Neutral Citation Number: [2022] EWHC 1096 (Comm)

Case No: LM-2021-000180

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT (QBD)

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday 12th May 2022

Before :

MR SIMON COLTON QC
(sitting as a Deputy Judge of the High Court)

- -

Between :

MR ATUL KUMAR SINHA	**Claimant**
- and -	
(1) MR NICHOLAS JOHN TAYLOR	**Defendants**
(2) …	
(3) MR PAUL KENNETH KENDRICK	

- -
- -

Lucas Fear-Segal (instructed by **Fletcher Day**) for the **Claimant**
The **First and Third Defendants** in person

Hearing date: 9 May 2022

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APPROVED JUDGMENT

This judgment was handed down by the judge remotely by circulation to the parties and their representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Thursday 12 May 2022 at 10:30am.

Mr Simon Colton QC:

Introduction

1. This is a claim brought by Mr Atul Kumar Sinha against two defendants – Mr Nicholas John Taylor and Mr Paul Kenneth Kendrick.

2. There was at one stage an additional (second) defendant, but the claim against that defendant was discontinued, so I say no more about him.

3. The claim alleges that Mr Taylor and Mr Kendrick made fraudulent representations by which Mr Sinha was induced to invest £200,000 into NP Simulations UK Ltd (the '**Company**'). The claimant has identified a range of causes of action including deceit, conspiracy, and breach of contract, together with a range of possible remedies including rescission of the Share Subscription Agreement with return of the sum invested, and damages. Mr Sinha seeks interest, and costs.

4. The claim was issued in the Commercial Court on 22 February 2021. The claim form and particulars of claim were served on Mr Taylor and Mr Kendrick at their residential addresses two days later, and their solicitors – Langleys Solicitors LLP in Lincoln – acknowledged service on 10 March 2021. There was some delay in a Defence being served, but this eventually took place on 26 April 2021. The Defence was professionally drafted by Counsel.

5. A Costs and Case Management Conference took place before Picken J on 30 July 2021. The claimant on the one hand, and the two defendants on the other, were each represented by Counsel. At that hearing, the court approved the List of Issues; a timetable was set for pre-actions steps including disclosure and witness statements; and the claim was transferred to the London Circuit Commercial Court.

6. In advance of the Case Management Conference, the claimant indicated that he intended to be his only witness of fact; and the defendants indicated that they intended to be their only witnesses of fact.

7. On 23 August 2021, Commercial Court listing fixed the hearing of this claim for 9 May 2022, with a time estimate of 4 days.

8. The parties served their disclosure lists, and disclosure certificates, in mid-October 2021. On 28 October 2021, the claimant's solicitors, Fletcher Day, wrote to the defendants' solicitors setting out various ways in which they considered the defendants' disclosure to be deficient. The only response was a letter from Langleys on 5 November, indicating that they had ceased to act on behalf of the defendants. The notice of change of legal representative served by Langleys – signed by each of the defendants – gave both physical and email addresses of the two defendants where documents relating to the claim should now be sent.

9. On 1 December 2021, the third defendant, Mr Kendrick, emailed the claimant's solicitors, on behalf of both defendants, seeking an extension of time for the service of witness statements, due the next day. The following day, the claimant

declined that request. That same day, the claimant filed his witness statement with the court, and his solicitors emailed that statement to the email addresses provided in the notice of change of legal representative. The defendants did not serve any witness statements, nor seek any extension of time for doing so. Indeed, save for a single email in April 2022, the email of 1 December 2021 was the defendants' last engagement with these proceedings until the day of trial.

Conduct of the trial

10. On 4 May 2022, 5 days before the date listed for trial, apparently unaware that Langleys were no longer representing the defendants, Commercial Court listing emailed both Fletcher Day and Langleys, explaining that I would be hearing the trial of this matter, and asking for a file share link for the bundle. Fletcher Day replied, providing such link, and informing the court that Langleys had ceased to act. That email was copied to the personal email addresses of both defendants.

11. On the date of trial, the claimant attended in person, together with his legal representatives.

12. Both of the defendants were present at the trial, but were unrepresented. Although the defendants had received the link to the trial bundle five days earlier, they had not downloaded it, and I gave them time to do so. Equally, although they had had Mr Sinha's witness statement since last December, they had not read that statement (or not recently) and so I allowed them time for that too.

13. By CPR 32.10, if a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission. This prohibition amounts to a sanction within the meaning of CPR 3.9, and so an application for permission to call a witness for whom no witness statement or summary has been served requires an application for relief from sanctions under CPR 3.9. No such application was made by the defendants. In any event, bearing in mind the three stage process for such applications laid down in *Denton v TH White Ltd* [2014] EWCA Civ 906, any such application would have been very unlikely to succeed: the defendants' breach was both serious and significant, in the context of the case, since it affected all of their potential witnesses, and endured up to the day of trial; there was no good reason for it – the primary reason appearing to be that the defendants could no longer pay their solicitors; and to have permitted the late service of witness statements, or oral evidence without witness statements, would have been unfair to the claimant in either requiring his counsel to cross-examine without proper preparation, or necessitating an adjournment of the trial.

14. As a result, the position at trial was that, in addition to the documentary evidence in the trial bundle (which had been prepared unilaterally by the claimant's solicitors, given the non-engagement of the defendants), I heard oral evidence only from the claimant. I did not permit the defendants to give factual evidence which could and should have been included in witness statements. I did not allow them to advance any positive case by reference to facts which were not contained in the admissible evidence. However, I allowed the defendants to test and challenge the claimant's claim by cross-examination of Mr Sinha, and by opening

and closing submissions. While on occasion the submissions of the defendants strayed into giving evidence of factual matters, I made clear to them, and to the claimant, that I would not be giving any weight to such matters.

15. In conducting the trial, and in reaching my judgment, I have also had regard to the pleaded Defence of the defendants, and the agreed list of common ground and issues annexed to the case management order of Picken J. I have assumed that the defendants continue to advance their pleaded defences, even where they made no reference to them in their oral submissions.

Approach to the evidence

16. I must make findings of fact on the balance of probabilities. In making such findings, I have regard to the witness evidence, the underlying documents, the submissions made by or on behalf of the parties, and the inherent probabilities of the matters alleged.

17. Mr Sinha was called as a witness and confirmed that his witness statement was true. He was cross-examined by each of the defendants, and I also asked some clarificatory questions. It was never suggested to Mr Sinha that his evidence was untruthful in any way, and having read his witness statement, and seen Mr Sinha in the witness box, I have no reason to doubt that his written and oral evidence was a truthful description of his recollections. Accordingly, I accept his evidence in its entirety.

18. As previously indicated, there is no witness evidence from the defendants. In *Royal Mail Group Ltd v Efobi* [2021] UKSC 33, the Supreme Court addressed the issue of adverse inferences which may be drawn in such circumstances. Lord Leggatt JSC held at [41], in summary, that whether or not to draw an adverse inference "*really is or ought to be just a matter of ordinary rationality*", using "*common sense*". He indicated, however, that:

> "Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole."

19. Mr Fear-Segal submitted that I should also draw adverse inferences from the absence of documentation which, if the defendants' case were correct, would have been available to them and disclosed in the course of proceedings. As it was expressed by Arden LJ in *Wetton (as liquidator of Momtaz Properties Ltd) v Ahmed* [2011] EWCA Civ 610 at [14], documentation may be "*conspicuous from its absence*" and I may be able to draw inferences from missing documentation.

20. In the present case, I consider I can draw adverse inferences from the absence of witness evidence from both Mr Taylor and Mr Kendrick. Their evidence would plainly have been material to the matters in issue. Their Case Management Information Sheet indicated that both intended to give evidence. Their continued

intention to do so was implicit in their email to Fletcher Day of 1 December 2021. And yet, no attempt was made to serve witness statements in any form, nor to give evidence on oath, at any time. I infer that the defendants could not have provided a credible response to the allegations of Mr Sinha. This affects not only Mr Sinha's evidence of facts within his own knowledge (such as what was said or not said at meetings he held with the defendants), but also in relation to matters which he did not personally know but suspected (such as his allegation that in making false statements the defendants were acting dishonestly).

21. I do not, however, draw any additional inference from the scarcity of documents disclosed by the defendants. By the time of these proceedings, the Company had gone into liquidation. At every stage, including when represented by solicitors and counsel, the defendants indicated that documents belonging to the Company were no longer within their control. In their disclosure certificate, they said that they had asked the liquidators to confirm what documents the liquidators had, but again indicated that all such documents were no longer within their control. Documents belonging to the Company are not, therefore, conspicuous by their absence. As for the defendants' personal documents (text messages, and the like) they would not necessarily have been disclosable in respect of any of the identified issues for disclosure. Overall, therefore, while the absence of documentation may be regarded as suspicious, it is not clear-cut that the defendants acted improperly in the disclosure they gave, and so I draw no inference in this regard.

Findings of fact

22. On the basis of the evidence I have received, and the adverse inferences I have drawn, I make the following findings of fact.

Background matters

23. Mr Sinha is a citizen of India. He was previously a pilot for a number of commercial airlines, including Singapore Airlines and Qatar Airways. In April 2018, he moved to England.

24. In light of his background, Mr Sinha decided to start his own business in the aviation sector, and before moving to England he started researching and planning possible business opportunities in early 2017. That research showed that there was good demand for flight training centres for new pilots in the UK, particularly around London.

25. To start a business in the UK, Mr Sinha needed a Tier 1 Entrepreneur Visa. A condition of this visa was that he had £200,000 available to invest in a new or existing UK business. He raised these funds by selling his property in the United States.

Statements made to Mr Sinha before he invested in the Company

26. In September 2018, Mr Sinha came across an advertisement placed by the Company on the Angel Investment Network website. I infer that the advertisement had been placed by the defendants. The advertisement said that the

Company was seeking investors and that, broadly, an investment in the Company would generate a return. Mr Sinha made contact with Mr Taylor, the first defendant, and met with Mr Taylor and Mr Kendrick, the third defendant, on or around 15 October 2018.

27. The defendants told Mr Sinha about the operations of the Company and their plans for its expansion, including their aim of purchasing a second flight simulator. They did not tell Mr Sinha, however, that the rent on for the Company premises was significantly overdue, nor say anything to suggest that the Company was insolvent or struggling financially; on the contrary, they suggested the opposite.

28. Mr Sinha was impressed with what he had been told. He believed it was a company with a growing business and a good future.

29. That view was reinforced by Slide Deck presentations he received. One such presentation was downloaded from the Angel Investment Network website in September 2018; another was received from Mr Taylor on 25 October 2018; and a third was received from Mr Taylor in March or April 2019 – although I note this last version came after Mr Sinha's investment, and so cannot have induced it. These Slide Decks all forecast good growth in the Company's turnover and profitability in the coming years, and stated that investment was being sought to enable the purchase of a second flight simulator.

30. Mr Sinha was also encouraged by two financial modelling documents. One was downloaded from the Angel Investment Network website, labelled "*Nick's NPS_Financials v0.7.xlsx*"; the other was emailed directly by Mr Taylor on 25 October 2018. Each of these contained detailed Profit and Loss Accounts, Balance Sheets and Forecasts which purported to take into account any third-party loans or debts that the Company had. They gave the clear impression that the Company was, at that time, in good financial health.

31. In mid-to late-October, Mr Taylor also told Mr Sinha that the plan was to buy two new flight simulators with the funds Mr Sinha would invest.

32. On 23 October 2018, Mr Sinha sent Mr Taylor a list of due diligence questions, provided to Mr Sinha by his accountant. Mr Taylor replied, copying in Mr Kendrick, on 25 October. That reply answered the questions asked, and attached the Slide Deck presentation I have mentioned. Mr Sinha's accountant expressed 'reservations' about this investment in an email of 29 October 2018, but Mr Sinha's evidence, which I accept, was that at no point did Mr Sinha's accountant tell him not to invest.

33. On 9 November 2018, Mr Sinha signed a 'Memorandum of Terms' with the Company. The defendants had signed this document, in their capacity as directors of the Company, the previous day. The Memorandum, according to clause 2, "*sets out the terms agreed in respect of a new investment to be made into [the Company] for the purpose of providing the Investee with additional working and growth capital*".

34. On or about 13 November 2018, Mr Sinha again met with Mr Taylor to discuss Mr Sinha's planned investment. Mr Sinha was again impressed with Mr Taylor's plans for the business. Mr Taylor did not mention that the Company was insolvent, had overdue debts, or was otherwise struggling financially. Mr Sinha decided to proceed with the investment.

35. Shortly after, Mr Sinha held a further meeting with Mr Taylor. Again, there was no suggestion that the Company had overdue debts, nor that Mr Sinha's investment would be used to settle such debts.

36. Before investing, Mr Sinha reviewed the 2016 and 2017 annual accounts. Although those accounts showed debts of the Company due within a year of the relevant accounting date, he assumed that they had been superseded by the Slide Decks and financial documentation he had been provided, which he understood to provide a more current, accurate and up-to-date picture of the Company's financial position.

37. Mr Sinha's evidence, which I accept, is that in reliance on the Slide Deck presentations, the financial documentation and the verbal assurances he received from the defendants in relation to the Company and the intended use of his money, on 13 November 2018 he signed three agreements: the Director's Service Agreement; the Job Creation Agreement; and the Share Subscription Agreement.

Parties to the Share Subscription Agreement

38. There is a pleaded issue as to whether the defendants personally were party to the Share Subscription Agreement.

39. On its face, it is clear that there were three parties or groups of parties to this agreement. First, there was the claimant, Mr Sinha. Second, there was the Company, NP Simulations UK Ltd. Third, there were "*The persons named in Schedule 1 Part 1*", described as the 'Directors'. The persons named in Schedule 1 Part 1 included both of the defendants, Mr Taylor and Mr Kendrick.

40. In clause 1.1 there was reference to undertakings and warranties being given "*by the Company and the Directors under this Agreement*", and in clause 2.1 it was stated that "*the Company and the Directors each warrant to and undertake with the Investor in the terms of the warranties*".

41. The Directors were also identified as giving promises, undertakings, covenants, confirmations or warranties, separately from the Company, in clause 2.2, clause 5.3, clause 5.4, clause 6.1, clause 6.2, clause 6.4, clause 6.5, clause 6.6, clause 6.7, and clause 6.8.

42. In my judgment, it is clear that the Directors were personally party to the Share Subscription Agreement. They did not, when signing it, bind only the Company. Rather, when signing this agreement they also bound themselves, in their personal capacities.

43. It is also, in my judgment, more likely than not that the defendants knew they were party to the Share Subscription Agreement. They knew they were making

representations in their own capacity, and not merely on behalf of the Company. I make this finding on the basis, first, that the agreement is clear on its face in this respect; and secondly because the defendants have failed to come forward to give evidence as to their state of mind at the time, from which I am entitled to draw, and do draw, an adverse inference.

44. I would add that – although I have found the defendants were personally party to the Share Subscription Agreement, and knew it – I do not consider that matters to the claim in deceit. In my judgment, if a director signs an agreement on behalf of his company, knowing that the document contains false representations, and intending the other party to rely on those representations, which the other party does, the director can be personally liable in deceit even if he has no personal contractual liability under the agreement. As Lord Hoffmann put it in *Standard Chartered Bank v Pakistan National Shipping Corp* [2002] UKHL 43 at [22], "*No one can escape liability for his fraud by saying: 'I wish to make it clear that I am committing this fraud on behalf of someone else and I am not to be personally liable.'*"

Representations made in the Share Subscription Agreement

45. A number of relevant representations were made to Mr Sinha in the Share Subscription Agreement.

46. The Share Subscription Agreement stated at clause 1.3, "*The Company shall apply the Subscription Sum solely in providing working capital for the Company unless the Investor agrees otherwise in writing*". While expressed as a contractual promise as to what would occur in future, Mr Sinha's evidence is that – consistently with what he had been told previously – he relied on this as meaning that the Directors intended that his investment would be used in the expansion of the Company – such as by the purchase of a second flight simulator – and not on the repayment of overdue debts. His evidence is that he was "*reassured by the various promises the Company and its directors, including the defendants*" made in the Share Subscription Agreement.

47. Warranties given by the Company and the Directors, including the defendants, included that all statements and figures in contained in the business plan, the set of historical financial statements, and the set of future projections provided to Mr Sinha were true and accurate in all respects; the documentation did not omit to state any facts, circumstances or opinions that could make inaccurate or misleading any facts, opinions, forecasts, projections or assumptions contained in the documentation; the Company did not have any borrowings or indebtedness other than as disclosed in management accounts; and there were no contingent liabilities in relation to any property occupied by the Company other than rent and rates and service charge.

48. There is no evidence that Mr Sinha gave particular thought to the warranties in the Share Subscription Agreement, which had been prepared for him by his investment advisor, InvestUK. However, the defendants' willingness to give these warranties lends weight to Mr Sinha's evidence that they had already led him to understand that they had disclosed everything material about the finances

and prospects of the Company, and there were no significant debts of the Company of which he was unaware.

Events after signature of the agreements on 13 November 2018

49. In accordance with the Share Subscription Agreement, on 21 November 2018 Mr Sinha transferred £200,000 to the Company, in return for 1,667 shares in the Company being issued to him.

50. Thereafter, Mr Sinha made numerous requests for information about the Company, but received no meaningful information from the defendants who repeatedly dismissed his enquiries.

51. What Mr Sinha did, finally, discover, when he obtained bank statements for the Company in February 2019, was that the sum he had invested had not been spent in the manner he anticipated. Rather, it had quickly been used to pay off a number of overdue debts of the Company, but the Company still had a number of overdue loans, and the rent for the Company's premises was also overdue.

52. Mr Sinha also discovered that a number of payments were made to the defendants or their associates, with descriptions implying that they were to settle pre-existing debts. These included – by way only of example – within a week of Mr Sinha's investment being received – £1,500 to Mr Kendrick's wife described as "*Final Loan Repay*"; £2,500 to Mr Kendrick himself described as "*Pt Salary Backpay*"; £2,500 to Mr Taylor marked as "*NJT1 back pay*"; £16,000 paid to Mr Taylor marked "*Loan Repay SM*"; and £4,000 to Mr Kendrick marked "*Pt Salary Backpay*". A fuller list of the payments is set out in paragraph 32 of the Particulars of Claim and, I note, was admitted in paragraph 32 of the Defence – although I also note that in paragraph 17 of the Defence it is denied that the claimant's investment was used to pay off third party loans or debts (even though the only sums in the bank account used to pay these amounts was the money from Mr Sinha's investment).

53. As Mr Sinha summarises the position, within two months of his investment going into the Company, the vast majority of the £200,000 he had invested had gone, having been transferred out of the Company bank accounts by the defendants acting as directors of the Company. Nothing useful was purchased for the Company with the funds which, on his evidence, was contrary to what he had been promised by the defendants.

54. The details of what happened to the Company thereafter are of relatively little importance. In summary, in November 2019, the Company's directors passed a board resolution placing the Company into administration. On 5 June 2020, the Company resolved that it should be wound up voluntarily. Shortly in advance of this, on 22 May 2020, Mr Taylor signed a statement of affairs for the Company, identifying an estimated deficiency of assets against liabilities as regards members of the company of £1,142,798 odd.

The claim in deceit

The elements of a claim in deceit

55. As summarised in Clerk and Lindsell on Torts (23rd ed) at ¶17-01: "*where a defendant makes a false representation, knowing it to be untrue, or reckless as to whether it is true, and intends that the claimant should act in reliance on it, then in so far as the latter does so and suffers loss the defendant is liable*".

The falsity of the statements made to Mr Sinha

56. I find as a fact that statements made to Mr Sinha were – to the knowledge of the defendants – false in at least the following material respects.

57. First, the Company was insolvent, or bordering on insolvency, at the time of Mr Sinha's investment. The defendants knew that. As Mr Sinha put it in his witness statement, they must have known that the Company had no viable future. This was a material fact which they knew they should have warned Mr Sinha of, but they did not do so. On the contrary, they conveyed to Mr Sinha the very opposite impression.

58. Second, there was no basis in reality for the increasing valuations of the Company set out in the Slide Deck presentations. While these were forecast numbers, and not guaranteed, there was no justifiable basis for having any optimism at all as to the future of the Company. Again, the defendants knew that.

59. Third, there were very significant debts of the Company which had not been disclosed to Mr Sinha. The existence of these debts became clear when Mr Sinha's money was used to repay them – or some of them – immediately after the investment was made.

60. Fourth, I find that the defendants did not genuinely intend to use Mr Sinha's investment for the purpose they had given him to understand it would be used for – that is, to invest in expanding the business for good commercial reasons. Rather, they intended to use the money in part to settle the Company's debts, many of which were apparently owed to the defendants themselves.

61. As evidence of the general dishonesty of the defendants, Mr Fear-Segal invited me to find that some of the payments which the defendants caused to be made from the Company's funds after Mr Sinha's investment did not settle *bona fide* debts of the Company; rather, the payments were examples of the defendants lining their own pocket. There was no pleaded case to that effect, and no opportunity for the defendants to meet that argument with disclosure or witness evidence, so I decline that invitation. But, even assuming these sums were properly due from the Company, the fact that such large sums were paid, so quickly, to the defendants themselves, provides strong support to Mr Sinha's case that the defendants had deliberately misled the claimant as to the true financial position of the Company, and as to their intended use with the sums he invested.

62. The defendants argue in paragraph 36 of their Defence that they had disclosed to the claimant that the Company was trading at a significant loss. They argue that

the financial statements for the Company for the year ending 31 December 2017 showed significant net liabilities. While I accept that the defendants knew that the Company was running at a significant loss, I reject the argument that this had been fairly disclosed to Mr Sinha. As I have held, the impression given to Mr Sinha as to the state of the Company's finances was much more rosy, and was deliberately false and misleading.

63. In cross-examination, it was put to Mr Sinha that he knew that further sums would need to be raised in addition to his investment – a total of £330,000 was needed, in order to both acquire a second flight simulator and obtain recognition by the Civil Aviation Authority as an Approved Training Organisation. Mr Sinha accepted that he knew that an additional £130,000 would be required on top of his investment, but he said he was told there would be no problem with the Company getting this, and there were 10 possible investors already lined up, with lots of fall-back options. The implication of the defendants' questioning was that Mr Sinha knew that there were no guarantees that the Company's business would succeed, and so could not have been misled by forecasts of future growth and profitability. I do not accept that argument. I find that Mr Sinha was led to believe – as the defendants intended – that the defendants had good grounds to believe that the Company would be a success; but in truth the defendants had no such good grounds, and they knew that the Company had substantial unmet liabilities.

Intention and inducement

64. I find as a fact that Mr Sinha was induced to make his investment by the false representations made to him by the defendants. This was what they intended. It was reasonable for Mr Sinha to rely on what he was being told by them, and he did so rely.

65. Without the statements being made, Mr Sinha would not have agreed to make the investment he made. Equally, if the true position had been disclosed – if the false statements had been corrected – then he would have refused to go ahead.

66. This is really a matter of common sense: it would have been commercial folly to invest substantial sums in a company which lacked any real prospect of future success, simply to watch those funds be spent on historic debts, and to allow the existing directors to pay substantial sums out of the Company to themselves.

67. The defendants in the Defence denied that the claimant was induced to enter into the Share Subscription Agreement by any representations of the defendants. They argued that he had conducted no due diligence in advance of his investment, and been advised by his accountant not to proceed with the investment, but chose to go ahead with the investment because he needed to do so for immigration purposes. I reject these arguments. As I have found (see, for example, paragraph 32 above), Mr Sinha did undertake due diligence in advance of his investment. While I accept that Mr Sinha was motivated to make an investment by a desire to meet the requirements of his visa, I do not accept that this meant that he did not care one way or other about the merits of the investment. His evidence was that he was "*seeking a genuine investment opportunity that would generate a decent return over time*", and I accept that evidence. As he said in his evidence, if he had just wanted any investment, without regard to its financial viability, he would not

have bothered looking for a business in the aviation sector – a sector with which he was familiar, and in which he was able to play a role. He also noted that it was a requirement of his visa that his investment created two new full-time employment positions with a minimum salary level – so it would have made no sense to invest in a failing business. Moreover, the £200,000 he invested was significant to him: it represented a large chunk of his lifetime savings.

Loss

68. I find that, in relying on the false representations made to him, Mr Sinha suffered loss. He lost all of the £200,000 he invested in the Company. He never received any payment from the Company, nor value for the shares in the Company to which he subscribed, nor has he any prospect of doing so.

The claim in unlawful means conspiracy

69. In light of the findings I have made, I find the claim in unlawful means conspiracy also succeeds. The first and third defendants combined with the intention of causing loss to Mr Sinha by unlawful means – the unlawful means being the making of false statements. They acted dishonestly, working together to defraud Mr Sinha of his £200,000. That is sufficient to establish the tort of unlawful means conspiracy: Clerk & Lindsell on Torts at ¶23-105. However, no greater nor different loss is established by the claimant in respect of this additional cause of action.

Other causes of action

70. In light of the findings I have made, I need make no findings as to the remaining causes of action. Rather, I would note only the following:

    i) It is not clear to me that – even if I had found that false statements were made carelessly, rather than dishonestly – the alternative claim in negligent misstatement could have succeeded against the defendants. It seems to me to be more likely than not that, when conducting meetings with Mr Sinha and providing documentation, the defendants were acting in their capacity as directors of the Company, and assumed no responsibility personally to Mr Sinha for the statements they made: compare *Williams v Natural Life Foods* [1998] 1 WLR 830, 835B-C. While the defendants did accept personal contractual liability for warranties given under the Share Subscription Agreement, that is not the same as having assumed a personal responsibility to Mr Sinha for statements made outside the scope of that contract.

    ii) As for the claim for breach of the Share Subscription Agreement, the pleaded claim related only to breaches which occurred after Mr Sinha invested – a failure to give him access to the Company's books and accounts; spending the money invested on third party debts and loans; and failing to keep Mr Sinha informed of facts affecting the financial performance and solvency of the Company. But there was no good evidence that these breaches caused Mr Sinha any loss. Given the debts of the Company, and its lack of prospects, once Mr Sinha's money had been

invested in the Company, the likelihood was that he would never have received any return, even if the identified breaches had not thereafter been committed.

Remedies

71. In the circumstances, I am satisfied that the defendants are both liable for the tort of deceit, and the tort of unlawful means conspiracy.

72. A claim to rescind the Share Subscription Agreement was abandoned at trial. In my judgment, the appropriate remedy here is in damages – and the appropriate quantum of damages is £200,000 – being the amount invested and lost by Mr Sinha. There is no plea that Mr Sinha failed to mitigate his loss. Nor, on the evidence I have seen and heard, do I consider that Mr Sinha in fact failed to do so, nor that he has managed to reduce or avoid his loss to any extent.

73. Since the defendants acted together in this wrongdoing, they are jointly and severally liable for these damages.

Conclusion

74. For these reasons, I will order that the defendants are jointly and severally liable to pay damages to Mr Sinha in the principal sum of £200,000.