Neutral Citation Number: [2025] EWHC 564 (Comm)

Case No: CC-2023-BHM-000040

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
CIRCUIT COMMERCIAL COURT (KBD)

Birmingham Civil Justice Centre
Priory Courts, 33, Bull Street, Birmingham B4 6DS

Date: 12 March 2025

Before :

HHJ WORSTER

- -

Between :

S U Consultancy Ltd

Claimant

- and -

(1) Gurmit Singh
(2) Balvinderjeet Kaur
(3) Miura Distribution Ltd

Defendants

and by Part 20 Claim between :

(1) Gurmit Singh
(2) Balvinderjeet Kaur
(3) Miura Distribution Limited

Part 20 Claimants

- and -

(1) Sangeeta Uppal
(2) Sarbjeet Singh
(3) Furdeco Limited
(4) Resource Employment Ltd
(5) Andrew Brookes
(6) S U Consultancy Ltd

Part 20 Defendants

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Avtar Khangure KC (instructed by **Aspect Law Limited**) for the **Claimant and Part 20 Defendants**
David Lewis KC and Michael Maris (instructed by **Morr and Co LLP**) for the **Defendants and Part 20 Claimants**

Hearing date: 13 December 2025

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Approved Judgment

This judgment was handed down remotely at 2 pm on 12 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ WORSTER :

1. The main Judgment in this case was handed down on 24 June 2024, and a Supplementary Judgment dealing with the issue of date of loss was handed down on 15 November 2024. The parties were unable to agree consequential orders, and the matter was listed for a further hearing on 13 December 2024. In particular, the parties were unable to agree the terms of the account to be taken on the Part 20 claim.

2. Much of what was in dispute in terms of consequential orders was determined at the hearing on 13 December 2024, but the Defendants asked for the opportunity to make considered submissions in response to the arguments raised by Mr Khangure KC in his skeleton argument for the hearing on 13 December 2024 as to the end date of the account I ordered. I agreed to that course, and have since received written submissions from Mr Lewis KC and Mr Maris dated 23 December 2024, and written submissions in reply from Mr Khangure KC dated 13 January 2025.

3. The background to the issue and the findings of fact made following the trial are set out in the judgments I have already given, and I do not repeat them here.

The end date of the account

4. Paragraph 3 of the draft minute of the Order made at the hearing on 13 December 2024 provides as follows:

> *It is declared and ordered that SU holds Miura's Business on constructive trust for Miura and must account to Miura in respect of costs incurred and the income and profits which have arisen from 31 July 2020 until 31 December 2024, or until a date to be determined by the Court following further argument by the parties ("the Account"). The Court will determine the issue of the end date of the Account on paper or at a further hearing and shall notify the parties accordingly.*

5. There is a danger in trying to simplify anything in this case, but stripped to its essentials, the position is as follows:

(i) Miura's original claim was in tort, and in particular for unlawful means conspiracy. The claim was for damages.

(ii) At trial, damages in the unlawful conspiracy claim were assessed by reference to the value of Miura's business. I determined that the date of assessment should be July 2020, for reasons set out in the Supplementary Judgment.

(iii) In responding to the claim in tort, SU argued that Miura had suffered no loss. That argument involved SU conceding that it held Miura's business on constructive trust for Miura. It accepted that it was obliged to account (although the nature of the account conceded did not involve the payment of any money, but was more akin to an audit).

(iv) There is an issue as to the precise nature of that constructive trust; see the Judgment paragraphs [112]-[114]. Miura's case is that it would have been imposed by operation of law to reverse or prevent unconscionable conduct; here the unauthorised transfer of Miura's property. In other words, it was a trust imposed by equity to remedy the wrong. SU's position was that there was no wrongdoing, but conceded a constructive trust as a necessary part of its argument that Miura had suffered no loss because it remained the beneficial owner of the business. The Judgment proceeds on the basis that SU are to be held to its concession.

(v) By amendment, and in reliance upon the concession of a constructive trust, Miura then sought orders for the return of Miura's business and an account of profits.

(vi) Miura ran that claim (principally for the return of the business) and the tortious claims at trial. It accepted that if the business were returned to it, that there would be no award of substantial damages on the tortious claim because (on the facts) there would be no loss.

(vii) I would have made an order for the return of the business, but that aspect of the claim failed for want of authority.

(viii) That left Miura's claim for damages for conspiracy, and the account.

(ix) I assessed damages on the conspiracy claim by reference to the value of Miura's business in July 2020. In addition, I made an order for an account of profits from that date.

6. Mr Khangure made the following submissions in his skeleton argument for the hearing on 13 December 2024 (in the course of the application for permission to appeal).

19. Post Judgment the Defendants sought damages in tort based upon the current value of SU. This was properly rejected by the Court in its Supplemental Judgment, and the court assessed the value of Miura at the time of breach.

> *20. The Defendants having made an election for damages in tort, and those damages now having been assessed, have no further remedy pursuant to the trust: see Personal Representatives of Tang Man Sit v Capacious Investments Ltd [1996] 1 AC 514; and Clerk & Lindsell on Torts, 24th Ed, at 29-02 to 29-06.*
>
> *21. The reason for this is that upon payment of the assessed damages to Miura, this would extinguish Miura's interest in the business for which it has been compensated*
>
> *22. The interest of Miura in the value of its business must as a matter of law be extinguished on the payment of damages; see British Midland Tool Ltd v Midland International Tooling Ltd [2003] EWHC 466 at [198]; and Clerk & Lindsell, §16-130; The Tort of Conversion, Green and anor., at pp.201-3.*

7. The first point that arises from those submissions is this. In taking an award of damages in conspiracy assessed by reference to the value of the business, did Miura elect to give up its claims pursuant to the constructive trust? As I understand the effect of that submission, it is that the election brings an end to any entitlement to an account, and to the return of the business, for both derive from the concession of a constructive trust.

8. Mr Lewis KC and Mr Maris submit not. They emphasise that the two orders made following judgment (damages and the account) derive from different claims, the one in tort and the other a consequence of the constructive trust. They submit that those remedies are cumulative; or to put it another way, they do not overlap. One is designed to compensate for the value of the asset taken, and the other recognises that a profit has been made with that asset since it was taken for which SU should account. Miura's case is that because they are cumulative remedies, there is no requirement to elect. With that I agree.

9. The more difficult question is brought mor clearly into focus by a consideration of the situation Mr Khangure KC posits at paragraphs 21 and 22 of his skeleton above; namely, does the payment of the damages extinguish Miura's interest in the business?

10. The passage Mr Khangure KC refers to in Clerk & Lindsell is concerned principally with the effect of section 5 of the Torts (Interference with Goods) Act 1977, which provides that where damages for wrongful interference fall to be assessed on the footing that the claimant is being compensated for the whole of its interest in the goods, their payment or settlement extinguishes the claimant's title. That statutory provision essentially reflected the position at common law, albeit the acceptance of damages can be seen as an election not to pursue the recovery of the goods, rather than as extinguishing the claimant's title. The practical effect in most cases would be the same.

11. The Court's practical approach to the issue is illustrated by one of the authorities footnoted to that paragraph in Clerk & Lindsell: *Aziz v Lim* [2012] EWHC 915 (QB). In that case, the claimant was pursuing the recovery of diamonds in proceedings in Switzerland, and a claim for damages in conversion in the High Court. Having found for the claimant, and recognising that an order for the payment of damages might lead

to the loss of the right to recover the bracelet, Lindblom J ordered that damages be assessed, but then stayed the assessment pending the outcome of the Swiss proceedings.

12. The decision in *British Midland Tool Ltd v Midland International Tooling Ltd* [2003] EWHC 466 Ch is dealt with by Mr Lewis KC and Mr Maris at paragraph 11 of their written submissions of 23 December 2024. That was a claim for unlawful means conspiracy. The section of the judgment referred to appears to be dealing with the recovery of three heads of claim in tort. Hart J was concerned that there might be an element of double counting in awarding damages for the value of the business and the losses subsequently incurred. The passages to which I was referred do not appear to be of any great assistance to the resolution of the issue I have to deal with.

13. However, what is plain, is that there should not be double recovery. That is reflected in the acceptance by Mr Lewis KC and Mr Maris that:

    (i) in relation to the damages claim, there would be no substantial award for damages in conspiracy if the business were returned; and

    (ii) in relation to the trust claim, that the trust would come to an end if the business were restored to Miura.

14. The notion that Miura's interest in the business is extinguished by the payment of the damages claim arises from cases relating to claims in tort, where double recovery is avoided by preventing the owner from recovering the thing and the value of the thing. Mr Lewis KC and Mr Maris submit that the analogy with conversion is flawed, and that the acceptance of a trust by SU is an acceptance of (i) Miura's interest in the business, and (ii) that it is obliged to return it to Miura. In relation to the specific issue I have to decide here, they submit that:

> *Miura's entitlement to an account on an ongoing basis is not "extinguished" by payment of damages for conspiracy and an account to date. The loss is self-evidently ongoing until the bare constructive trustee, SU, returns that which belongs to it.*

15. The logical consequence of that approach would appear to be that, regardless of whether or not SU has paid Miura the value of the business as damages for conspiracy (and the profits found to have been made with that business prior to payment) Miura would retain its right in the business and to be entitled to its return. To paraphrase Mr Khangure KC, that cannot be right. It would lead to double recovery for (once the award has been satisfied) Miura would already have the value of the business.

16. Leaving to one side the arguments as to election and the extinction of rights, it is instructive to consider the issue in the context of the trust Miura rely upon. The basis of that trust was not explored in great detail at the trial because the existence of the trust was conceded, but Miura's case is to the effect that it is a trust imposed to provide a remedy for wrongdoing. It is in the nature of being a remedial constructive trust. Were Miura to receive the value of the business, the underlying reason for that trust would fall away. A remedy for the wrongdoing would have been provided by other means. In terms of equity, it would neither be just nor equitable to continue to

impose obligations on SU to return the business when Miura had already received its value. To do so would work an injustice, and equity would seek to ensure that that did not occur.

17. The decision I have to make concerns the end date of the account. Looked at in terms of loss, if Miura has received payment representing the value of its business, it has a sum of money which represents the asset from which any profit is subsequently made. To require it to also make a payment pursuant to an account which represents the subsequent use of the asset for which it has received value is double recovery. Put the other way, it already has the value of the asset from which it can make its own profit.

18. The result would be the same if the issue is analysed in the context of the principles underlying the trust, and the discretion inherent in the grant of an equitable remedy. Either the payment of the value of the business brings to an end the need for an rationale of the trust. Or, as a matter of discretion, the Court would refuse to make an order which involved the recovery of the profits made from an asset, the value of which had already been paid over.

19. Consequently, the end date of the account will be the date upon which Miura's claims for damages for the value of the business are satisfied. Whether that outcome arises from principle or the exercise of discretion, I am satisfied that it is the right one. Given the unusual facts of this case, it may well not be a perfect reflection of the parties' rights, but it is the best approximation that can be achieved.

The minute of order

20. The draft minute of order from the hearing on 13 December 2024 is largely in agreed form. The differences between the parties are outlined in a letter from the Defendants' solicitors of 30 January 2025, and a letter from the Claimants' solicitors of 31 January 2025. There are two discrete issues. The first concerns the date from which interest is payable on costs, and the second concerns the definition of "Relevant Books of Account" for the purposes of the account.

Interest

21. At the hearing on 13 December 2024, I ordered that SU, Bob and Sangeeta were to pay 50% of Miura's costs to be assessed on the standard basis if not agreed; see paragraph 15 of the draft minute. I also made an order that there be a payment on account of those costs in the sum of £230,000 by 4pm on 10 January 2025; see paragraph 19 of the draft minute.

22. The parties agree that as a matter of principle interest is payable on those costs pursuant to section 17(1) of the Judgments Act 1838, but they do not agree as to the date from which interest should run. The issue was not addressed at the hearing on 13 December 2024 for understandable reasons. The parties agree that interest is to be payable on the payment on account from 11 January 2025 (to the extent that the payment of that sum is outstanding). They disagree as to when interest is to be paid on costs. Miura submit that it should run from judgment (13 December 2024) whereas SU submit that interest on the costs to be assessed should not start to run until those costs have been assessed and are become payable.

23. Section 17(1) of the Judgments Act 1838 provides that:

> *… every judgment debt shall carry interest at the rate of … from such time as shall be prescribed by rules of court until the same shall be satisfied …*

CPR Part 40.8(1) provides that:

> *Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838 …. the interest shall begin to run from the date the judgment is given unless*
>
> *(a) a rule in another Part or a practice direction makes different provision; or*
> *(b) the court orders otherwise.*

24. SU does not rely upon any other rule or practice direction, but submits that it is only fair that the Court make an order that interest on the assessed costs should run from when the costs have been assessed and become payable. Miura refer to the notes in the White Book at 40.8.2, which summarise the relevant authorities; see also Cook on Costs para 32.1 and following; and CPR Part 44.2(6)(g), and the notes in the White Book at 44.2.29.

25. The normal rule is that costs run from the date of judgment rather than the date of assessment, but the Court can make a different order. The potential unfairness of the normal rule is that parties can claim interest on costs they may not have yet paid (disbursements or post judgment costs for example). The unfairness of interest running from after assessment and when the costs become payable, is that the unsuccessful party has caused the costs to be incurred, and the receiving party has been kept out of their money (or most of it) since judgment. The issue was considered in *Hunt v RM Douglas (Roofing) Ltd* [1990] 1 AC 398, and the balance of justice was held to favour (what is now) the normal rule set out in CPR Part 40.8(1).

26. Whilst it is unnecessary to show "exceptional circumstances" before departing from the normal rule, there needs to be some reason to depart from it. The submission that it would be fair, without some explanation as to why it would be fair, is not enough. Nor can I see any obvious point which would assist SU. Interest is to begin to run from 13 December 2024 as Miura submit.

27. Nothing in that order is to fetter the discretion of the Costs Judge on assessment as to the date to which interest is to run. I have directed that it will start running on 13 December 2024, but it may be that there are issues which have yet to arise (unreasonable delay in the assessment for example) which might be relevant to the period over which interest is to run. The draft minute at paragraph 18 caters for this by providing that interest runs until payment or further order.

Relevant Books of Account

28. The definition in Appendix A of the draft minute is as follows:

> *Relevant Books of Account means such books or accounts as are necessary to exhibit and explain the transactions [and financial position of the trade or business of the company including without limitation Sage, the Shipley records and bank statements].*

29. Miura submit that the full definition was conceded by SU and approved at the hearing on 13 December 2024. SU submit that it was not, and that the provision of the Shipley records and the collation of bank statements is neither necessary nor proportionate.

30. An extract from Miura's solicitor's note of the exchanges about this issue on 13 December 2024 has been provided. It begins with: *Not sure we need relevant books of account*. In other words, it was not needed at all as a definition within Appendix A. My recollection is that this is a note of my contribution. Mr Khangure KC is then noted as objecting to the term of the definition and saying that the sentence should end after "the transactions". I then express the view that the process of the account involved the definition of the issues and (as the note records it) "*maybe not exhibit everything, maybe better moment to ensure documents relevant to issues are produced"*.

31. The point Miura rely upon particularly is in bold towards the bottom of the extract from the solicitor's note. I am in the process of working through the order to see where this term arose, and note that it is of relevance to paragraph 3 (of Appendix A). This provides that for the purposes of taking the Account, the Relevant Books of Account shall be evidence of their contents, but that any party can object. I then refer to paragraph 5 of Appendix A which includes provision for disclosure of source materials and data relied upon. Then I say this:

> *So relevant books of account is ok because it crops up in para 3 so far as see*

Mr Khangure KC then says this:

> *I was looking at definition, I understand point, is only 3, then yes.*

32. Mr Khangure KC has been shown the note. His recollection is that his concession was not as to the text of the definition but to the need for its inclusion (it reflected paragraph 1.2 of PD40A). That accords with my recollection of how this issue developed. If the matter remains seriously in dispute then a transcript can be obtained, but it seems to me that the process the parties have agreed should suffice to ensure that the relevant documents are disclosed without the need for the more detailed definition of Relevant Books of Account which Miura contend for. Consequently, the words in brackets are to be excluded from the Order.