL would – yes, that would be correct. Not willy-nilly, but obviously depending on whatever specific payment had to be made.
>
> Q. But was there any particular mechanism to decide which company was going to pay a particular payment?
>
> A. Well, I mean if within the kind of companies where I control the bank accounts, if there's funds available, I'll use those. If not, then I'll have to ask [PHL], because the [PHL] account is controlled by my brother.
>
> Q. But why was none of this properly documented?
>
> A. Well, because we came to a point that there's so much going on that we --- and there's contractors and finance and other things to deal with, that we

thought at the end of the project we'll do a final account, and this is what we did.

In response to further questions Prakash indicated that underlying accounts for these transactions existed, but sought to blame their non-disclosure on the fact that he was acting in person (despite having been represented at the time that the original disclosure exercise took place).

51. This need for a final reconciliation to take place at the end of the development meant that Prakash told me in the course of his evidence that the accounts for SSL filed with Companies House were not reliable and did not necessarily properly reflect the true balance of the inter-company loans.

Q. "When you draw up company accounts they're meant to reflect the true position of the company.

A. Yes, yes.

Q. So if you draw up accounts, you would expect to see in there debts owed by the company and debts owed to the company.

A. Yes.

Q. So are you saying that in fact these accounts were accurate at the time, or that actually there were other debts that may have been owed to the company or owed by the company that just simply aren't in there?

A. I think it's a bit of both.

…

Q. They're two mutually exclusive options, Mr Bhundia.

A. In my opinion, when the accounts were prepared, we thought that was a true and fair view of the company. And then as we went along, we found other items that had been missing.

Q. Sorry, just talk me through this. This is a company. It's got one business: it's doing a development.

A. Yes.

Q. So there are invoices that come in in relation to this. Presumably the invoices are addressed to SSL, and they are paid either by SSL or by one of your other companies. When you produce the accounts, do you look at the invoices?

A. Yes, we do. Yes.

Q. So you will see what invoices SSL has paid; you will see what invoices have been paid but not by SSL.

A. Correct, yeah.

Q. Why wouldn't those be recorded as debts owed to or from other companies?

A. Well, I think that's just because we were in the middle of this massive development, it's the first time we've done such a big development, and the invoices and the reconciliation to be done, and I thought at some point … we do a final reconciliation of all the costs.

Q. But if you are filing accounts every year at Companies House, you don't say: "Well, hang on, these accounts actually aren't accurate, but I'll do a final reconciliation five years hence when the development is done."?

A. …That's where we failed. We should have done it every year."

52. I pause to add that SSL's accounts up to (and including y/e June 2014) were subject to an independent audit[1], making Prakash's explanation that the accounts fail to record the true liabilities of the company even more extraordinary.

53. Prakash's failure to exercise any adequate financial controls or accounting procedures for SSL has meant that substantial funds are said to have been paid out from SSL to other companies owned or controlled by Prakash in circumstances where there is no evidence other than Prakash's uncorroborated assertion that the recipient had met liabilities on SSL's behalf. The position has been made even more difficult by the fact that from 2013 onwards SSL does not appear to have even had a bank account. Additionally, it is clear that funds have been paid out in circumstances where there was no underlying liability of SSL to the recipient company. The most egregious example of this state of affairs are payments in excess of £2.3M that were made on behalf of SSL in repaying a loan that was owned by Lazuli.

54. The judgment of Mr John Martin QC in the Lazuli Claim contains at para [10(2)] a quotation from a report prepared by the single joint accountancy expert in that case:

[1] PHL's accounts were also the subject of an independent audit (although by a different auditor to SSL's accounts). The fact that the substantial differences in the value of the loans owed by SSL to PHL shown between these two sets of accounts was not discovered during the audit process is concerning.

> "I have concluded that transfers between bank accounts held by ETFL, [Crane Court], SSL and Lazuli appear to have been made on an "as needed" basis to facilitate payments to external parties. Accordingly, funds are mixed and there is only limited segregation between the bank accounts".

This appears to me to accurately describe the position that pertained here.

55. Significant attempts have been made by QPL to procure the underlying documentation necessary to understand the inter-company transactions that have taken place. In 2018 during Mr Ugboma's stewardship of QPL, a forensic accountant, Chris Makin, was engaged to try to unpick the finances of SSL. He requested a number of important documents, including copies of bank statements for all accounts used to receive monies and make payments on behalf of SSL and copies of the financial statements for SSL from 2012 to 2017. These were not forthcoming. Nor have such documents emerged from the disclosure process within these proceedings. Although in cross-examination Prakash claimed that detailed internal accounts for SSL existed, these have never been disclosed (despite clearly being covered by the terms of the disclosure orders made) and I am not satisfied that reliable accounts for SSL have ever been produced. I proceed on the basis that these do not exist.

56. There is *some* evidence in the accounts of PHL that it was incurring expenses on behalf of SSL. Its accounts include a note each year that funds had been incurred on behalf of SSL. However, no underlying documentary evidence to corroborate these figures has been provided, and the amounts stated are not reflected in SSL's accounts for the corresponding years. The figures given in PHL and SSL's accounts for the balance owed by SSL to PHL are as follows:

Year	**Amount of Loan (PHL Accounts)**	**Amount of Loan (SSL Accounts)**
2003	£52,671	N/A
2004	£121,349 + £3.5M[2]	£174,020
2005	£215,771 + £3.5M	£215,699
2006	£327,251 + £3.5M	£286,774

[2] This £3.5M is a loan introduced on behalf of Viking under the Shareholders' Agreement (see paragraph [60] *et seq* below.

2007	£445,745 + £3.5M	£397,818
2008	£496,456 + £3.5M	£438,598
2009	£566,612 + £3.5M	£256,362
2010	£715,751 + £3.5M	£258,714
2011	£1,066,958 + £3.5M	£163,187
2012	£1,350,780 + £3.5M	N/A
2013	£1,428,600 + £3.5M	N/A
2014	£1,529,385 + £3.5M	N/A
2015	£5,424,376	N/A
2016	£5,485,380	N/A
2017	£5,616,575	N/A
2018	£5,616,575	N/A
2019	The accounts record that £6,619,185 was waived by PHL on behalf of a connected company as part of a group restructure	N/A

57. Thus it can be seen that in the period between 2008 and 2011, according to PHL's accounts, SSL's liability to PHL (leaving aside the £3.5M reflecting the value of the Hotel) rose from £496,456 to £1,066,958. By contrast over the same period SSL's own accounts show its indebtedness to PHL *falling* from £438,598 to £163,187. I have therefore reached the conclusion that even the filed accounts of the various companies must be treated with considerable caution, and I have given them greater weight where their contents support the

petitioner's case than where they have been relied upon by Prakash in support of his assertions.

58. These actions by Prakash clearly involve the breach of a number of the fiduciary duties that he owed as a director of SSL. His actions in using funds from a number of companies to pay the costs of the development and then failing to keep a proper, up to date account of these payments, is in my view a breach of the duties imposed by sections 171 (duty to act in accordance with the constitution of the company and only exercise his powers for the purposes for which they are conferred), 172 (duty to act in the way he considers most likely to promote the success of the company for the benefit of its members), 174 (duty to act with reasonable care, skill and diligence), 175 (duty to avoid situations of conflict of interest) and 177 (duty to declare any interest in a proposed transaction) of the Companies Act 2006. It is also a breach of the duty not to approve accounts unless satisfied that they give a true and fair view of the financial position of the company.

The Complaints

59. I now turn to the specific complaints made by QPL. I will look at each one in general terms and consider whether it is made out as a matter of unfair prejudice before going on to consider whether it arises as a result of breaches of duty by Prakash.

(1) Failure by Viking to introduce capital into SSL by way of loan.

60. QPL makes two substantive complaints under this head. First, that in breach of the Shareholders' Agreement Viking failed to make a loan of £3.5M to SSL to fund the development of the Hotel; and second that even if a loan was made, it was not compliant with the Shareholders' Agreement which required a cash loan rather than a book debt.

61. I am not satisfied that QPL has established that this ground of complaint is made out. I am satisfied that the introduction of funds by Viking was achieved by the PHL transferring the Hotel to SSL with £3.5M of the purchase price being left outstanding as a loan.

62. Viking was the parent company of PHL.

    (1) There is no dispute that the Hotel was transferred to SSL to PHL.

    (2) PHL's accounts for y/e 30 June 2003 indicate that the Hotel was sold to SSL for £10.4M and a loan of £3.5M is shown in the accounts of that company from 2004 onwards.

(3) SSL's accounts for y/e 30 June 2004 show that it held freehold property with a book value of £10.534M. This must be the Hotel. It has not been suggested by anyone that SSL has ever owned any other property.

(4) Those accounts also show the following balances owing by SSL:

a) Bank loans and overdraft - £3,635,559

b) To group undertakings - £3,360,000

c) To Shareholders - £3,500,000.

(5) Prakash's witness statement describes £3.5M of the purchase price of £10.4M coming from QPL; £3.4M being met by bank borrowing (HBOS) and the balance (£3.5M) being left outstanding by way of a loan from Phoenix to SSL.

63. Taking these matters into account, I am satisfied that Viking complied with its obligations to introduce £3.5M by way of loan into SSL and did so through the loan granted by PHL to SSL in relation to the unpaid balance of the purchase price for the Hotel. SSL had no funds apart from the loans introduced by its shareholders and its bank loans and no alternative explanation is provided by the Petitioner as to how SSL was able to pay PHL £10.4M for the Hotel.

64. The second point raised by QPL is that if there was a loan provided by PHL to SSL, this represented a breach of the Shareholders' Agreement in that it was provided by PHL rather than Viking. I do not accept this argument. Whilst clause 4.1.1 refers to a loan to SSL "equally by Viking and QPL", the reality is that neither Viking nor QPL directly provided the funds which made up their respective loans. In Viking's case the funds were provided by PHL. However as Viking is the ultimate parent company of PHL, I have little difficulty in finding that the loan from PHL to SSL was procured by Viking in order to meet its obligations under the Shareholders' Agreement. Equally in QPL's case the funds loaned to SSL did not come directly from QPL either. As Sagir explained in his witness statement:

> "I would note that the loan was paid over on QPL's direction by a third party, Dalhatu Investment Ltd (as QPL did not and does not have a bank account)… the funds were advanced by Dalhatu Investment Ltd on behalf of QPL."

65. I do not consider that it is open to QPL to argue that Viking was not free to discharge its obligation to loan funds into SSL by procuring a loan from an associated company, whilst maintaining that it was entitled to adopt a similar course of action itself.

66. Nor do I accept a further alternative argument raised by Mr Moeran that Viking's actions in procuring a loan from PHL to SSL in the manner described above was itself unfairly prejudicial in that it meant that there was less cash available to SSL. This argument seems to me an attempt to both have one's cake and to eat it. Had Viking lent £3.5M in cash to SSL (rather than procure that PHL should agree to £3.5M being left outstanding on the purchase of the Hotel) then this money would simply have been used to pay the remaining part of the purchase price for the Hotel. I do not consider that it would have made any meaningful difference to the financial position of SSL and do not consider that Prakash / Viking's actions in this regard have caused any prejudice to SSL.

(2) Failure to repay the shareholder loans *pari passu.*

67. QPL have established this ground of complaint. In my judgment it is wholly clear from SSL's accounts that in breach of the Shareholders' Agreement the loans introduced by or on behalf of Viking and QPL have not been repaid on a *pari passu* basis and that such repayment has taken place has favoured Viking. Although the initial loans appear to have been £3.5M each, the 2004 SSL accounts suggest that the loan owed to Viking had fallen to £3.36M, whilst £3.5M remained owing to QPL. Subsequent sets of accounts appear to have transposed these balances, however I consider that on the balance of probabilities this was an error and that in 2005 and subsequent years (subject to other movements on the loans accounts) the balances owed were £3.36M to Viking and £3.5M to QPL.

68. The 2007 accounts indicate that there were repayments to both Viking and QPL of £1,315,000. On its face it appears that this repayment would have been *pari passu* (if it occurred). However, Prakash does not in fact contend that that a payment in this amount was made to QPL (and it is unclear why this payment was ever recorded in SSL's accounts as having been made). Rather he contends that over the course of many years sums totalling £497,678 have been paid to or for the benefit of Alhaji and these should be treated as being partial repayment of QPL's loan.

69. Thereafter SSL's filed accounts record payments as having been made to Viking but not to QPL. Thus:

Y/e	**Viking repayment**	**QPL repayment**
30.6.08	£131,789	0
30.6.09	(£79,210)	0

30.6.10	(£19,472)	0
30.6.11	£314,419	0

70. Even if I were satisfied that the £497,678 claimed to have been paid to QPL had in fact been made (and I set out my conclusions on this matter in the following paragraphs) this would still mean that there had been a failure to make loan repayments on a *pari passu* basis as it is clear that the payments that have been made to Viking (which on the filed accounts alone amount to a net figure of £1,662,526) significantly exceed the amount claimed by Prakash to have been repaid to QPL.

71. Moreover, SSL's accounts for this period also show additional payments being made by SSL on behalf of Viking as follows. The accounts record the net amount owed *by Viking to SSL* as follows:

Year	**Amount owed by Viking to SSL**
2004	£159,906
2005	£491,399
2006	£737,842
2007	£1,236,275
2008	£1,458,571
2009	£1,253,361
2010	£1,308,388
2011	£1,188,875

This running account appears to have been treated separately for accounting purposes from the £3.5M loan established pursuant to the Shareholder's Agreement. However, the use of funds from SSL to support Viking in this way, whilst consistent with Prakash's use of funds within the various companies that

he controlled or owned as a single pot, is an additional breach of the Shareholders' Agreement.

72. Turning then to the figure of £497,678 that Prakash claims to have paid to or for the benefit of QPL. Prakash's evidence is that (through SSL) he met payments for a property in London owned by Alhaji at Radnor Place and met other outgoings on behalf of Alhaji and other members of the Bafarawa family when in London such as limousine services and mobile telephone bills. He also claims to have made substantial payments to Alhaji directly. He has provided a schedule setting out the payments that he claims were made and which he says constitute part repayment of QPL's loan. These are as follows:

Item	**Amount**
Alhaji's mobile phone bills	£9.961.40
Insurance on Radnor Place	£17,941.02
Limousine service for Bafarawa family	£13,490.66
Burglar alarm	£4,819.76
Cleaning	£3,258.25
Utilities	£14,497.97
Payment for QPL agent's fees	£13,808.75
Payments directly to Alhaji	£376,997.58
Other (medical bills / university fees / legal fees)	£42,903.33
Total	**£497,678.72**

73. Yet again, very few documents have been disclosed in support of these assertions. The only contemporaneous evidence provided by Prakash are two cheques drawn on SSL's bank account to Alhaji dated 13 October 2008 for £36,000 and dated 20 October 2008 for £16,000.

74. Further schedules produced by Prakash show the dates upon which these liabilities are said to have been incurred. Whilst some have been incurred over a significant period, it is noteworthy that other expenses (including virtually all the payments that are said to have been made in respect of the utility bills at Radnor Place) predate the Shareholders' Agreement and the incorporation of SSL.

75. Under cross-examination Alhaji accepted that he had received the two payments for which cheques are available. He had also received a £6,000 per month management fee that had been paid for around 18 months pursuant to the Shareholders' Agreement, although he denied that other direct payments had been made to him. He also accepted that Prakash had met expenses for him and his family in London including telephone bills, insurance bills and limousine hire. However, his position, as I understood it, was that these were part and parcel of the agreed benefits of £6,000 per month that had been agreed under the Shareholders' Agreement.

76. I am not in a position to make any findings as to whether these sums were in fact paid in the amounts claimed by Prakash. However, I have concluded as follows:

    (1) Sums that were paid by Prakash prior to the date Shareholders' Agreement cannot be attributable to the terms of that agreement, and cannot be taken as a payment by SSL to or for the benefit of QPL.

    (2) The payment of sums to or for the benefit of Alhaji is not on its face a payment for the benefit of QPL. However, it is clear that at material times he was its beneficial owner and although not a director was exercising *de facto* control of that company.

    (3) Insofar as payments were made by SSL to or for the benefit of Alhaji, I accept Alhaji's evidence that these were part of the agreed benefits or management fees that were to be payable under the Shareholders' Agreement, and deal with these below at paragraph [81].

    (4) However, one category of payment, the payment of QPL's agent's fees to Centrum appears to have been directly for the benefit of QPL and I will treat these as being a payment on account of QPL's loan to SSL. Prakash has claimed £13,808.75 in respect of these fees. I do not have any supporting documents to corroborate the amounts claimed, but I am

satisfied that (a) fees would have been charged by Centrum for the services that it provided to QPL and (b) Prakash was Centrum's primary point of contact.

77. Finally, I should deal with a further argument made by Prakash in relation to this ground of complaint. He sought to suggest that the payments from SSL to Viking in fact represented the repayment of additional monies that Viking had expended on behalf of SSL during the course of the development. This was certainly not the case until at least 2011 because, as I have set out above, SSL's filed accounts show that throughout the period from 2004 to 2011 it was SSL that was supporting Viking, not the other way round. Equally, although PHL's accounts suggest that it was providing financial support to SSL, the amounts of the support claimed to have been provided are not borne out by SSL's own accounts. Given that these figures were all prepared by Prakash I propose to adopt the set of figures least favourable to him. These show that as at June 2011 the sum owed to PHL by SSL was only £163,187, whilst Viking's running account with SSL showed that Viking owed SSL £1,188,875.

78. I have already referred to Prakash's use of funds belonging to companies owned or controlled by him as a single pot upon which was applied on an "as needed basis", and it is certainly possible (I can put it no higher than that) that in the later part of the development Viking or PHL met certain liabilities which were properly that of SSL and were subsequently reimbursed by SSL for having done so (although credit would need to be given for the amounts that were owed to SSL by Viking by 2011).

79. However, I do not consider that this argument can assist Prakash in respect of this head of complaint. SSL's accounts show that the running inter-company loan accounts were treated separately from the principal loan of £3.5M pursuant to the Shareholders' Agreement (and for the period that accounts are available show that in relation to these loans, SSL was a creditor rather than a debtor of Viking). QPL's complaint is that SSL made repayments to Viking of the principal loan of £3.5M without making corresponding payments to QPL at the same time. SSL's own accounts show that it did so. The accounts for the y/e 30 June 2011 show SSL's indebtedness to Viking as being £1,837,474 in respect of this loan rather than the original balance £3.5M. The only reasonable conclusion that I can draw from this is that SSL had made payments to Viking reducing the outstanding amount of this loan. At same time QPL's loan still stood at (or around) £3.5M.

80. I am satisfied that this constituted unfair prejudice to QPL. The two shareholders of SSL had agreed to enter into the joint venture on the basis that the parties' loans were to be in proportion to their shareholding in SSL. By making repayments to Viking without making a corresponding payment to QPL, SSL preferred the interests of one of the shareholders (Viking) over the other

member, QPL. This was again a breach of duty by Prakash being a breach of his duty to promote the success of the company for the benefit of its members as a whole; a breach of his duty to act with reasonable care, skill and diligence and a breach of his duty to declare an interest in a transaction in which he had an interest.

(3) Failure to pay management fees.

81. I do not consider that this ground has been made out. The Shareholders' Agreement provided for a management of fee to be paid of £6,000 per month "unless agreed otherwise". Alhaji accepted in his evidence that this payment was only to be made during the period that the Hotel was continuing to operate as such and would cease once development began. However, his complaint is that was paid from early 2004 only for a period of 18 months or so, whilst the evidence suggests that the Hotel continued to operate until around June 2011.

82. Unlike a number of the other complaints now raised by QPL, the cessation of payment of the management fee is something which would have become immediately known to QPL and to Alhaji, and something which I would have expected Alhaji to raise with Prakash. Although he told me in the course of his cross-examination that he had done so, he clearly took no further steps to have these fees reinstated. Nonetheless, as I have described above, he continued to have various liabilities of his met in London by Prakash through SSL. He told me that these were part of the benefits that it was agreed that he would receive and as I have already explained I consider that these payments from January 2004 onwards should be treated as part of the management fees due under the Shareholders' Agreement. If necessary, there may need to be an account taken of these payments.

83. Given that the Shareholders' Agreement provided for the payment of the management fee "unless agreed otherwise" and given that Alhaji does not appear to have made any meaningful protest once the payment of the management fee stopped (although the payment of other benefits continued) I consider that the parties must have reached an agreement (either expressly or by conduct) that the payment of these management fees should cease. Accordingly, I do not consider that the cessation of these payments can be said to have caused unfair prejudice to QPL. I note also the point made by Ms Bayliss and Mr Kane that as both Viking and QPL were to be entitled to these management fees, the non-payment of the management fees to both shareholders cannot be said to unfairly prejudice either.

(4) Sale of Properties

84. I have been left in no doubt that QPL, through the actions of Prakash, has been unfairly prejudiced by the sale of a number of the seven properties identified at paragraph [24] above. Two separate failures arise:

    (1) Some of the properties were sold for less than market value; and

    (2) There was a failure to obtain payment of the proceeds of sale owed to SSL.

85. Before turning to the details of the individual sales, I should record that although the 2017 Contract stated that an eighth property (Flat 6, 6 Queen's Gate) was also owned by SSL, the evidence established that this property was sold in 2015 to a third party for a price in excess of that identified by Mr Alford in his evidence as constituting market value. The sale of that property therefore did not cause any prejudice to the members of SSL.

86. As to the remaining seven properties, six were sold to PX1 between January 2019 and October 2020; the seventh was sold to Jenmark in May 2019. I will deal with the sale to Jenmark first as although that transaction did not complete until May 2019, key events in relation to this sale took place in the autumn of 2018.

The Sale to Jenmark

87. The majority of the facts relating to the sale of Flat 1, 4 Queen's Gate are not in dispute. In March 2018 HMRC brought a petition to wind up SSL in respect of various unpaid tax liabilities. As at the date of the presentation of the petition the debt was £1,242,181.36. This petition was adjourned on at least two occasions. On 3 October 2018 counsel for SSL successfully persuaded the court to adjourn the petition for a further 56 days until 28 November 2018. I have not seen the majority of the evidence which persuaded the court to grant the adjournment, although I observe from an e-mail sent by counsel to his instructing solicitors that it included a contract for sale of "Flat 9" which was ultimately sold to PX1 in May 2019. I have taken this to be a reference to a contract for the sale of Flat 9, 5 Queen's Gate as a contract for the sale of this property to PX1 dated 4 September 2018 for a purchase price of £2.7M is included in the disclosure. The completion date for this sale was described as being "ten working days after the seller receives consent to the lease for the seller's lender." I have assumed that it was not possible to proceed with this sale within the time frame set by the adjournment of the winding up petition.

88. The following day HMRC confirmed that the outstanding balance owed by SSL was £1,231,448.77. In order to raise these funds Prakash therefore agreed to sell Flat 1, 4 Queen's Gate to Jenmark whose directors are another of his brothers and one of his nephews, and whose ultimate parent company is owned

by his brother Bharat Bhundia and another individual. The sale price agreed was £1,175,000 and although the contract provided for an initial deposit of 10%, Jenmark agreed to pay the full purchase price as a deposit on exchange of contracts. At a late stage in the case Prakash disclosed an e-mail exchange between his brother Bharat and Jenmark's solicitors dated 26 November 2018 confirming that the full purchase price of £1,175,000 would be paid upon exchange.

89. Further disclosed e-mails show a total sum of £1,231,448.77 being transferred by SSL's solicitors to HMRC on the following day. This is some £56,448.77 more than the sale price that had been agreed for the property and the source of these additional funds remains contentious. Prakash's position is that the additional £56,448.77 sent to HMRC above and beyond the agreed sale price of £1.175M for Flat 1, 4 Queen's Gate were also provided by Jenmark. However, although Prakash has provided e-mails dated 27 November 2018 showing an exchange between him and SSL's solicitors concerning these monies, there is no documentary evidence to show that the balancing payment of £56,000 odd came from Jenmark. Cross-examined about this matter Prakash explained that the property had been valued at £1,175,000 and Jenmark could not purchase it above that valuation. However, he described the additional funds as having been provided by Jenmark on the following basis "Please pay the extra £54,000, because we don't have any cash. Let's get the petition done with and then we'll deal with you." He also indicated that "… the £54,000 has to be returned to them somewhere down the line".

90. In the light of this evidence I find as follows:

(1) I am satisfied that the additional £56,000 odd that was required to discharge the HMRC petition debt was provided to SSL by Jenmark.

(2) However, it did not represent additional consideration for the sale of the Flat 1, 4 Queen's Gate. Rather it was a separate arrangement, in the form of an informal loan between SSL (acting through Prakash) and Jenmark (acting through Bharat). This loan was repaid with some of the funds realised from the PX1 loans discussed below.

(3) Such an arrangement is consistent with both the haphazard and undocumented way in which Prakash appears to have organised the affairs of SSL and the other companies under his effective control. It is also consistent with his answer in cross examination that these additional funds would need to be repaid to Jenmark "somewhere down the line".

(4) The sale price received by SSL for Flat 1, 4 Queen's Gate was therefore £1,175,000.

91. The evidence of Mr Alford was that the market value of Flat 1, 4 Queen's Gate at the time of this sale was in fact £1,344,000. On its face therefore, the sale price achieved by SSL was about 87.5% of its apparent market value. QPL argue that this was therefore a sale at an undervalue and that it has caused it prejudice as a member of SSL.

92. The only expert valuation evidence in relation to Flat 1, 4 Queen's Gate that I have before me is that of Mr Alford on behalf of QPL[3]. Neither Prakash nor Minesh called expert evidence of their own notwithstanding that permission to do so had previously been granted. However, various criticisms of Mr Alford's evidence were made in cross-examination by Prakash and an important point of clarification was obtained by Ms Bayliss in her cross-examination of Mr Alford.

    (1) In preparing his report Mr Alford did not conduct an internal inspection of any of the properties. His valuation was therefore based on an external inspection, publicly available data from HM Land Registry and other documents provided to him by the petitioner. Prakash made a number of points about the inaccuracy of some of this information. For example, Mr Alford's report refers to an estimated construction cost of c£7.1M whereas Prakash pointed to an adjudication report dated August 2014 following a dispute between SSL and its principal contractor which put the cost at c£12.5M. This point appears to me to be a double edged sword for Prakash. Although it indicates that Mr Alford's figures may not be wholly reliable, it also tends to show that Mr Alford may have underestimated the overall quality of the final build.

    (2) Prakash made a further point about the comparables relied upon by Mr Alford. Mr Alford confirmed in cross-examination that he had been instructed by QPL that there may be a question mark over the sale prices of some of the property and that he had therefore had "to take a generalised view rather than just accepting a sale in the same building as being the market value".

    (3) This line of questioning arose out of Mr Alford's approach to the valuation of another flat, Flat 8, 4 Queen's Gate. This flat had been sold by SSL in 2014 to a third party for £3.25M – a sale price which has not been challenged by QPL. In Mr Alford's report he put its value as at the date of sale in 2014 at £3,170,000 and put its value as at the date of his report (July 2022) as £3.4M. However, HM Land Registry records establish that this property was in fact sold in 2021 (that is between the dates of Mr Alford's two valuations) for £3M. Asked to explain why his two valuations were higher notwithstanding evidence of an actual sale at

[3] Although Prakash has disclosed contemporaneous valuations prepared for the purposes of PX1's lender in respect of the properties that were sold to that company.

a lower price at a point in time between the two of them, he explained that he had reached his conclusions having looked "at all the comparables, not just a single comparable".

(4) During his cross-examination by Ms Bayliss Mr Alford accepted that in circumstances where a quick sale of property was required, a discount to market value may need to be applied. He suggested that a discount of between 5% and 7% to the market value would be the appropriate deduction to make in such circumstances.

(5) In response to a question by Prakash, Mr Alford also accepted that where the property was sold through an agent agency fees of around 1.5% would have been expected.

93. In the light of Mr Alford's evidence and these challenges to it, I have reached the following conclusions.

(1) Mr Alford's evidence as to market value properly represents his professional opinion based upon the information provided to him.

(2) However, there are obvious limitations to Mr Alford's report. This was effectively a desktop valuation of the properties conducted without having had access to the properties.

(3) Mr Alford also appears to have been warned by those instructing him that actual sale prices reached for the flats should be treated with caution. Whilst I can see that this may be appropriate in relation to the sales that are challenged, I can see no basis for extending this approach to onward sales by third parties in which SSL had no involvement (such as that of Flat 8, 4 Queen's Gate).

(4) I note that the actual sale price achieved on the sale of Flat 8, 4 Queen's Gate in 2014 represented 108.3% of the value ascribed to it by Mr Alford at that time. Whereas the subsequent sale price achieved in 2021 represented 94.6% of the value attributed to it by Mr Alford in 2014 and 88.2% of the value attributed to it by Mr Alford in 2022.

(5) Other sale prices achieved in 2014 to third parties (which are not being challenged by QPL) also appear to be significantly different (and greater) than the valuations suggested by Mr Alford. In contrast, prices actually obtained by recent sales of the PX1 properties by a receiver have been between 7% and 31% lower than Mr Alford's valuations.

(6) Ultimately, the ascertainment of past market value is not an absolute science, and there is likely to be a range of values which could be said to represent market value. Given the limitations on Mr Alford's report

identified above I am not prepared to hold that a sale that fell below the figure that he has provided is automatically to be treated as being a sale at an undervalue.

(7) Doing the best that I can on the very limited evidence that is available to me, I am prepared to assume a range of plus or minus 7.5% on Mr Alford's figures. Accordingly, I will not treat a sale that achieved at least 92.5% of the value attributed to it by Mr Alford as being at an undervalue.

(8) In relation to the sale to Jenmark, I also have to take into account the fact that this was a sale that had to be conducted under financial pressure because HMRC had issued a winding up petition against SSL. On this basis Mr Alford accepted that a discount of between 5 and 7% could be expected.

(9) Thus in relation to the sale to Jenmark, taking Mr Alford's value of £1,344,000 and allowing for a variation of plus or minus 7.5% would give a possible range of values for the property between £1,444,800 and £1,243,200. If a 6% discount were then applied to the lower of these figures top take into account a forced sale, a value of £1,168,608 which is slightly lower than the sale price actually achieved.

94. I accept that the adjournment of the HMRC petition for 56 days gave SSL a limited time in which to raise the necessary funds to pay this debt and that it was necessary to sell a property to do so. In the circumstances, whilst the sale price of £1,175,000 is certainly at the low end of the possible range, and the sale was to a company controlled by one of Prakash's brothers I am not satisfied that the petitioner has established that it was at an undervalue. Accordingly, I find that the sale of Flat 1, 4 Queen's Gate did not cause prejudice to QPL.

The Sales to PX1

95. By contrast, I am satisfied that the sales to PX1 clearly caused unfair prejudice. As I have already mentioned, until his bankruptcy Prakash was the sole director of PX1 and this company is 100% owned by Viking UK, a UK company of which Prakash was the director and in respect of which he is a person with significant control.

96. In his witness statement Prakash explains that the initial reason for the incorporation of PX1 and the transfer of the remaining properties to that company "was to assist with a cash raising exercise for and on behalf of SSL.". He explained that as a result of Mr Ugboma's actions it was clear that QPL no longer wished to have some of the unsold properties transferred to it *in specie*,

but that it was instead looking for a cash settlement. In addition, QD which had funded part of the development was looking for repayment of its loan of £1.6M.

97. I pause to make two points at this juncture. First, that this outstanding QD loan (like the HMRC liabilities that were settled upon the sale of Flat 1 4 Queen's Gate to Jenmark) were not mentioned in the 2017 Contract, which instead asserted that the remaining flats held by SSL were "unencumbered". This suggests (at the very least) a complete lack of care by Prakash when identifying the assets then available for distribution. Second, in the course of his cross-examination, Prakash asserted that QD had agreed to write off the loan that it was owed by SSL and that the only reason that it had decided not to do so was because of the actions of Temi Ugboma who had made accusations of corruption. This assertion that QD was prepared to write off a loan of £1.6M to an arms-length third party such as SSL was not mentioned in Prakash's witness statement, and is unsupported by any documentation. It is inherently improbable and I find as a fact that it is untrue.

98. Prakash's explanation in his witness statement continues:

> "… I considered that the best course of action was to transfer the remaining units from SSL to PX1 and to raise money through PX1 secured on those units. I also thought that the transfer to PX1 would afford protection in respect of the assets of SSL as it was unclear what Mr Ugboma and / or [Alhaji] might try to do."

99. As Mr Moeran submits, this explanation is unacceptable:

(1) It is wrong. Both the 2017 Contract and subsequent correspondence focussed on a division of the remaining properties in SSL between Viking and QPL.

(2) It is irrational. With security available, SSL could have raised cash in exactly the same way that PX1 were to do; and

(3) It indicates that Prakash was seeking to conduct the affairs of SSL in a manner intended to defeat claims that may be brought by or on behalf of QPL.

100. It is not easy to piece together precisely what took place in relation to the sale of these properties by SSL to PX1 as very little disclosure has been forthcoming from Prakash. What appears to have taken place is as follows:

(1) Properties were transferred from SSL to PX1 for an agreed price that was not paid.

(2) Instead PX1 would raise a loan on the security of the properties through Aura Finance Ltd ("**Aura**")

(3) The total loans raised amounted to c£6.8M against an agreed sale price for the six properties totalling £13,077,500.

(4) These funds would be applied by PX1 in various ways. It is clear that part of the funds raised on these loans were properly applied towards liabilities of SSL. Equally though, it is clear that a significant part of the funds were not used for the benefit of SSL; the use to which other sums were put remains opaque.

(5) The balance of the purchase price was left outstanding. No steps were taken by SSL to obtain the payment of these funds or even to secure PX1's obligations in this regard.

101. The sales to PX1 were as follows:

Property	**Date**	**Sale Price**	**Mr Alford's Market Value**	**Strutt & Parker 2020 valuation**
23 Queen's Gate Mews	15 February 2019	£4,200,000	£4,150,000	£4,350,000
Flat 9 5 Queen's Gate	29 January 2019	£2,700,000	£3,650,000	£3,100,000
Flat 2, 6 Queen's Gate	17 February 2020	£2,500,000	£2,265,000	£2,650,000
Flat 3, 6 Queen's Gate	5 March 2020	£1,000,000	£1,325,000	£1,150,000
Flat 1, 5 Queen's Gate	29 October 2020	£1,440,000	£1,600,000	£1,500,000

Flat 1, 6 Queen's Gate	29 October 2020	£1,237,500	£1,230,000	£1,200,000

102. The above table also includes values for the properties as at October 2020. These are taken from a Strutt and Parker valuation disclosed by Prakash which I understand was carried out for Aura for the purposes of its lending.

103. It can be seen that even allowing (as explained above) for a plus or minus 7.25% range on Mr Alford's values, three of the properties (Flat 9, 5 Queen's Gate – undervalue £676,250; Flat 3, 6 Queen's Gate – undervalue £225,000 and Flat 1, 5 Queen's Gate – undervalue £40,000) appear to have been sold at an undervalue.

104. The position is no better for SSL even if the Strutt and Parker values disclosed by Prakash are applied. On the basis of this valuation, five properties were sold at undervalues (23 Queen's Gate Mews – undervalue £150,000; Flat 9, 5 Queen's Gate – undervalue £400,000; Flat 2 6 Queen's Gate – undervalue £150,000; Flat 3, 6 Queen's Gate undervalue £150,000 and Flat 1, 5 Queen's Gate – undervalue £60,000).

105. Turning to the loans raised by PX1 on the properties, there were at least four facility letters granted to PX1 from Aura namely:

(1) A facility letter dated 11 January 2019 for a loan of £2,041,000 secured on Flat 9 4 Queen's Gate[4] and 23 Queen's Gate Mews.

(2) A facility letter also dated 11 January 2019 for a loan of £1,339,000 secured on Flat 9 4 Queen's Gate and 23 Queen's Gate Mews.

(3) A facility letter dated 29 January 2020 for a loan of £1,945,775 secured on Flat 2, 6 Queen's Gate and Flat 3, 6 Queen's Gate.

(4) A facility letter also dated 29 January 2020 for a loan of £3,442,525 secured on 23 Queen's Gate Mews and Flat 9, 5 Queen's Gate.

All of these loans were to be accompanied by personal guarantees from Prakash.

106. Prakash provided a table purporting to show the history of the loans that were provided to PX1 from Auara pursuant to these facility letters. This table is not complete or correct as it omits an initial loan in the sum of £1,010,000 (most likely granted in January 2019). A completion statement is available for this

[4] I have assumed the references in the facility letters of 11 January 2019 to Flat 9, 4 Queen's Gate to be an error. The correct property is Flat 9, 5 Queen's Gate.

loan and Prakash referred to it in the course of his evidence. Fortunately completion statements and statements of account are available from PX1's solicitors in relation to the majority of the loans and I have based the following analysis upon those documents. The history of the loans appears to be as follows:

(1) January 2019- a loan of a gross amount of £1,010,000 which included a prepayment of retained interest in the sum of £45,450 ("**Loan X**"). Some £141,137.34 of this loan was directly applied in paying interest on a loan connected with the Crane Court / Lazuli development ("**the Lazuli Loan**"). In all, after the deduction of numerous fees and charges a net amount of £769,350.66 was available to PX1.

(2) January 2019 – a loan of a gross amount of £1,339,000 which included a prepayment of retained interest in the sum of £60,255.00 ("**Loan A**"). After the deduction of numerous fees and charges a net amount of £1,239,511,40 was available to PX1.

(3) July 2019 – a loan of a gross amount of £1,480,000 which included a prepayment of deferred interest in the sum of £32,875.15 ("**Loan B**"). Some £970,357.50 of this loan amount was applied in the discharge of an earlier loan which Prakash identified in cross-examination as being Loan X. The difference between the redemption figure and the gross amount of Loan X is explained by the fact that some of the retained interest (withheld by Aura when Loan X was taken out) was repayable. This meant that the net sum available to PX1 from Loan B (again after the deduction of additional fees and charges) was £417,318.45. A statement of account from PX1's solicitors shows that of the total available funds of just over £2M raised from loans A, B and X, some £1.64M was used to repay QD's loan and a further £33,000 used to discharge legal costs, leaving £317,000 available for other uses.

(4) Uncertain date in 2019/20 – two loans of gross amounts of £2,068,300 ("**Loan C**") and £3,500,000 ("**Loan D**") respectively. These loans were applied in the repayment of Loans A and B and in the repayment of the Lazuli Loan of £2,170,438.40. This left a balance available for PX1 in the sum of £163,954.42 (again after the deduction of additional fees and charges).

(5) April 2020 – a loan in the gross amount of £6,500,000 ("**Loan E**"). This was applied in the discharge of Loans C and D. This left a balance available for PX1 in the sum of £29,539.69 (again after the deduction of additional fees and charges).

(6) Uncertain date – a loan in the gross amount of £6,828,577 odd ("**Loan F**") I understand that this was used to discharge Loan E. It does not appear that any additional funds were made available to PX1 from this loan. This loan may have been with West One Loan Limited ("**West One**") (rather than Aura) who obtained a mortgage over the six properties sold to PX1 Ltd on 29 October 2020. On 16 February 2022 West One appointed receivers of these properties pursuant to its mortgage and I understand that at least some of these properties have since been sold.

107. Prakash has also provided schedules prepared by himself purporting to show how the proceeds of the various loans were applied. Again, I do not consider that these can be treated as reliable. There are few documents to support these schedules and they do not appear to adequately explain the disposition of the proceeds of Loan X (and make no reference to the discharge of some £141,137 odd of interest on the Lazuli Loan out of this sum). Prakash's schedules do not appear to add up and seem to suggest that a further loan of over £2M to Viking (as against a figure of £1.994M in Prakash's witness statement) was discharged from the loan proceeds – something which is simply not possible on the figures that I have set out above. Instead I consider the completion statements and statements of account provided by PX1's solicitors to be the best evidence as to how the proceeds of the loan were applied.

108. From these documents it is clear that the following payments were made:

Payment	**Amount**
Repayment of QD loan	£1,641,714.70
Repayment of Jenmark "loan" to cover balance of HMRC winding up petition	£56,448
Payment to HMRC in respect of further winding up petition	£163,002.77
Payment of interest on Lazuli Loan	£141,137.34
Repayment of Lazuli loan	£2,170,438.40

109. Once the various costs and charges (including the solicitors' own invoices) are deducted there is a potential balance of about £480,000 unaccounted for. In his schedules Prakash has claimed that a sum of £180,697.30 in respect of insurance liabilities of SSL from 2014 to 2017 and £295,737 spent on staff costs of SSL from 2017-2019. Together these amount to around £476,500. However, there is no supporting evidence to corroborate Prakash's claim that these payments were applied for SSL's benefit.

110. Moreover, it is abundantly clear that a substantial part of the sums from these loans by PX1 was applied in a manner that is not for the benefit of SSL. The most egregious examples are the payment of £141,137.34 in interest on the Lazuli Loan and the subsequent repayment of the principal of that loan in the sum of £2,170,438.40. In cross-examination Prakash accepted that the Lazuli Loan had nothing to do with SSL, and I note from the judgment in the Lazuli Claim that the borrowing in that case (also with Aura and West One) was said by Prakash to have been incurred to meet overrunning costs on that development. The Lazuli Loan was thus not a liability of SSL. Other substantial deductions from the loan proceeds shown in the completion statements, including the solicitors' costs in arranging the loan, arrangement and other fees, interest and council tax post-sale were all liabilities properly attributable to PX1 and not SSL and cannot be treated as an application of funds for SSL's benefit.

111. In total I consider that only £1,861,165.47 from the proceeds of the PX1 loans (being the repayment of QD loan, the Jenmark "loan" and the additional HMRC petition debt) can clearly be treated as consideration received by SSL for the sale of the properties to PX1. There may be some additional payments (such as staff costs or past insurance liabilities) which can also properly be attributed to SSL and which had been met by another company on its behalf although I am not currently in a position to assess the value of these. However, there is clear evidence that more than half of the monies raised from these loans was used to meet liabilities that were nothing to do with SSL.

112. Thus I am satisfied that the sales of the properties to PX1 have caused unfair prejudice to the members of SSL (including QPL) in a number of ways:

    (1) A number of the sales did not take place at market value. Even allowing for a range of plus or minus 7.5% on Mr Alford's figures, there was a total undervalue on the sale of three properties of £941,250[5]. The Strutt & Parker valuation gives a similar figure for the undervalue (on the sale of five properties) of £950,000. Adopting Mr Alford's figures with the

[5] For the avoidance of doubt I do not propose to give credit for the three properties where the agreed sale price payable to SSL was above Mr Alford's valuation of market value. Achieving a good price on one sale does not provide any justification for selling a different property at a significant undervalue. In any event, two of these sales (23 Queen's Gate Mews and Flat 1, 6 Queen's Gate) were within the plus or minus 7.25% range that I have identified.

qualification that I have already explained, I find as a fact that the undervalue on these sales was £941,000.

(2) The purchase price was not paid in full. Of the total consideration ostensibly due to SSL from PX1 on these sales of £13,077,500 (disregarding any undervalue) only about £1,861,000 has clearly been paid for SSL's benefit, and of the other liabilities identified by Prakash as having been discharged out of these sums, it appears that at the very most only around £475,000 can arguably have been attributed to SSL. There is thus (leaving aside the question of any undervalue) a shortfall in the consideration that should have been received by SSL for these sales of around £10.7M. I understand that a debt of £10,414,00 owed from PX1 to SSL was identified in a freezing order made post judgment in the Lazuli claim.

(3) Moreover, no steps were taken by SSL to obtain any security for the unpaid balance of the purchase price.

113. By his actions in this regard Prakash again breached a number of the fiduciary duties that he owed as director. He was not acting in a way most likely to promote the success of the company for the benefit of its members; in selling properties at an undervalue, he was not acting with reasonable care skill and diligence; in selling properties to a company controlled by him, he was in breach of his duty to avoid a situation in which he had a conflict of interest and a breach of his duty to declare that interest.

114. I accept Mr Moeran's submission that the explanations provided by Prakash for the structure for the sale to PX1 are implausible. I do not consider that any good reason has been advanced as to why the borrowing needed to take place through a third party rather than SSL itself. SSL was the owner of six very valuable properties and doubtless could have raised the relatively limited funds needed for its own use on the security of those properties. Nor do not I accept that the sale to PX1 was intended to raise funds to enable QPL to be paid off in cash rather than through a distribution of the properties. This is not consistent with the correspondence. Moreover, the sums that were being raised (taking into account the other liabilities that needed to be met) were nowhere near sufficient to enable such a cash distribution to be feasible.

115. There was never a proper assessment of which of the proceeds of the loans were being applied for SSL's benefit and which were not. I am satisfied that by this stage, to Prakash, the remaining properties in SSL were to be treated effectively as part of a common fund available to be used to meet the liabilities of whichever of the other companies that he owned or controlled was in need of funding. Thus he felt able to direct over £2.3M of the proceeds of the loan in

the repayment of the Lazuli Loan and interest thereon – something which had nothing to do with SSL at all.

116. Perhaps, the most credible explanation provided by Prakash for his conduct is that he was concerned by Mr Ugboma's conduct and wished to move assets out of SSL to provide "protection" from possible claims brought by Mr Ugboma / Alhaji. Yet this is of itself an admission that the transfers were made with a view to taking assets from SSL and defeating claims that may be brought, and only emphasises that these sales to PX1 were indeed unfairly prejudicial.

(5) Failure to apply payments for the benefit of SSL.

117. I am also satisfied that the payment of £368,685 made on behalf of QPL between April and August 2017 was also not applied for the benefit of SSL. This money, at Prakash's request, was paid to Crane Court as by this time SSL did not have a bank account. Prakash's explanation for this payment as it developed in the course of cross-examination is that this was in fact a payment to reimburse expenditure which had been incurred by Crane Court on behalf of SSL. Viking, he explained, had procured the payment by Crane Court of various sums on behalf of SSL. Viking had not paid them itself as by this stage (like SSL) it lacked a bank account of its own.

118. As I have already found, it is clear that Prakash operated the various companies that he owned or controlled as a single pot of money. In the absence of any disclosure on this issue I have no way of understanding the status of the balances on the accounts between the various companies that existed at this time. The accounts for PHL suggest that sums were owed to that company, although Prakash has produced a further schedule (yet again, not backed by any underlying documents) which purports to show a substantial debt owed by SSL to Viking. I am left in considerable doubt as to whether this is in fact the same debt as is owed to PHL or whether these two debts are different.

119. I therefore make my decision by reference to such contemporaneous documents as I have. QPL has satisfied me that the payment was indeed made to Crane Court at Prakash's request. In those circumstances I consider it is for him to demonstrate that this payment discharged a liability that was owed by SSL, either directly to Crane Court, or to another debtor of Crane Court. I have no detail of the amounts said to have been paid by Crane Court on behalf of SSL or what these payments are said to have been for. Indeed there are no documents in support of this contention at all.

120. I have also received a variety of explanations as to why SSL owed funds to Crane Court. Prakash has claimed that Viking had procured Crane Court to pay certain unparticularised expenses of SSL. Minesh (who was a director of Crane Court but took no part in its management) has claimed that Crane Court paid

certain salaries and employee tax and National Insurance on behalf of SSL. However, Prakash gave evidence that employee contracts were actually transferred from SSL to Crane Court, in which case those payments were no longer liabilities of SSL. Minesh also claimed that SSL owed Crane Court for arrears of rent for office space that it rented.

121. In the absence of any documentary evidence to corroborate these bare assertions I am not satisfied that any of the £368,685 paid to Crane Court at Prakash's / Viking's direction was properly owed to Crane Court by SSL and I find that the direction to make this payment has caused unfair prejudice to QPL. Again, Prakash was in breach of his fiduciary duties. He was not acting in a way most likely to promote the success of the company for the benefit of its members; he was not acting with reasonable care skill and diligence; he was in breach of his duty to avoid a situation in which he had a conflict of interest and in breach of his duty to declare that interest.

(6) Wrongful involvement in the Lazuli Claim

122. Finally, I am also satisfied that the involvement of SSL in the Lazuli Claim has also caused unfair prejudice. The basis upon which SSL was found to be jointly and severally liable for the judgment debt is not wholly clear from the judgment. It appears that the original intention in that case was that either SSL or Prakash would have a 65% share of the joint venture, but neither in fact contributed the capital to the project that had been intended. Nonetheless the original intentions of the parties, coupled with the mixture in the course of the Crane Court / Lazuli development of funds belonging to SSL and Crane Court meant that the judge treated both Prakash and what he referred to as "his companies" (a description which includes SSL) as liable to the Lazuli Claimants. I note that the judge found (at para [2(2)] of his judgment) that neither Prakash nor SSL contributed any funds (either directly or indirectly) to the purchase or development of the Crane Court / Lazuli project "despite [Prakash's] statement… that he had done so". I note also that SSL, along with the other defendants to the Lazuli claim was represented by leading counsel and that no appeal has been made on behalf of SSL against the judgment in that case.

123. I am satisfied of the following matters:

(1) SSL was a joint venture between Viking and QPL for the sole purpose of redeveloping the Hotel. At no time was there any joint intention on behalf of the shareholders in SSL that SSL should become involved in any other project. Specifically, there was no intention that SSL should become involved in the Crane Court / Lazuli development.

(2) Nonetheless, Prakash involved SSL in the Crane Court / Lazuli development. He did so by proposing that it should hold a share in the Lazuli joint venture company (although this did not come to pass) and subsequently falsely claiming that he / SSL had provided funds for the development. In doing so he ignored the interests of the members of SSL and the terms of the Shareholders' Agreement and thereby entangled SSL in a wholly separate development venture without the knowledge or consent of QPL. I note that the Lazuli judgment records that Prakash appears to have represented that SSL was a company owned by Prakash. This is of course not the case. Thereafter the intermingling of finances between the companies controlled by Prakash (including SSL) has meant that SSL has been found to be jointly and severally liable with Prakash and Crane Court for the large judgment debt now owed to Lazuli.

(3) Yet again, Prakash was in breach of his fiduciary duties. He was not acting in a way most likely to promote the success of the company for the benefit of its members; he was not acting with reasonable care skill and diligence; he was in breach of his duty to avoid a situation in which he had a conflict of interest and in breach of his duty to declare that interest.

(4) By involving SSL in the Crane Court / Lazuli development in this way Prakash has caused unfair prejudice to the members of SSL.

Conclusions on Unfair Prejudice

124. For the reasons set out above I am satisfied that there are four heads where QPL has demonstrated that unfair prejudice has been caused to the members of SSL by breaches of duty by Prakash namely:

(1) The failure to make repayment of the shareholders' loans on a *pari passu* basis;

(2) The sale of the six properties to PX1 without obtaining the payment of full consideration for those sales;

(3) The direction that QPL should make payment of £368,685 to Crane Court; and

(4) The involvement of SSL in the Crane Court / Lazuli development and the resulting judgment that was entered against it.

Was Prakash Dishonest?

125. QPL also seek a finding that Prakash's conduct and his breaches of duty as director were dishonest within the meaning of that word as held in *Royal Brunei Airlines v Tan* [1995] 2 AC 378, and as subsequently applied in *Barlow Clowes International Ltd v Eurotrust International Ltd* [2006] 1 WLR 1476 and *Abou-Rahmah v Al-Haji Abdul Kadir Abacha* [2007] 1 Lloyds Rep 115. That is to say, does the respondent know of the elements of the transaction which make it dishonest according to normally accepted standards of honest behaviour / honest conduct? In other words would an ordinary honest person, knowing what Prakash knew have acted in the same way?

126. On the basis of this test, I consider that Prakash's conduct in relation to three of the heads of complaint was dishonest. Those elements are:

(1) The sale of properties to PX1;

(2) The payment to Crane Court; and

(3) The involvement of SSL in the Lazuli Claim.

127. The common feature of these matters is that in each case Prakash was using SSL, a company that he had set up for a single joint venture with Alhaji / QPL in relation to the development of the Hotel, to fund a wholly separate development in which neither QPL nor Alhaji had any interest. In doing so he:

(1) Sold properties that belonged to SSL to PX1 (a company owned and controlled by Prakash) at an undervalue;

(2) Failed to obtain payment from PX1 of the agreed sale price for those properties;

(3) Applied a substantial part of the funds that were available from the sale of these properties towards liabilities that had nothing to do with SSL or the development of the Hotel, but were referable to the separate Crane Court / Lazuli development.

(4) Directed QPL to pay additional sums intended to meet SSL's outstanding liabilities to Crane Court (whilst failing to provide any evidence that Crane Court had previously discharged liabilities on behalf of SSL).

(5) So involved SSL in the Crane Court / Lazuli development that it was found to be jointly and severally liable for a very substantial sum.

128. The Crane Court / Lazuli development was a separate venture that Prakash had decided to engage in on his own account. He should not have involved SSL in that development in any shape or form, still less use it as a source of funds to

meet the liabilities of that project. I am satisfied that in doing so he acted dishonestly, siphoning assets from the Hotel development to repay Lazuli's creditors without any discussion with QPL. I do not consider this to be honest behaviour having regard to normally acceptable standards of honest behaviour or conduct. In my view Prakash saw the assets of SSL as effectively his to be used as he saw fit.

129. Moreover, in transferring properties from the joint venture vehicle of SSL into PX1 a company under his (or his family's) ultimate ownership, and doing so in some cases at an undervalue, and permitting a substantial part of the agreed purchase price to remain outstanding without any security, Prakash was preferring his own interests over that of the members of SSL. He himself has admitted that one of the reasons for his actions in this regard was to avoid possible actions or claims brought on behalf of QPL by Mr Ugboma or Alhaji. Again, I do not consider these to be the actions of a person acting by reference to an objective standard of honest conduct.

130. I take a different view in relation to the overpayment of the Viking loan. Whilst this was doubtless a breach of the Shareholders' Agreement, it was a partial repayment of an undoubted debt of SSL, and was reflected in the company's filed accounts. I therefore do not consider this to be a dishonest act.

The Role of Minesh

131. It is clear from their evidence and from the underlying documents that at all material times Prakash has been the leading force in the business activities of SSL, Viking and other related companies. He has been in day to day charge of both the finances and the executive decision-making for these companies. The role of Minesh has been significantly more limited. Indeed, in the course of his cross-examination, Prakash went so far as to describe himself as the "sole director" of SSL.

132. Minesh is a civil engineer by training. However, from 1992 onwards he became involved in the family businesses and became, initially, general manager of the Hotel. However, Minesh was at all material times also a director of SSL and thus subject to the duties that I have outlined above. His witness statement describes a rather naïve understanding of his role:

> "When I became a director, it felt to me like I was being made a proper partner with my brothers, that I was gaining an ownership stake in the Hotel. I knew that I had responsibilities for the administration of the Hotel but I did not understand that I was taking on responsibilities for the administration of SSL as a company. I was never given a copy of the memorandum and articles of association of SSL. I did not know these were important. I understood companies in a naïve way: companies owned assets

that made money and being a director of a company meant that you were part of the ownership structure for that asset."

133. However contemporaneous documents and the answers given in his cross-examination make it clear that Minesh has at all times been aware that with his role as a director of SSL came responsibilities. He was also aware that there were dangers with his brother's approach to the running of matters. His concerns were recorded in a number of documents that were placed in evidence before me. Thus in a document that he prepared in around 2006/2007 Minesh recorded a number of matters:

(1) First he was anxious to define the role that he would play in SSL / the redevelopment of the Hotel stating:

> "For my part, I am no longer prepared to be a passenger in the decision making process and find myself in situations which may not be of my choosing. It seems to me that both of you have decided development will be a full time occupation and that I should oversee the project. I don't agree. I think there will be an initial busy spell at the beginning but thereafter it will [be] at most two working days a week. The question is what I will be doing for the remainder of my time and I need to explore this carefully…
>
> For me work above all is enjoying what I do and in a good working environment, with good compatriots and a decent salary. The work would have to be of a type for which I have a talent and capability for. The worst case scenario of no work and full pay is NOT an option for me."

(2) In these documents Minesh tellingly set out the strengths and weaknesses of him and his brother. So far as Prakash was concerned Minesh described his strengths as "[r]aising finance, contractual issues, takes risks, taxation". Prakash's weaknesses were said to have included "poor accountability and financial control, ever optimistic, poor reporting." So far as Minesh himself was concerned he described his strengths as being "good operations skills, good customer relations skills, good employee skills, engineering background." And his weaknesses as being "no direct finance skills, no risks taken".

(3) On the subject of financial issues Minesh indicated that a summary of all the loan commitments from PHL and SSL and "any other that have implications for these two companies" would be required.

134. In a further document directed to Prakash and dated March 2007 Minesh showed himself needing to ask further questions about the financial

arrangements of SSL. In that document he mistakenly appears to have understood that about £3.5M had been loaned by SSL to Alhaji when of course the reality was the other way round (with the funds being advanced by QPL to SSL). Nonetheless the document is important because (a) it demonstrates that Minesh was seeking to obtain an understanding of the financial arrangements of SSL and (b) he was already aware that Prakash's approach to the running of companies was problematic. The letter identifies a number of issues with the running of SSL thus:

> "I believe that one reason for our troubles is that we fail to run [SSL] and [PHL] as proper businesses where all directors are accountable and there is a formal structure for reporting and decision making. We should have proper minutes of board meetings and decisions should be made by formal resolutions. There should be a proper accounts system in place."
>
> And
>
> "My guess is that the source of a lot of our problems lie in the various companies that you have incorporated but appear unable to stand by themselves. They have been propped by [PHL] and [SSL] with unquestioned and no return support. If this is the case it must stop! Any funds taken out for these operations must be approved and accounted for. A structure must be put in place for repayment and return on investment. I guess the big question here is the extent of your liabilities and your ability to service these liabilities. Only you know!"

135. In relation to SSL's accounts, Minesh has stated that there was no formal process for approving the accounts, and despite statements to the contrary contained within the accounts there were never any annual board meetings to approve them. Indeed, Minesh's evidence was that no board meetings of SSL ever took place. In his witness statement Minesh claimed that he was not aware that directors had to approve the company's accounts, and that in 2013 Prakash told him that he could sign the accounts off himself. Nonetheless, Minesh was aware (a) that such accounts existed and (b) that it was possible to obtain copies of them from Companies House. This is clear, because by 2008/2009 Minesh had taken it upon himself to obtain SSL's accounts from Companies House. He claimed that he did this because he was curious about how the Hotel had been performing and that he "would not have been able to read the accounts in a forensic way".

136. Nonetheless, Minesh would have been able to see the following from even a cursory look at SSL's 2008 accounts:

(1) A statement that he was a director;

(2) A statement that: "each director has taken all the steps that ought to have been taken as a director in order to be aware of any information needed by the company's auditors in connection with preparing their report and to establish that the company's auditors are aware of that information."

(3) A statement of directors' responsibilities which identifies among other matters, (a) their responsibility for preparing the annual report and the financial statements and (b) their responsibility for keeping proper accounting records.

(4) A statement that "[the] continued operational existence of the company is dependent upon the continuing support of its shareholders and bankers."

(5) That among SSL's debts it owed £2,053,211 to Viking and £2,045,000 to QPL.

(6) That it had total debtors of c£1.5M.

Minesh had some contact with the auditors during the preparation of the accounts providing them with information on the Hotel's finances, and could have informed them of his concerns.

137. Under cross-examination Minesh accepted that he was aware of a number of the responsibilities of directors. He knew that there should be a proper accounting system in place, that directors should take decisions together and that decisions should be recorded by formal resolutions. The cross-examination continued:

"Q. And you knew that none of this was in place for SSL?

A. Correct.

Q. And you did not insist upon this being put in place.

A. That's right."

138. In those circumstances:

(1) I am unable to accept Minesh's evidence in his witness statement that he was unaware that the accounts needed to be approved by the board of directors. Moreover, whilst I accept that Minesh may have been a reluctant businessman, I do not consider that a person who has accepted appointment as a director of a company can be wholly unaware that certain responsibilities attach to such a position, including responsibility for approving the accounts of the company.

(2) Even if Minesh was initially unaware of this responsibility, he was clearly sufficiently concerned about his position so as to independently obtain a copy of these accounts from Companies House. I do not accept that he did so solely to compare the Hotel with its competitors. Once he had obtained the accounts his responsibilities as a director were set out in black and white for him to read (although he claimed under cross-examination that he had not done so). Once these accounts were in his possession (no later than 2009) I consider that Minesh knew, or ought to have known, that as director he was under a duty to involve himself in the approval of the annual accounts. Minesh himself accepted under cross-examination that at some point prior to 2013 he became aware of this obligation.

(3) There is a disconnect between Minesh's apparent understanding of the account between Alhaji / QPL and SSL and the figures in SSL's account. Although Minesh appears to have understood that Alhaji owed SSL £3.5M, a quick look at SSL's accounts (which showed a total figure for debtors of c£1.5M) would have shown that this could not possibly be correct.

139. Further disclosed documents indicate that towards the end of the development of the Hotel Minesh was feeling very marginalised by Prakash. In an e-mail dated 7th June 2013 Minesh wrote to his brother as follows:

> "As we come to a critical time in the redevelopment, with construction hopefully complete by the end of September, I would like a candid and constructive conversation to review how events have progressed and plans henceforth. I also seek an understanding and clarification of our working relationship.
>
> Since moving to Quantum House I have not been included in anything to do with [Crane Court] or [ETFL]. When it comes to maintenance issues, I would be best placed to deal with them and nor do I seek financial recompense. I have concerns with my involvement with [SSL] feeling marginalised and anxious about the sales of the apartments.
>
> Monthly I have to ask you to pay me and every transaction however small has to go through you as you have a hold on the bank accounts. I am uncomfortable asking for pay and know I should have full access to these accounts. Your grip on the bank accounts means I don't have internet access and you hold the chequebooks under lock and key. The myriad accounts through which funds belonging to [SSL] get channelled through leave a muddled picture of the cash available. Whilst we don't have any revenue streams we are receiving funds

> from [QD] and VAT refunds. There needs to be accountability for all funds and an obligation to discuss decisions made on behalf of [SSL].
>
> I'm at a loss as to why there has been a handshake on the completion agreement value £13.38M when all the discussions prior suggest the maximum value of £12.5M. There may well be good reasons for this but this you have not made clear…
>
> To continue to work in a manageable way I would like to discuss the following:
>
> 1. I understand that in order to reduce our tax liability from the sale of the apartments we need to create an offshore company and bank account. I would like to understand details relating to this and particularly ownership and control…
>
> 3. I would like to get an understanding of our position with [Alhaji] and where we are with substantial company loan (£2.5M to £3.0M) given to him in 2007. At the time you assured me these sums would be exchanged for his shares or repaid but I do not believe this has happened. If we use an interest rate of 4% over 5 years, his indebtedness to [SSL] is nearly £3.0M to £3.6M. What are the plans for recovering these monies and how will he feature in the sale of the apartments?
>
> 4. The accounts that are filed with Companies House required all directors to have agreed to them I have not been involved in any discussions. I would like this to be rectified.
>
> 5. As a director of [SSL] I want access to our bank managers and be able to discuss any issues with him.
>
> 6. We need to formalise a structure for reporting and decision making."

140. Prakash replied to this e-mail on 13 June 2013. He did not directly answer most of Minesh's questions and concerns but indicated that he was "anxious to clear any misunderstanding that you may have".

141. A meeting between the brothers took place on 1 July 2013. Minesh kept a note of the discussions. His note indicates that in advance of the meeting he was feeling anxious about the meeting. The note states:

> "1. Prakash said he was not reporting to me and will never. I said that I never asked him to report to me. It is good that directors of a company

know what is happening in the company and I felt that I was out of the loop.

2. [Prakash] wanted to know why bring this up now. He has nothing to hide and all records are there available for my inspection.

3. [Prakash] did not want to talk about historical events with the hotel yet he said … he had taken up personal loans for £3M. He also said that because of this he does not have any obligation to anyone for any of his failures!

4. [Prakash] says the amount of funds put into [ETFL] account for [SSL] are smaller or at least equal to the funds that have gone from [ETFL] to [SSL]. He showed me a statement from HSBC … I said that even allowing for this there was still more monies going for [SSL] to [ETFL]. I showed him my analysis and he rebuffed this is being meaningless.

6. He said that he had a salary of 60K and the rest of his money came from [Crane Court]. He shuffles payment between accounts. The reason why there's no consistency in paying me is because he is dependent on rental from Crane Court which is never on time. Again I am sceptical about this because interest payments for Crane Court almost match rental income.

24. Re Bafarawa. Prakash says Bafarawa lent us £3M and we gave him £3M back so we are balanced. I said 'No'. He also got 25% shares in [SSL] and these are still on his holding. He said I didn't understand he will try to explain."

142. Minesh claimed in his witness statement that during the course of this meeting Prakash also told him that he (Prakash) could approve SSL's accounts on his own. However, under cross-examination Minesh accepted that even at the time he had an "inkling" that this was not the case, and Prakash's answer of course conflicted with Minesh's own prior understanding of the petition. I therefore do not consider that it would have been reasonable for Minesh to rely on Prakash's statement to that effect.

143. It is also clear from the notes of this meeting that Minesh was aware that funds were being switched between various companies controlled by Prakash and there was (to put it at the very lowest) a real risk that the net balance of these transactions did not favour SSL.

144. I do, however, accept Minesh's evidence that Prakash was secretive in his dealings with his various companies, only sharing information when he thought it was important for the recipient to know about it.

145. I turn now to consider Minesh's involvement with the properties that were sold to PX1. Following the completion of the development of the Hotel, once properties had begun to be sold off, Minesh took charge of the collection of the ground rent and service charges. This was carried out through another company Faraday, Facility Services Ltd ("**Faraday**") on behalf of SSL. Minesh was the sole director of Faraday. Minesh would use the monies collected to pay communal expenses on the block (electricity bills, building insurance, concierge salary etc).

146. In about 2017 Minesh was told by Prakash that four properties were to be transferred to QPL. Early the following year he was told by Prakash that Mr Ugboma on behalf of QPL had gone back on the deal. In his statement Minesh says that he did not understand why the empty properties were not rented out but was told by Prakash that it would be easier to reach a deal with Alhaji if the unsold properties remained vacant.

147. Minesh's evidence is that he did not know at the time of the sale that Flat 1, 4 Queen's Gate had been sold to Jenmark. However, some months later his brother Bharat came to him asking for keys and he (Bharat) told Minesh that he had bought the flat. Minesh's evidence is that he also did not know anything about any of the transfers to PX1. Prakash did not discuss them with him and he was not asked to approve any documents. Among the disclosure in this case are the minutes of a board meeting of SSL said to have taken place on 21 January which discussed granting a charge over Flat 9, 4 Queen's Gate to Aura as security for a loan to be taken out by PX1 from Aura. Minesh was not present at this meeting and notwithstanding a recital in the minutes that notice had been given to all directors, Minesh does not believe that he was notified of the meeting.

148. Minesh described being "shocked and horrified at what appears to have happened in respect of the assets transferred to PX1" and I am satisfied that he was not party to the transfers and did not know that they were taking place. Cross-examined about this, he responded as follows:

> "Q. If you had known that they were being transferred to PX1, would you have demanded to see the proceeds of sale paid to Solid Star?
>
> A. Yes.
>
> Q. And if Prakash didn't do that, would you have taken legal advice?
>
> A. I can't speculate what I might have done.
>
> Q. Yes, you can.
>
> A. I don't know.

Q. Had you known that they had been transferred out, you would have ensured that Solid Star got the money it was owed for them, wouldn't you?

A. Correct."

149. However, although Minesh may not have known that the properties had been transferred to PX1 he explained under cross-examination that:

(1) He was aware by about 2020 the properties (that is to say those that had been transferred to PX1) were being rented out on assured shorthold tenancies;

(2) He had a notion of the level of rents that they were capable of generating (c£450,000pa).

(3) That he (on behalf of Faraday) was not collecting the rents for these properties but he assumed that Prakash was collecting them;

(4) He thought the properties continued to belong to SSL, but was unaware where the income from those properties was going;

(5) The properties were not contributing to the insurance or service charges being met by Faraday.

150. Minesh was finally asked by Mr Moeran about what he would have done had he been aware of various matters at the time that they occurred. His answers were illuminating:

"Q. Had you seen the full accounts, you would have realised that Prakash was indeed stripping assets out and you would have stopped that, wouldn't you?

A. For this PX1?

Q. For PX1 to start with.

A. Yes.

Q. And had you seen accounts showing money being paid to Viking but not to QPL, you would have asked about that, wouldn't you?

A. As I understand it now, yes, I would have.

Q. Okay. And had you seen the full accounts and identified that money was being spent by SSL in favour of the Crane Court development, or money was being paid back on the Crane Court development, you would have asked questions as to why that was being done?

A. Correct.

Q. Okay.

A. As far as the Crane Court/Quantum House development, I really didn't see Solid Star had any involvement there.

Q. The Crane Court development, the judgment suggests that profit was generated of over £1 million. You were a director of Crane Court. Did you see any of that profit coming back to Crane Court, or did it go into other accounts?

A. I didn't see where that money went.

Q. In around 2017, [Alhaji] arranged for a payment of -- it ended up being £368,000-odd, possibly because of exchange rates; maybe £310, maybe £350, maybe £368 -- arranged for that payment to Crane Court Properties. Were you aware of that property payment being made?

A. No.

Q. Were you aware of what Crane Court was spending at that time, what it might have spent that money on?

A. No, I'm not aware.

Q. Are you aware of any debt owed by Solid Star to Crane Court Properties at that time?

A. I'm not aware of any.

Q. So if you had seen that being paid and it was flagged up as on behalf of Solid Star, you would have asked questions?

A. I would have."

Breach of Duty by Minesh

151. Having regard to the totality of the evidence regarding Minesh's position I am satisfied of the following matters:

(1) That Minesh knew that he had a duty to inform himself about the company's financial position.

(2) That he knew a company should have proper accounting procedures and records in place.

(3) That he knew by 2009 at the latest that company accounts needed to be approved by all of the directors of the company.

(4) That he had the measure of his brother and knew that Prakash was an optimistic risk-taker with a record for poor accountability and financial control and poor financial reporting.

(5) That he knew that SSL had shareholders other than Prakash / Viking and that duties were owed to these other shareholders.

(6) That he knew that funds were flowing back and forward between SSL and the other companies controlled by Prakash; and that the explanations provided for this by Prakash did not make sense.

(7) That he knew from about 2020 a number of properties that had been owned by SSL were being let out.

(8) That he was not aware of any rental income being recovered by SSL.

152. Overall I am satisfied that Minesh had good reason from at least 2007 onwards, to be concerned about SSL's financial position and the manner in which Prakash was controlling the company. However, despite this knowledge he did not take any adequate steps to inform himself of the company's financial position. Other than the downloading of SSL's accounts from Companies House in 2008/2009, and the modest requests for information that he made in 2007 and 2013 he appears to have taken no steps to inquire into the financial position of the company. Importantly, despite being aware that one of the responsibilities of a company director was to approve the company's accounts, he took no steps to ensure that he was involved in the approval of the accounts each year, nor did he take any adequate steps to obtain access to the underlying financial information which would have enabled him to be satisfied that they gave a true and fair view of SSL's financial position.

153. Ms Bayliss and Mr Kane have referred me to authorities which indicate the extent to which a director of a company may place reasonable reliance on his co-directors and employees in discharging those duties. In particular I was referred to the decision of the House of Lords in *Dovey v Cory* [1901] AC 477. In that case a bank had sustained substantial losses because its chairman and manager had connived to produce fraudulent balance sheets. The House held that a co-director who had not been involved in the fraud was not liable to the company in negligence since directors may properly delegate the duty to prepare accounts unless there are grounds for suspicion. Lord Halsbury LC held at 486:

> "I cannot think that it can be expected of a director that he should be watching either the inferior officers of the bank or verifying the calculations of the auditors himself. The business of life could not go on if people could

> not trust those who are put into a position of trust for the express purpose of attending to details of management."

However, *Dovey v Cory* was a case where the director had properly taken part in the approval of the company's accounts, but had relied upon (fraudulent) information provided by the chairman and manager. By contrast, here Minesh abdicated all responsibility for the financial management of the company. He did not seek any underlying financial information about the position of the company; he did not even seek to participate in the exercise of the approval of the accounts. In my judgment it is one thing to take an effective part in the management of the company but be deceived by fraudulent co-directors; it is altogether another not to take part at all.

154. Ms Bayliss and Mr Kane also relied upon *Huckerby v Elliott* [1970] 1 All ER 189 as authority for the proposition that a director is not under a general duty to supervise the running of the company so as to prevent frauds committed by co-directors or employees, *at least where there are no grounds for distrusting them* (my emphasis). In that case Lord Parker LCJ held at 193:

> "I know of no authority for the proposition that it is the duty of a director to, as it were, supervise his co-directors or to acquaint himself with all the details of the running of the company. Indeed it has been said by Romer J in *Re City Equitable Fire Insurance Co Ltd* ([1925] Ch 497 at 428-430) that amongst other things it is perfectly proper for a director to leave matters to another director or to an official of the company, and that he is under no obligation to test the accuracy of anything that he is told by such a person, or even to make certain that he is complying with the Law.
>
> It was pointed out that business cannot be conducted otherwise than on principles of trust, and accordingly as it seems to me on the evidence produced by the prosecution there is disclosed a state of affairs where the appellant left matters concerning the licences to her co-director, Mr Lunn, who was the secretary of the company and fully acquainted with the business. One asks oneself this: has she any reason to distrust Mr Lunn or to feel that he was not carrying out his duty?"

155. This was a case involving criminal liability for the acts of a co-director, and may be of limited assistance in this case. In any event, again there seems to me an important distinction to be drawn between a director who seeks to play a role in the management of a company, but who delegates certain matters to another director or an employee; and a director who is in effect a cipher; who (like Minesh) never attended a board meeting, never sought to call a board meeting, never approved a set of accounts and took no adequate steps to obtain financial information about the company. I am satisfied that the decision in *Huckerby v Elliott* does not provide *carte blanche* for a director to wholly abdicate

responsibility by delegating all matters to a co-director without conducting any proper enquiry or consideration as to whether such delegation is appropriate. As Lord Parker identified in the extract from his judgment set out above, in deciding whether to delegate matters the director must ask themselves whether they have any reason to distrust the proposed delegate or to feel that they were not carrying out their duty.

156. Here, not only did Minesh have reasons to distrust Prakash and to feel that he was not carrying out his duty, it is clear from the e-mails sent and notes kept by Minesh in 2013 he did indeed distrust his brother and considered that his brother was not carrying out his duty at that time. Despite this, he did nothing to restore proper governance to SSL.

157. On balance, I do not consider that Minesh's actions (or more strictly speaking, his inactions), whilst naïve and demonstrating an abdication of the responsibilities of his office as a director were dishonest. His conduct seems to have been borne from a dislike of confrontation and an unwillingness to stand up to his brother. Nonetheless, I am satisfied that Minesh has negligently breached his fiduciary duties as a director of the company. In particular I am satisfied that in effectively delegating the entire control of the company to Prakash he:

(1) Failed act in a way most likely to promote the success of the company for the benefit of its members as a whole (s 172 CA 2006).

(2) Failed to exercise independent judgment (s 173 CA 2006);

(3) Failed to act with reasonable care, skill and diligence (s 174 CA 2006); and

(4) Took no steps to ensure that the accounts of the company gave a true and fair view of its assets.

Causation

158. However, a breach of duty by Minesh is not, of itself, sufficient to hold him responsible for the unfair prejudice that I have found to have taken place. I must also be satisfied that that there is a causative link between his conduct and the prejudice that has been suffered. In the case of Prakash, such a causative link is plain, he was the actor directly responsible for the prejudicial acts that I have found to have taken place. The position in the case of Minesh requires more analysis. His breaches of duty were not positive acts, but were instead omissions which created the circumstances under which Prakash was able to operate unchecked.

159. On behalf of Minesh, Ms Bayliss and Mr Kane seek to argue that Prakash was so dominant and in control of SSL, that there was effectively nothing that Minesh could have done which would have made any difference. They point to the following matters:

(1) The informality of Prakash's management of SSL with no board meetings being held;

(2) The exclusion of Minesh from discussions and information relating to SSL's finances and the fact that when Minesh did ask for information (as he did in 2013) he was effectively rebuffed by Prakash;

(3) The fact that Prakash was prepared to fabricate minutes of board meetings which had never taken place.

(4) That if board meetings had been held, Minesh would not have been able to make SSL act differently. Prakash would have chaired the meeting and as chairman would have had the casting vote under SSL's Articles.

(5) That on the occasions that Minesh did raise complaints about Prakash's conduct he was rebuffed by Prakash who lied to him (telling him that the board was not required to approve the accounts).

(6) That there was effectively nothing that Minesh could have done. There was no one else on the board to whom Minesh could have disclosed his concerns and his resignation would not have made any difference as the company's articles permit a sole director to act (so that Prakash could have continued unchecked).

160. This argument is, in my view, a counsel of despair and one that I am unable to accept. It cannot be the case that one of two directors is entitled to sit back and not intervene or take steps to intervene in the governance of the company, when he is on notice that the co-director is acting in breach of his fiduciary duties to the company (even if not fully aware of the extent of those breaches). In his submissions Mr Moeran pointed to a number of steps that could have been taken by Minesh. If Minesh had persisted in his inquiries into SSL's financial arrangements he would have discovered that no proper account existed for the inter-company payments and loans. He could have sought injunctive relief on behalf of the company to prevent Prakash from dealing with the company's finances in this way, or at the very least informed the shareholders of the position so that they could take steps to protect their position. In my view Minesh simply abdicated all responsibility for the governance of the company. As HHJ Paul Matthews observed in *Re AMT Coffee Ltd* [2020] 2 BCLC at [222]

> "The reality is that if a person cannot properly perform the onerous duties of a company director that person should not hold office. [They] must accept the consequences of [their] actions or inactions."

161. Turning then to the specific acts of unfair prejudice that I have found to have occurred.

(1) The unequal loan repayments.

162. SSL's accounts show that up to 2011 (the last year where it is possible to understand what has taken place from the accounts) some £1,662,526 was repaid on Viking's £3.5M shareholder loan. Although the accounts also purport to show payments having been made to QPL, the reality was that any repayment of this loan (through payments made to Centrum on behalf of QPL) was trivial in amount. Mr Moeran argues that if Minesh had not acted in breach of duty then unequal repayments would not have been made. In contrast Ms Bayliss and Mr Kane argue that (a) Minesh had no way of knowing what payments were being made to Viking and (b) even if he had done so he had no knowledge of the terms on which QPL had invested in the development, as he had not seen, and was not a party to, the Shareholders' Agreement. However, in cross-examination Minesh went so far as to say that had he been aware of payments being made to Viking and not QPL he would have asked questions about this.

163. Minesh was certainly aware that QPL was a shareholder in SSL (and had a holding of at least 25%). He had also been (incorrectly) told by Prakash that SSL had loaned £3.5M to Alhaji. Had he properly examined SSL's annual accounts from 2008 and 2009, he would have seen that no loan from SSL to Alhaji was shown in the accounts, and that SSL's debtors in 2008 totalled only c£1.5M. He would also have seen that loans had been made to SSL by both Viking and QPL and that these were being repaid in different amounts. Examination of accounts for successive years would have shown that repayments were continuing in unequal amounts.

164. In my judgment the information contained in the accounts, which clearly conflicted with the information that was being provided to him by Prakash, should have caused Minesh to make further inquiries about the basis upon which funds were being lent to SSL by its members. Had he made such enquiries, he would either have discovered the truth or would have been put on notice that Prakash was acting in a manner such that steps needed to be taken to restore proper governance to SSL.

165. I am satisfied that in either event the position regarding unequal repayments of the shareholder loans would have come to light and could have been rectified. In the circumstances I am satisfied that Minesh's breaches of duty were causative of the element of the unfair prejudice.

(2) The Sales to PX1

166. Again, Ms Bayliss and Mr Kane argue that breaches of duty by Minesh did not cause the unfair prejudice that arises from the sales to PX1. For his part Mr Moeran accepted that Minesh could not have been in a position to have stopped either the sale to Jenmark or the first two sales to PX1 (those of 23 Queen's Gate Mews and Flat 9, 5 Queen's Gate Mews) from taking place. However, he argued, Minesh should have been put on notice after these first sales and could have taken steps to have prevented the later sales from taking place.

167. I accept Mr Moeran's submissions on this point. Although Minesh could not have prevented the first sales by Prakash, had he not abdicated all effective responsibility for SSL's finances, he would have become aware shortly after the first two sales to PX1, that (a) such sales had taken place, (b) that funds derived from the proceeds of sale had been applied in the discharge of outstanding liabilities, including a liability to HMRC that was the cause of a winding up petition that he should have known about and (c) that the purchase price had not been paid in full. Independently, of this breach, Minesh was also "on the ground" collecting ground rents and other payments from the properties and was (or ought to have been) aware that these properties had been let out, yet took no steps to identify whether the income from that rental was being received by SSL:

> "Q. Where was the income going?
>
> A. I don't know where it was going.
>
> Q. You didn't ask?
>
> A. No.
>
> Q. You knew SSL didn't have a bank account?
>
> A. Correct.
>
> Q. You didn't ask where the income was being paid to?
>
> A. No, I didn't."

In the circumstances I am satisfied that Minesh's breaches of duty were causative of the prejudice suffered by SSL in respect of the final four property sales.

(3) The Payment to Crane Court

168. Under the 2017 Contract, this payment was due to Viking rather than SSL. However, the purpose of this payment had always been to meet outstanding

liabilities of SSL and Prakash confirmed that the reason for the direction that the payment should be made to Crane Court was to reimburse expenditure which had been incurred by Crane Court on behalf of SSL. As I have already found I am not satisfied that this payment did in fact discharge a proper liability of SSL and the direction by Prakash that it should be paid to Crane Court thereby caused unfair prejudice to QPL.

169. I am satisfied that Minesh's breaches of duty was a cause of this payment. Although Minesh's evidence (which I accept) was that he had no knowledge of this payment, I consider that the circumstances under which the payment was made came about because Minesh had wholly failed to make adequate enquiries about SSL's financial position, and in particular, about the inter-company liabilities (something which had clearly caused him concern as far back as 2013). Minesh himself accepted in the extract from his cross-examination that I have set out above that if he been aware of this payment he would have asked questions. Had Minesh not breached the duties that he owed as director and pursued his enquires into the position regarding the inter-company liabilities, proper accounts of these loans would have been kept (to the extent that they continued to take place) and it would have been obvious that this payment was not being made for SSL's benefit, and timely steps could have been taken to recover it for the benefit of SSL.

(4) The Lazuli litigation

170. In respect of the Lazuli litigation, I am satisfied (for the same reasons that I have explained above in relation to the sales to PX1) that Minesh's breaches of duty were also causative of the unfair prejudice that resulted from the use of funds that should have been paid to SSL in the discharge of the Lazuli loan. More generally, I am also satisfied that Minesh's breaches of duty can be said to have been causative of SSL's liability to Lazuli under the judgment in the Lazuli Claim. Although Minesh played no part in, and was not responsible for, Prakash's initial representations that SSL would participate in the Crane Court development, it seems clear that an element in the judge's decision on liability in the Lazuli Claim must have been the intermingling of funds that took place between SSL and Crane Court. I am satisfied that if Minesh had not acted in breach of the duties that he owed as a director, and had properly pursued his concerns regarding these loans this intermingling of funds would not have taken place and SSL's liability to Lazuli could have been avoided.

Conclusion in relation to Minesh

171. I am therefore satisfied that Minesh's breaches of duty were causative of much of the unfair prejudice sustained by QPL. The exception is any loss to SSL that was caused by the first two PX1 sales.

Next Steps

172. For the reasons that I have set out above, I have found that the affairs of SSL have been conducted in a manner that has caused unfair prejudice to QPL and that both Prakash and Minesh bear responsibility for this.

173. It is therefore necessary to turn to consider the question of the appropriate remedy in this case. QPL is seeking an order that Viking, Prakash and Minesh are ordered to buy out its shares in SSL. The crafting of an appropriate remedy in this case is a matter which will need to be explored at a further substantive hearing at which questions of the quantum of QPL's loss can be considered. The parties have not sought, at this stage, a precise determination as to how liability for the prejudice I have found to have been caused should be split between Prakash and Minesh, and for the present I will confine myself to observing that:

    (1) As set out above, Minesh does not share responsibility with Prakash for all of the unfair prejudice that I have found to have occurred; and

    (2) My initial view is that as between themselves, Prakash as the controlling mind and instigator of the prejudicial acts, should bear the greater part of the responsibility.

174. In the next stage of the proceedings, various steps will need to be taken. Further financial information is likely to be required; accounts may need to be taken; and I will need to consider whether SSL is likely to be able to recover anything from PX1 in respect of the properties that were sold to that company. I will therefore need to hold a directions hearing to consider how the petition should proceed in the light of this judgment.

175. Ms Bayliss and Mr Kane make the point that any relief that I grant of QPL's petition may conflict with claims that SSL may itself have against Prakash and Minesh for breach of duty. I recognise that there is some force in this argument, although I do not consider that it can or should prevent me from constructing a remedy to compensate QPL for the unfair prejudice that it has sustained. The answer to this point is in my view to take steps to ensure that SSL (through its liquidator) is given an opportunity to participate in the next stage of these proceedings and to make representations as to how any remedy that I am minded to grant to QPL should be structured to take account of its own claims against its former directors.

176. I will therefore make the following directions:

    (1) This judgment is being handed down without a hearing.

(2) I will list this matter for a directions hearing to be listed by reference to counsel's convenience. I ask counsel to provide my clerk with an agreed time estimate for that hearing and a list of their available dates by 4pm on Wednesday 27 September 2023.

(3) I formally adjourn all consequential matters (including any application to appeal any aspect of my decision) to that directions hearing.

(4) At the directions hearing I will deal with any consequential matters arising from this judgment and give directions for the remedies stage of this petition.

(5) QPL is forthwith to provide the liquidator of SSL with (a) a copy of this judgment and (b) the date of the directions hearing (when available). The liquidator of SSL is not required to take any further action in respect of this judgment. However, if he wishes to participate in the directions hearing he must comply with the additional directions set out below.

(6) The parties are to exchange lists of any directions sought 14 days before the directions hearing.

(7) Seven days before the directions hearing the parties are to file with the court a composite table showing the directions sought and the extent to which these are agreed.

(8) Skeleton arguments for the directions hearing are to be filed and exchanged no later than 2 working days before the directions hearing. If any party is seeking permission to appeal, a summary of the proposed grounds of appeal must be included within that skeleton argument.

(9) Any documents filed with the Court should also be sent directly to me.

177. The existing freezing orders that have been made in this case shall remain in force until the directions hearing.

Conclusion

178. Finally, I must extend my apologies to the parties for the length of time that it has taken to provide this judgment. A number of factors, including a recent extended indisposition have contributed to this delay, and I am grateful for the parties' patience whilst awaiting my decision.

179. That is my judgment.