



Neutral Citation Number: [2023] EWHC 1830 (Ch)

Case No: HC-2015-001647

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (CHD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 19/07/2023

**Before :**

**MR JUSTICE MILES**

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**Between :**

**KEA INVESTMENTS LIMITED**

**Claimant**

**- and -**

**ERIC JOHN WATSON**

**Defendant**

**- and -**

**FLADGATE LLP**

**Intervening Party**

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**Elizabeth Jones KC and David Drake** (instructed by **Farrer & Co LLP**) for the **Claimant**  
**The Defendant** did not appear and was not represented

Hearing dates: 4, 5, 6 July 2023  
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**Approved Judgment**

Remote hand-down: This judgment was handed down remotely at 10:30am on 19 July 2023 by circulation to the parties or their representatives by email and by release to The National Archives.

## Mr Justice Miles :

### Introduction

1. This is a judgment on the application by the claimant (**Kea**) to determine finally the amount of equitable compensation due to it from the defendant (**Mr Watson**).
2. Some of the evidence I was taken to at the hearing was subject to confidentiality undertakings owed by Kea to third parties. I have made previous orders protecting the confidentiality of some information. I was able to hear most of the application in public but some of it was held in private to ensure that confidence was not lost. It has been possible to produce this public judgment by using some descriptions rather than numbers and not referring to some third party entities by name. I am satisfied that the judgment is intelligible to readers and that the public and press will be able to understand the process by which I have reached my conclusions.
3. Mr Watson has not participated in the proceedings for some time. I have made orders for alternative service (the latest of which was on 13 June 2023) and I am satisfied by the evidence that Kea has served him in accordance with that order. I am also satisfied that he was informed of the hearing date. Mr Watson has not served any evidence in opposition to the application. I am satisfied that Mr Watson has had a full opportunity to participate in the application but has chosen not to do so, and that I should proceed in his absence.
4. Counsel for Kea provided a detailed and comprehensive skeleton argument and took me through the underlying evidential material and authorities painstakingly over three days. They properly drew my attention to points that might have been available to Mr Watson. I have drawn heavily on their skeleton argument in preparing this judgment.

### Background

5. The main protagonists in the dealings that led to the present disputes were Sir Owen Glenn and Mr Watson. The central transaction was Project Spartan, a joint venture into which Sir Owen and Mr Watson entered indirectly, through corporate vehicles. In Sir Owen's case, the relevant vehicle was Kea, of which Sir Owen is the shareholder. In Mr Watson's case, the vehicle was Novatrust Ltd (**Novatrust**), a professional trustee company. Kea and Novatrust each became 50% shareholders in Spartan Capital Ltd (**Spartan**), a BVI company. Kea also agreed to lend substantial sums to Spartan, which could then be used in potential investments. These arrangements were reflected in a share purchase and a shareholders' agreement between Kea and Novatrust (and, in the case of the shareholders' agreement, Spartan), and loan agreements between Kea and Spartan (**the Spartan Agreements**).
6. These dealings gave rise to three sets of proceedings:
  - i) the present proceedings – the Part 7 claim – were brought by Sir Owen and Kea against Mr Watson (D1), Novatrust (D2), an associate of Mr Watson's called Mr Leahy (D3), a company used by them called Nucopia Partners Ltd (**Nucopia**, D4), Spartan, and (in due course) Munil Development Inc (**Munil**). The Part 7 claim sought to have Kea's agreements with Novatrust and with Spartan set

- aside on a variety of grounds, and sought various types of further relief in relation to the money paid over by Kea pursuant to those agreements;
- ii) a petition brought by Kea to have Spartan wound up on the just and equitable ground, initially in the BVI, and then in England; and
  - iii) a derivative claim brought by Novatrust on behalf of Spartan against Kea.
7. Novatrust settled with Kea, agreeing to cause Spartan to repay £80 million, and to pay a contribution to Kea's costs. That settlement disposed of the petition and the derivative claim entirely (since Novatrust and Kea controlled Spartan). As to the Part 7 claims, it was agreed between Kea, Novatrust and Spartan that the agreements that Kea had entered into were to be set aside.
8. Kea's claims against Mr Watson, Mr Leahy, Nucopia and Munil continued with a view to establishing that Kea was entitled to have the Spartan agreements set aside, and for the various types of further relief that Kea sought. There was a trial before Nugee J in 2017 against these three parties and concerned with these issues. The relief sought by Kea at trial included:
- i) having the Spartan Agreements declared void or set aside (Re-re-amended Particulars of Claim (PoC) paras 245-251 and 253);
  - ii) proprietary and personal restitutionary claims, and claims to profits, in respect of the Spartan Money, and assets into which the Spartan Money or parts thereof could be traced (PoC paras 252-264); and
  - iii) a claim for equitable compensation against Mr Watson (to the extent that Kea's loss was not made good by recoveries such as those in respect of its proprietary and personal restitutionary and profit-based claims) (PoC paras 265-265A). Included within the claim for equitable compensation was a claim in respect of interest pursuant to the court's equitable jurisdiction, to compensate Kea for being kept out of its money.
9. A particular part of the tracing exercise instigated by Kea involved £12,143,133 of the Spartan Money which was paid by Spartan to Munil on 26 April 2013 (**the Munil Money**), and beyond, into the hands of Mr Watson and others (PoC paras 236.1, 236.3, 254A-254C, 255).
10. In his trial judgment of 31 July 2018 ([2018] EWHC 2016 (Ch)) Nugee J found that Kea had been induced to participate in Project Spartan, in which Kea invested £129 million, by means of a fraud planned and orchestrated by Mr Watson ([529], [536]); and that the agreements were also liable to be set aside for breach of fiduciary duty on Mr Watson's part, in failing to disclose his interest in the transactions ([529]); and for want of authority and/or as having been executed for an improper purpose ([528]).
11. Nugee J also concluded that Kea had an entitlement to interest in equity at 6.5%, compounded annually. He concluded that Mr Watson was liable to pay Kea equitable compensation for the shortfall between the amounts Kea would have been able to recover in respect of the payments of £129m (with compound interest) and the amounts actually recovered by it. Nugee J held that Kea could not recover sums in respect of

interest where it had elected instead to follow assets and taken the profits deriving from them. He also recognised that the final amount of equitable compensation payable by Mr Watson would depend on the extent to which Kea was able to trace, particularly in respect of the Munil Money and elected to assert any relevant proprietary claims.

12. Nugee J's order of 13 September 2018 (**the September 2018 Order**)
  - i) declared that title to the sums totalling £129m had revested in Kea which is entitled to claim the traceable proceeds of those sums (paragraph 3);
  - ii) awarded equitable compensation against Mr Watson and declared the maximum amount of the equitable compensation as at 13 September 2018 with interest continuing to accrue at a rate of 6.5% per annum compounded annually;
  - iii) declared that Kea was entitled to an account of sums and assets including profits which could be traced in the hands of Mr Watson (whether personally or through others) from the Munil Money, and that Kea was entitled at its election to orders that such sums and assets as could be traced were held on trust for Kea and should be transferred to Kea (paragraphs 7-9)
  - iv) ordered that Mr Watson make an interim payment in the sum of £25,259,986.49 (paragraph 10);
  - v) ordered Mr Watson to make affidavits and give disclosure in relation to various matters (paragraphs 13-16);
  - vi) ordered that the court should give directions as to the taking of any accounts and for the future conduct of the action, including joining additional parties if necessary, on the first available date after 1 November 2019 (paragraph 18) ;
  - vii) provided that Kea did not have to elect between awards of equitable compensation and proprietary and profit based claims until after the trial and the account provided for in paragraphs 17 and 18 had taken place (paragraph 19); and
  - viii) made orders for costs including a payment on account against Mr Watson (paragraphs 20-21).
13. Kea in due course intimated and/or made claims against a number of further parties (some of whom were joined or threatened with being joined as defendants to the action), and various recoveries were made by Kea by means of settlements or orders of the court.
14. The settled claims included claims that shares in companies associated with an English company called Long Harbour Limited were held by third parties as nominees and/or on trust for Mr Watson, and interests in a number of entities in or associated with the Long Harbour group were in due course transferred to Kea.
15. In addition a number of tracing claims were adjudicated on by Nugee J (or Nugee LJ as he became).

16. The claims against each of the other defendants – originally parties or joined before trial or after trial - have all been settled, resolved by summary judgment (in the case of D7), or have been overtaken by the insolvent liquidation of the defendant (in the case of D4). Kea now seeks to have the amount of equitable compensation finally determined.
17. Assessing the equitable compensation due from Mr Watson to Kea requires account to be taken of each relevant transaction by which Kea made payments out or has made recoveries, as well as the accrual of interest over time.
18. Kea has provided comprehensive information about the relevant transactions and an explanation of how it proposes they should be accounted for. These are contained in a series of witness statements and exhibits of Mr Toby Graham of Kea’s solicitors, Farrer & Co (**Farrer**). Some of these exhibits are confidential as they contain information about settlements and related transactions covered by confidentiality agreements. The results of the exercise are set out in a calculation spreadsheet (**the Main Spreadsheet**). As it contains confidential information this document is in a confidential exhibit. The spreadsheet works chronologically. It lists the payments making up a total of £129m. It accrues interest on the principal outstanding at any date at 6.5% compounded annually. It then accounts for receipts by Kea in respect of its claims by making appropriate deductions on the date of receipt or other appropriate date from the then outstanding principal amount. I was taken by Counsel for Kea through each relevant cell in the Main Spreadsheet.
19. At the hearing which led to the September 2018 Order there were two other spreadsheets before the court, one for the maximum sum (**the Maximum Sum Spreadsheet**), and the other for the interim payment (**the Interim Payment Spreadsheet**), (together **the September 2018 Spreadsheets**).
20. The September 2018 Spreadsheets were agreed between Kea and Mr Watson. The figures contained in the September 2018 Spreadsheets, the way in which the tracing claims were dealt with, and the compounding on 13 September in each year, were therefore agreed.
21. Nugee J observed during the hearing on 13 September 2018 in relation to the tracing claims that Kea cannot claim equitable compensation and profits in respect of the same sum at the same time, and the treatment of the tracing claims in September 2018 proceeded on that basis.
22. In particular, the potential tracing claims against the Munil Money, and in relation to an investment called “Royal” which Spartan had made with the sums advanced by Kea, on which Spartan had made a substantial profit, were taken into account in September 2018 in calculating the minimum amount of equitable compensation. The Royal investment was dealt with on the (hypothetical) basis that Kea would claim a proprietary interest in that investment, by taking the amount invested out of the equitable compensation calculation on the date that it was invested (so as to stop the interest running on the equitable compensation claim while claiming a profit on the proprietary claim), and the Munil Money was all taken out of the calculation on 25 April 2013 (because Kea did not know what had happened to that money and might have wanted to trace into it from that date).

23. Following the 13 September 2018 hearing, Mr Watson disclosed more information about what had happened to the Munil Money. This included some more spreadsheets and a number of underlying bank statements and other documents. Kea then proceeded to try to trace into and claim an equitable interest in, alternatively a lien over, certain of the assets which were still in existence.
24. Nugee J made a number of rulings (at several different hearings at which Mr Watson was variously represented by either solicitors or counsel) between November 2018 and October 2020 as to Kea's ability to trace into those assets, and made orders for various assets or sums to be paid to Kea. The rulings and orders included the following assets:
  - i) an apartment in New York known as Sky Walker Tower;
  - ii) money and shares which were held at Barclays Bank in Monaco;
  - iii) sums held in Mr Watson's JP Morgan account in Geneva. In the event JP Morgan exercised a right of set off and the money was used up in that way and not released to Kea. This led to shares held in companies called White Energy and Swisher being made available and which were then addressed in further orders of the court; and
  - iv) a sum which had been advanced to a trust called the Richmond Trust which bought a residential property for use by one of Mr Watson's former partners.
25. These tracing claims have already been adjudicated on. The court's present exercise is to determine whether they have been properly accounted for by Kea in calculating the equitable compensation payable by Mr Watson. In most cases the tracing claims have been treated in the Main Spreadsheet by deducting, at the date on which the investment was made, the amount required to produce the sum (including profits) which was recovered by Kea in due course. There is a different treatment for the (comparatively small) Richmond Trust investment (see below).
26. I shall return below to the treatment of these various recoveries in the Main Spreadsheet.
27. Other sums have been received by Kea which are not the result of tracing claims.

### **Principles to be applied**

28. Kea has approached the issues by applying the following principles.
29. The first concerns the general principle of the appropriation of a payment from a debtor to a creditor where the debtor owes more than one debt. The general rule is that the debtor may, at any point up to and including the point at which the payment is made, allocate the money paid to a particular debt or debts; but if the debtor does not do so, the creditor is free to allocate the payment to whichever debt or debts it chooses: see *The Mecca* [1897] AC 286, 293-294. The debtor's right to appropriate ends at the time of payment: see Chitty, 34th ed, 24-058 to 24-060. The creditor must communicate any appropriation to the debtor.
30. The second set of issues is how a claimant should allocate sums which have been obtained from a third party by settlement against the claims against the relevant party.

31. That issue was considered, in part, in these proceedings in [569]-[580] of the trial judgment. That passage was concerned with whether Kea was able to allocate the settlement monies it had received from Spartan in June 2017 (pursuant to the settlement with Novatrust) to any of Kea's claims against Spartan which had not been obviously unsustainable, or whether instead Kea could only allocate such monies to claims against Spartan which, in light of the trial judgment, could be seen to have been likely to succeed. Nugee J held that, in circumstances where he had sat through the trial and was well placed to form a view as to whether the various claims against Spartan would have succeeded, the latter was correct. However, he expressly declined to comment on the position where the judge considering the question of allocation is not in a position to form a view of the merits of the claims to which the claimant wishes to allocate his recoveries: see at [580].
32. The issue of how allocation of recoveries from settlements with third parties may affect the calculation of compensation has been considered more recently by the Court of Appeal in *FM Capital Partners Ltd v Marino* [2021] QB 1. The question in that case was how recoveries under a settlement with another party (A) should be allocated in calculating the claims of the claimant against the relevant defendant (B).
33. The Court described Nugee J's reasoning on this topic in the present case as not altogether easy to understand (see [63] and [69]).
34. The Court decided that where a claimant has made a recovery from one party, A, in circumstances where he had or claims to have had more than one claim against A on the basis of which the recovery could have been made, there is a need to determine (a) on what particular claim or claims against A the claimant should be treated as having recovered, and (b) whether that particular claim overlaps with the claimant's claim against the instant defendant, B, such that the claimant must give credit to B for the recovery made.
35. As to point (a), it may be clear from the circumstances of the claimant's recovery from A, including from the express terms of any settlement agreement between the claimant and A, that the recovery from A was made on the basis of some particular claim or claims: see [69]. Where the allocation of the claimant's recovery from A is not determined by the terms of any settlement agreement or otherwise by the objective circumstances of the recovery, the claimant is entitled to allocate the recovery as he sees fit among any of his claims against A on the basis of which the recovery could have been made: see [62] and [73].
36. The claimant's discretion as to allocation is however limited by a merits test which varies in its application according to the circumstances. Where the judge charged with fixing the amount of B's liability has presided over a trial, on the basis of which he or she can readily form a view of the merits of each of the claimant's claims against A, the judge can properly rely upon that view when determining to which of those claims the claimant may allocate his recoveries.
37. However, in other situations, where the judge charged with fixing the amount of B's liability is not in a position to form a view of the merits of each of the claimant's claims against A, it cannot be right for that judge to be expected to hear full argument on the merits of a defunct claim against A, who will not be before the court, merely in order to determine how the claimant's recoveries from A may be allocated, so as to determine

the credit due to B. In such circumstances, therefore, the applicable merits test is that the claim against A is not obviously unsustainable. The claimant can be required to do no more than “to place before the court evidence which would have enabled the judge to form a general view as to its validity and quantum” and “upon which the judge could conclude that the ... claim was a valid and viable claim”: see [64]-[76].

38. As to point (b), the claimant’s claim against A to which his recovery is allocated will be held to overlap with the claimant’s claim against B, such that credit must be given to B for the recovery from A, where (i) both claims are based, in whole or in part, on the proposition that the claimant has suffered a loss, and (ii) the loss is the same. The claims will be held not to overlap if they are not based on the proposition that the claimant has suffered a loss or if the loss is not the same: see [43]-[55].
39. In the present case one of Kea’s claims against third parties was a claim for recovery the unrecovered costs of the proceedings against Mr Watson and others. The issue of claims for costs was not discussed in the Court of Appeal decision in *FM Capital*. However, it was addressed in the first instance decision in the same case ([2018] EWHC 2905 (Comm)) at [28]-[31]. Cockerill J concluded that 70% of the claim based on the costs of claiming against another party (where these did not appear to the court to be unusual or untoward in amount) should be treated as being an acceptable estimate.
40. Kea has adopted a similar approach to costs here but has taken a rate of 2/3rds of the costs of claiming against other parties as the basis of the apportionment.
41. I accept Kea’s submissions that the principles set out in paragraphs 29 to 40 above should be followed in the present case.

### **The calculations contained in the Main Spreadsheet**

42. I turn to consider the various transactions and events appearing in the Main Spreadsheet. These are addressed below thematically rather than strictly chronologically for ease of exposition.

### **Kea’s payments to Spartan**

43. Kea made a series of payments to Spartan (or to Fladgate LLP as solicitors for Spartan). They are recorded in the trial judgment and were included in the September 2018 Spreadsheets. They were:
  - i) £100,000 on 23 July 2012;
  - ii) £24,900,000 on 10 September 2012;
  - iii) Payments totalling £104 million on 19 September 2012. The £104 million was made up of four tranches: payments of £25 million and £63 million to Spartan; and payments of £3.5 million and £12.5 million to Fladgate LLP, acting as solicitors for Spartan.
44. The £12.5 million tranche is called the **Third Kea Loan**. This was used to fund the payment by Spartan of £12,143,133, being the Munil Money. This is relevant to a number of subsequent transactions, which involve recovery by Kea of parts of the Munil Money or its traceable proceeds. For this reason, where Kea is free to allocate its



other recoveries, it has generally allocated them to reduction of its claims in respect of the payments of capital to Spartan other than the Third Kea Loan. This is to avoid receipt of compensation in respect of the Third Kea Loan that would preclude an election in favour of a proprietary claim derived from the Munit Money. Kea's total recoveries, as it has thus allocated them, are insufficient to exhaust its claims in respect of the payments of capital to Spartan other than the Third Kea Loan.

### **Interest**

45. Under the Principal Order interest accrues on the £129m paid to Spartan by Kea on a compound basis at a rate of 6.5% per annum.
46. For the 13 September 2018 hearing, 13 September was agreed by Mr Watson as the annual compounding or rest date. The same rest date has been used in the Main Spreadsheet. Interest continues to run on the full sum on a compounding basis until any repayments or recoveries are taken out of the calculation.
47. I am satisfied that this is the correct treatment of interest.

### **Spartan's repayments to Kea**

48. Spartan has made certain repayments to Kea. All of them were included in the September 2018 Spreadsheets, so there is no issue about the amounts.
49. £356,867 was repaid on 3 May 2013. The making of this payment, and the fact that it was a repayment in part of the Third Kea Loan, was the subject of findings by Nugee J. It was treated as such in the September 2018 Spreadsheets and is so treated in the Main Spreadsheet.
50. A series of payments totalling £240,914.89 was made between January and October 2013. There is a small point of detail here. The Main Spreadsheet takes account of these payments on the dates on which they were actually made. However this is not how the payments were treated at the 13 September 2018 hearing. At that time, for the sake of convenience, the series of payments had been treated as if they were a single payment of £240,914.89, made on 3 May 2013, and allocated to interest. Adopting the fiction of a single payment on this date erred in Mr Watson's favour, by treating the whole of the amount as having been paid in the compounding-year 13 September 2012 to 13 September 2013, rather than some in that year and some in the next. The interest that accrued on this fictional basis was £296.75 less than the interest that would have accrued if the payments were accounted for individually on the dates they were made. Kea has accepted that the treatment of those sums in the September 2018 Spreadsheets is binding on Kea, and has made an adjustments of £296.75 to the compensation payment calculation (rather than recasting the whole of the Main Spreadsheet).
51. £50 million was paid on 25 July 2016. Kea treats the payment as having been made on 24 July 2016, and has allocated the entire £50 million to claims in respect of the payments of capital to Spartan other than the Third Kea Loan, being first repayment of capitalised interest, and then of principal. This accords with the treatment in the September 2018 Spreadsheets.

52. £80,037,067.67 was paid on 13 June 2017. This was also included in the September 2018 Spreadsheets. It was recovered pursuant to the settlement with Novatrust and Spartan. Kea allocates the £80,037,067.67 as to £4.2 million to interest and as to £75,837,607.67 to capitalised interest, then to principal, other than in respect of the Third Kea Loan. This treatment differs slightly from the September 2018 Spreadsheets but in a way which favours Mr Watson.
53. I am satisfied that Kea has properly accounted for the payments in the calculation.

#### **Sums recovered from Mr Leahy**

54. Kea recovered £500,000 from Mr Leahy in December 2018 (£306,014.36 on 13 December 2018, and £193,985.64 on 19 December 2018) in settlement of its claims against him. The settlement agreement did not appropriate the payment among Kea's various claims.
55. Kea allocates this as follows:
- i) A specific sum in respect of Kea's claims against Mr Leahy for costs up to 13 September 2018.
  - ii) £124,350.50 to restitutionary claims in respect of monies received by Mr Leahy from Spartan (not out of the Munil Money) via Nucopia.
  - iii) £75,649.50 to restitutionary claims in respect of monies received by Mr Leahy from Munil via Nucopia (and so out of the Munil Money).
56. As to element (i), the nature of this claim was in set out Farrer's letter of 3 October 2018 to Mr Leahy. The 3 October 2018 letter alleged that Mr Leahy had been one of the principal architects of the Spartan fraud (as reflected in the trial judgment), and was found to be a witness in whom the court could not have confidence. The total costs incurred by Kea against all the defendants at the end of the trial in the various proceedings that had resulted from the Spartan fraud were set out (**the Pre-Judgment Spartan Costs Total**). The amount being claimed in the letter against Mr Leahy as costs was about 4% of those costs.
57. I accept Kea's submission that the court has sufficient information to enable it to form at least a general view as to the nature and extent of the claim, and to conclude that it is not obviously unsustainable. The amount appropriated to Kea's costs claim against Mr Leahy represents the costs of pursuing him and does not fall to be taken into account as a deduction in the calculation of the equitable compensation due from Mr Watson.
58. As to element (ii), the foundation of this claim was the declaration in paragraph 3 of the Principal Order that, as against Mr Leahy, Kea had established that title to the Spartan Money had reverted in it, and it was entitled to claim its traceable proceeds. A potential tracing claim against Mr Leahy was envisaged in Nugee J's trial judgment at [540(3)].
59. In the 3 October 2018 letter to Mr Leahy, Farrer explained the nature of this claim. In short, the letter explained that Mr Leahy received £94,852.48 by way of salary payments between October 2012 and April 2014 from a bank account of Nucopia's. This was admitted by Mr Leahy. Nucopia was controlled, for relevant purposes, by Mr

Watson: trial judgment [56]. These salary payments were made after Nucopia entered into a consultancy agreement with Spartan which Nugee J found was another fraud practised on Spartan. In respect of all but one of the payments, the balance in Nucopia's account at the time of the payment had been funded by payments from Spartan sufficient to cover the payment. In respect of one payment, on 25 February 2014, only £1,785.32 of the payment could be regarded as funded by a payment from Spartan. In total, Mr Leahy received £89,779.90 of funds traceable to Spartan in this way. Spartan's funds had been held on constructive trust for Kea, and that both Mr Leahy and Nucopia (through Mr Leahy and Mr Watson) knew that Spartan and Nucopia had obtained the relevant funds by fraud, as found by Nugee J. Kea alleged that Mr Leahy was in the circumstances liable to return the funds to Kea. The letter calculated the value of this claim, based on an award of £89,779.90, together with compound interest at 6.5% per annum from the date of each receipt by Mr Leahy up to 15 November 2018, amounting to £34,570.60. The total claimed under this head was £124,350.50.

60. I accept Kea's submission that an allocation of £124,350.50 to this claim satisfies the merits threshold: the court has sufficient information to enable it to form at least a general view as to the nature and extent of the claim, and to conclude that it was not obviously unsustainable.
61. Kea gives credit for this claim against Mr Watson, as the recovery was in respect of overlapping claims. Rather than giving credit as at December 2018 for a sum inclusive of interest, Kea accounts for this receipt by giving credit for a single sum of £89,779.90 (that is, the aggregate value of the traceable sums received, excluding interest) as at 25 April 2013 (a date from the middle of the period during which the receipts occurred – this slightly errs in Mr Watson's favour).
62. As to element (iii), Farrer's 3 October 2018 letter explained that on 16 April 2014, a payment of £245,000 was made from Munil to the Richmond Trust – of which one of the trustees was Mr Watson: see the trial judgment [531]. On 17 April 2014 a payment of £373,000 was made from the Richmond Trust to Nucopia. On 17 April 2014 a payment of £168,120.75 was made from Nucopia to Mr Leahy. Mr Leahy admitted receipt of net bonuses of £18,466.50 and £161,262.85. Kea asserted a claim to the £161,262.85 bonus as the traceable proceeds of Munil Money, together with interest at 6.5% from 17 April 2014 to 15 November 2018. This claim again had its basis in paragraph 3 of the September 2018 Order.
63. Kea allocates £75,649.50 to this claim. I accept Kea's submission that the court has sufficient information to enable it to form at least a general view as to the nature and extent of the claim, and to conclude that it is not obviously unsustainable. Kea gives credit for this claim against Mr Watson as the recovery was in respect of overlapping claims. Again, rather than giving credit, as at December 2018, Kea accounts for this part of the receipt by giving credit for a sum of £56,953.13 as at 16 April 2013 (the date when the relevant part of the Munil Money was paid away). This figure errs in Mr Watson's favour, by overestimating the sum required to produce, with compound interest, a sum of £75,649.50 in December 2018.
64. I am therefore satisfied that Kea has properly accounted in its calculations for the sums received from Mr Leahy.

**Sky Walker Tower LLC**

65. Sky Walker Tower LLC (**SWT**) was joined as D7 to these proceedings by order dated 12 November 2018 (i.e. after the trial). Kea claimed against SWT to recover US\$4,741,592.57, being the traceable proceeds, including profits, of sums of US\$2.8m paid on 20 August 2013 and US\$1.2m paid on 2 October 2013. Kea's claim was that it could trace US\$2.8 million paid out of Munil on 20 August 2013 and US\$1.4 million paid out of Munil on 2 October 2013; and that those payments could be traced into an apartment, the purchase of which they were used to fund, and thence into the proceeds of sale from the apartment, from which the US\$4,741,592.57 was paid. The excess of the sum over US\$4.2 million was a profit earned as a consequence of the use of Munil Money to enable the apartment to be purchased.
66. The sum of US\$4,741,592.57 was received by Farrer on 22 November 2018 pursuant to the 12 November 2018 order. On 18 December 2018 Nugee J gave summary judgment on Kea's claim. Nugee J ordered that the sum received by Farrer was held on trust for Kea.
67. In summary therefore Kea has therefore recovered a total of US\$4,741,592.57, being the original investment and the profit thereon.
68. Kea cannot claim both interest (as part of the equitable compensation) and profit (on the proprietary claim). The calculation in the Main Spreadsheet gives credit for (and hence ceases to charge interest on): (a) the GBP equivalent of US\$2.8 million (£1,786,853) as at the date it was paid from Munil in order to fund the investment (20 August 2013); and the GBP equivalent of US\$1.4 million (£863,131) as at the date it was paid from Munil in order to fund the investment (2 October 2013).
69. I am satisfied that Kea has properly accounted for this receipt in its calculations.

#### **Cash and shares in Mr Watson's account with Barclays Monaco**

70. These assets again derive from a tracing exercise.
71. By paras 4.3 and 5.2 of its 7112 November 2018 order the court ordered that US\$53,042.89 and €118.96 standing to the credit of Mr Watson's Barclays account were the traceable product of the Munil Money and were held on trust for Kea.
72. The net sums actually received by Kea were US\$52,813.51 on 21 November 2018, and €103.96 on 22 November 2018.
73. In addition to this cash, by paragraph 1 of the 12 October 2020 order Nugee LJ declared that Mr Watson held 51,766 shares in a company called Swisher Hygiene Inc. (**Swisher**), held in his Barclays Monaco account, on trust for Kea, and that Mr Watson should transfer those shares to Kea if that became possible, and should also transfer US\$28,492 from his Barclays Monaco account received in connection with those shares to Kea.
74. Kea alleged that these assets were traceable to the Munil Money. This was based on information given by Mr Watson in an affidavit of 11 October 2018 and attached spreadsheet (pursuant to the September 2018 Order). This showed that on 28 October 2013 US\$1 million was paid from Munil to Mr Watson's JP Morgan 507 account. On 1 November 2013 US\$2 million was paid from the JP Morgan 507 account to Mr

Watson's Barclays Monaco account. Between 4 November 2013 and 9 July 2018, the US\$2m in the Barclays Monaco account was used for profitable trading – generating a profit of US\$553,844.56, or a 26.7% return on investment. The US\$ and Euro balances in the Barclays Monaco account as at 9 July 2018 became the cash recoveries made by Kea already mentioned in paragraph 71 above.

75. Mr Watson identified 51,766 of the 162,473 Swisher shares left in the Barclays Monaco account as traceable to Munil Money, and it was those that were declared by the court on 12 October 2020 to be held on trust for Kea.
76. In respect of the cash recovered, since a 26.7% return was made on trading in the Barclays Monaco account between 4 November 2013 and 9 July 2018, Kea has treated the sums which were invested in 2013 which gave rise to the remaining cash receipts as 1/1.267 times smaller: US\$41,683.91 and €82.05. I am satisfied that this is the correct approach.
77. As for the Swisher shares, Mr Watson identified the total cost of the 162,473 shares in the account as US\$216,262.67 (US\$1.33 per share). On that basis, Kea has taken the cost of the 51,766 shares as US\$68,904.08. Kea treats the amount invested in the shares as US\$68,904.08 of the money paid away from Munil on 28 October 2013 and gives credit on that date in the Main Spreadsheet.
78. I accept that Kea has properly accounted for these recoveries (cash and shares) in its calculations by crediting Mr Watson with £68,630.57 as at 28 October 2013 (£68,630.57 being the sum of the GBP equivalents of US\$41,683.91, €82.05 and US\$68,904.08 as at that date).

#### **Shares in Mr Watson's JP Morgan 507 account**

79. On 28 November 2018 Kea acquired claims to two sets of shares held in Mr Watson's JP Morgan 507 account (5,196,749 in White Energy; 180,730 in Swisher), in substitution for a claim that Kea had (up to that point) had to £953,836.54 of cash in the JP Morgan 507 account, as traceable proceeds of Munil Money.
80. A judgment of Nugee J of 7 February 2020 explains that Kea had established a proprietary interest in the £953,836.54 in the JP Morgan 507 account; that this had been used by JP Morgan (on 28 November 2018) to pay off other debts owed by Mr Watson which had had the effect of releasing the White Energy shares from a charge which existed to that time in favour of JP Morgan; and that accordingly Kea was entitled to the White Energy shares, either as a profit within paragraph 8 of the September 2018 Order or by way of subrogation. An order was also sought in relation to certain Swisher shares which had been released from the charge at the same time and in the same way.
81. Kea ultimately received proceeds of sale from these White Energy and Swisher shares, but Kea's Main Spreadsheet gives credit at the date on which it acquired its claims to the shares (28 November 2018) for the value of the interests acquired.
82. In the case of the White Energy shares, their market value as at 28 November 2018 was the AU\$ equivalent of £206,220.20.

83. In the case of the Swisher shares, there is contemporaneous evidence of their market value having been regarded by JP Morgan as zero. Kea has however taken the figure eventually realised from the shares (£74,151 on 29 January 2021) and discounted it by 6.5% per annum to arrive at an imputed value as at 28 November 2018. The calculation marginally errs in Mr Watson's favour and comes to the figure of £65,375.92.
84. I am satisfied that Kea has properly accounted for these recoveries in its calculations. (I note that there is a slight error in favour of Mr Watson in the numbers expressed in the Main Spreadsheet, where the figure for the deduction is given as £271,758.74 rather than the correct figure of £271,596.12. Kea has agreed to use the figure which favours Mr Watson.)

#### **4B Chislehurst Road**

85. By paragraph 4.4 of the 12 November 2018 order, as against the owners, Mr Watson and Mr Gibson as trustees of the Richmond Trust, Flat 4B Chislehurst Road (**the property**) was declared to be the traceable proceeds of the Munit Money. In the event proceeds of £61,337.91 were received by Kea on 18 October 2019.
86. Kea proposes in this case to credit the account with that sum as at that date. The recovery did not include an amount for interest or profits so there is no need to credit Mr Watson at an earlier date to avoid double counting.
87. I am satisfied that Kea has properly accounted for this receipt in the calculations.

#### **Recoveries from other parties**

88. The next series of recoveries are non-proprietary ones from other parties.

#### **Mr Watson's interest in Beaverbrook Golf Club**

89. Kea took enforcement proceedings in respect of Mr Watson's membership of the Beaverbrook Golf Club. A sum (**the Beaverbrook Sum**) was recovered on 18 October 2019 pursuant to a charging order made in respect of Mr Watson's liabilities to make interim payments of compensation and costs under paragraphs 10 and 21 of the September 2018 Order.
90. Kea has allocated this recovery to the costs liability under paragraph 21 of the September 2018 Order. No direct account is taken of this recovery in calculating the equitable compensation due from Mr Watson. I am satisfied that Kea is entitled to make this allocation and has properly accounted for the receipt in the calculations.

#### **Mr Watson's alleged interests held by Ivory Castle**

91. Following the September 2018 Order Kea claimed that certain assets belonging to Mr Watson, were held for him by Mr Gibson and Ivory Castle. Mr Watson, Mr Gibson and Ivory Castle denied that the assets belonged to Mr Watson. Mr Gibson and Ivory Castle were joined as defendants, and the claim was settled by agreement. The settlement agreement does not contain any allocation of the assets to any particular claim or matter. Indeed the claim against Ivory Castle and Mr Gibson was principally to obtain declarations that Mr Gibson and Ivory Castle held assets as nominees for Mr Watson.

92. Under the settlement Kea obtained (a) cash, (b) shares in Long Harbour entities and (c) interests in a limited partnership called **Aegean**.
93. Starting with (a) the cash receipts, some were directly transferred pursuant to the settlement agreement, and some of them were received subsequently as a result of the interests Kea obtained in the Aegean limited partnership. These sums were £3,293,000 received from Aegean on 5 June 2020; £8,000 received from Cottian on 12 June 2020; £39,405 received from Cottian on 7 July 2020; £925,600 received from Aegean on 15 December 2020; £54,125.31, received from Cottian on 26 January 2021; £119,000, received from Aegean on 14 July 2021; £1,122,590 received from Aegean on 22 December 2021; and £2,569,085 received from Aegean on 22 December 2022.
94. Kea proposes to allocate these recoveries to (a) payment of an entirely separate debt due to Kea from Mr Watson, being a judgment debt of US\$6,370,483.30 arising from a judgment dated 22 March 2019 in relation to an entity called **Red Mountain Inc**, and (b) towards the reduction of the equitable compensation payment, as further set out below.
95. Kea allocates:
- i) the 5 June 2020 receipt of £3,293,000: as to £2,485,141.14, to the reduction of the principal amount of the Red Mountain judgment debt (so that there is no impact on the equitable compensation); and as to £807,858.86, to payments of capital to Spartan other than the Third Kea Loan, being first repayment of capitalised interest, and then of principal;
  - ii) all of the payments from 12 June 2020 to 22 December 2022 in whole to reduction of the principal amount of the Red Mountain judgment debt;
  - iii) the 22 December 2022 receipt of £2,569,085:
    - a) as to £145,513.76, to the extinguishment of the principal amount of the Red Mountain judgment debt;
    - b) as to £2,423,571.24, to payments of capital to Spartan other than the Third Kea Loan, being first repayment of capitalised interest, and then of principal.
96. Counsel for Kea drew my attention (since Mr Watson was not present) to the fact that the proceedings which gave rise to the settlement were brought against Ivory Castle and Mr Gibson in the current proceedings for the purpose of enforcing the debts arising out of the current proceedings. I accept Kea's submission that this does not affect the validity of Kea's allocations. The declarations that Ivory Castle and Mr Gibson were nominees for Mr Watson did not depend on which proceedings they were sought in, and happened to be sought in the current proceedings for administrative convenience. Since Mr Watson did not seek to allocate the recoveries to any particular debt, Kea is entitled to do so.
97. I am satisfied that Kea has properly accounted for these cash receipts in its calculations.

98. As to (b) the receipts from the Long Harbour Transaction, the evidence before the court establishes that:
- i) Kea threatened proceedings against the owners of LH, asserting that they held shares in Long Harbour Holdings Limited (**LHHL**) for Mr Watson - that was denied;
  - ii) A settlement was reached whereby certain shares in LHHL were transferred to Kea and Kea acquired rights in respect of certain other shares; the settlement agreement required that the consideration transferred and payable under that agreement should be applied to reduce the debt of Mr Watson to Kea under the Judgment (paragraph 7.2);
  - iii) Kea also obtained shares in another company (**LHRF**) and an interest in the Aegean limited partnership as referred to above;
  - iv) the owners of LHRF then set up a new entity called “NewCo” in which Kea obtained an interest by reason of a payment for equity (the “Equity Sum”). In other words Kea had to invest further sums to enhance the value of its recoveries;
  - v) there was then a complex restructuring of the LHHL and LHRF groups and NewCo;
  - vi) Kea was then able to sell some of its interest in the restructured group to an institutional third party Buyer, giving rise to cash recoveries (**the LH cash recoveries**, made up of what were called **the Sale Sum** received on 3 August 2021 and **the Balancing Sum** received on 15 December 2021).
99. As for the LH cash recoveries, Kea proposes that:
- i) From the 3 August 2021 receipt of the Sale Sum, the Equity Sum (which was an outlay required to enable the Sale Sum to be earned) should be deducted, leaving a net recovery (the LH Residual Sum); and that this sum be allocated to payments of capital to Spartan other than the Third Kea Loan, being first repayment of capitalised interest, and then of principal. The resulting figure is to be deducted in the calculations as at 3 August 2021.
  - ii) The 15 December 2021 receipt of the Balancing Sum be allocated to payments of capital to Spartan other than the Third Kea Loan, being first repayment of capitalised interest, and then of principal. The date for the deduction in the calculation is 15 December 2021.
100. I accept that this is the correct approach and I am satisfied that Kea has properly accounted for these receipts in its calculations.
101. There are also certain retained interests arising from the LH transactions, to which I shall return below.

### **The Fladgate Settlement**



102. This receipt arises from proceedings against Fladgate, a firm of solicitors who acted for Mr Watson and various other parties in the transactions which gave rise to the original claims. Kea brought two claims against Fladgate alleging involvement in and liability for Mr Watson's wrongdoing. It claimed in respect of principal sums of £129m paid out to Spartan plus interest and the unrecovered costs of the principal proceedings.
103. Kea recovered a sum (**the Settlement Sum**) from Fladgate in August 2021 pursuant to a settlement (**the Fladgate Settlement Agreement**). The agreement did not appropriate the payment among Kea's various claims. Paragraph 6.1 provides that each party will bear its own costs of the two actions and Fladgate's counterclaim. I accept Kea's submission that the effect of this clause was that there would be no additional payment for costs, and was to supersede and override costs orders already made in those actions. Clause 6.4 provided that the agreement was not to affect Kea's ability to allocate the Settlement Sum as it saw fit between the various claims which Kea had or claimed to have, including any claim for costs.
104. Kea proposes to allocate the Settlement Sum as follows (using shorthand descriptions for the various amounts):
- i) The **Fladgate Costs Sum** to Kea's claims against Fladgate for the costs of the Fladgate Proceedings.
  - ii) The **Pre-Judgment Spartan Costs Sum** to Kea's claims against Fladgate for damages in respect of Kea's unrecovered pre-judgment Spartan costs.
  - iii) The **Post-Judgment Spartan Costs Sum** to Kea's claims against Fladgate for damages in respect of Kea's unrecovered post-judgment Spartan costs.
  - iv) The residue – the **Fladgate Residual Sum** in reduction of the equitable compensation due from Mr Watson.
105. Since items i) to iii) (being concerned with costs) do not overlap with the equitable compensation ordered against Mr Watson, it is only the Fladgate Residual Sum which appears in the equitable compensation calculation in the Main Spreadsheet.
106. I am satisfied on the materials before the court that the claims against Fladgate themselves were not obviously unsustainable in the sense described above.
107. As to the first element, the costs of the Fladgate proceedings, I have been taken to Kea's estimate of these costs and the evidence supporting it. Given the complexity of the underlying Project Spartan facts in which Fladgate had been involved, the corresponding complexity of the claim against Fladgate, the size of the claim, and the duration of the Fladgate Proceedings (from April 2018 to July 2021), I am satisfied that there is nothing surprising or untoward about Kea's estimates of those costs. Kea has applied a 1/3 discount to the total. I am satisfied that this is a conservative approach as an estimate of what costs might reasonably be expected to have been recoverable (and by comparison with the discount of 30% made by Cockerill J in *FM Capital*). I am satisfied that the court has sufficient information to enable it to form at least a general view as to the nature and extent of the claim, and to conclude that it is not obviously unsustainable.

108. Turning to the allocation for the Pre-Judgment Spartan Costs Sum, Kea's claim against Fladgate was for all the losses it had suffered as a result of entering into the arrangements with Spartan. The claim included not only in respect of the money paid away by Kea to Spartan, but all the costs incurred by Kea in then seeking to recover the money. A claim to recover as damages the costs incurred in a claim against another party is a well-recognised claim: see eg *Hermann v Withers* [2012] PNLR 28 at [108].
109. As regards the costs which Kea incurred prior to the judgment given on 31 July 2018, the figures have already been dealt with in the section dealing with Mr Leahy above. I am satisfied by the evidence that the estimate of the total pre-judgment Spartan costs is reasonable and not untoward.
110. Had Kea pursued its claim against Fladgate to trial, Kea had a good case, on the basis of authority such as *Hermann v Withers* ([105]-[116]) that this head of loss would have fallen to be assessed on the indemnity basis.
111. Kea has again applied a 1/3 discount to the total pre-judgment Spartan costs. It has also given credit in respect of the allocation made in this regard from the recoveries from Mr Leahy and the Beaverbrook Sum. Taking off the 1/3 discount and these further sums, Kea has arrived at a Pre-Judgment Spartan Costs Sum for the purposes of its calculations.
112. I accept Kea's submission that the court has sufficient information to enable it to form at least a general view as to the nature and extent of this part of the claim, and to conclude that it is not obviously unsustainable. I accept Kea's submission that this amount is properly allocated to the unrecovered pre-judgment costs of the Spartan proceedings and does not therefore fall to be deducted from the equitable compensation owing by Mr Watson.
113. As to Kea's Unrecovered Post-Judgment Costs, Kea explained its case and the figures for these costs in a long letter to Fladgate on 7 June 2021. In short, Kea claimed against Fladgate under this head its post-judgment costs of seeking to recover the money it had paid out to Spartan and the interest awarded thereon.
114. The relevant costs to which Kea seeks to allocate are those up to 15 July 2021, the date of the Fladgate Settlement Agreement. I am satisfied that Kea's evidence is sufficient to give the court a general view of the scope of the activity pursued in aid of investigation and enforcement following the September 2018 Order. I am also satisfied that Kea's evidence suffices to give a general view of Kea's post-judgment Spartan costs and the activities in the course of which they were incurred. These were matters which Kea explained to Fladgate in the course of the Fladgate Proceedings.
115. I am satisfied that Kea's evidence as to its total post-judgment Spartan costs has been prepared on a reasonable basis. (I note here that Kea's legal team noticed shortly before the hearing that a further credit also needs to be given in the calculation for £100,000 which was paid to Kea in respect of an appeal on interest in 2019, and the costs of the security for costs application in respect of that appeal. Kea has proposed to update the overall calculation at the end of the hearing to bring into account the further £100,000.)
116. I am satisfied that the scale of the costs is neither unusual nor unreasonable given the scale and complexity of the legal activity involved. Had Kea pursued its claim against

Fladgate to trial, there is good reason to believe that this head of loss would have fallen to be assessed on the indemnity basis (see above). Kea's estimate of its costs includes no element of interest on costs between the date when individual items of costs were incurred (beginning in September 2018 and ending on 15 July 2021). Kea has again applied a 1/3 discount to arrive at the Post-Judgment Spartan Costs Sum.

117. I am satisfied that Kea's treatment of this sum for the purposes of its calculations is proper: the court has sufficient information to enable it to form at least a general view as to the nature and extent of the claim, and to conclude that it is not obviously unsustainable.
118. Given these conclusions I am satisfied that Kea has properly allocated only the balance after the above allocations (i.e. the Fladgate Residual Sum) in reduction of losses in respect of which equitable compensation is due from Mr Watson.
119. As it has not been allocated by the agreement, Kea is entitled, for the reasons already given, to choose to allocate this sum to claims in respect of payments of capital to Spartan other than the Third Kea Loan, being first repayment of capitalised interest, and then of principal.

#### **Ashfords/Chesa Lumpaz Tax Rebate**

120. On 30 May 2022 Farrer received a payment of £38,000 from Ashfords, a firm of solicitors, funded from a tax rebate due to Mr Watson relating to the sale of a ski chalet called Chesa Lumpaz. The money was not paid over in satisfaction of a proprietary claim. Kea has allocated it to interest. I am satisfied that Kea has properly accounted for it.

#### **Conclusions about the calculations in the Main Spreadsheet**

121. The sum which Kea sought as set out in the version of the Main Spreadsheet before the court was calculated at £30,953,945.37 as at 3 July 2023. As already mentioned an adjustment needs to be made for £100,000 of receipts (see paragraph 115 above). There will also be further interest from 3 July 2023. The exact figure will be calculated as at the date when judgment is given. Subject to those adjustments I am satisfied with the calculations contained in the Main Spreadsheet.

#### **Retained interests**

122. In addition to the above receipts, as a result of the various settlements and other transactions relating to Long Harbour Group explained above, Kea retains certain interests which are illiquid and difficult to value.
123. Kea therefore sought to engage with Mr Watson in 2020 about how Kea's interests in Long Harbour should be valued for the purposes of the equitable compensation calculation, proposing either (a) giving credit for the interests straight away, on the basis of an attempt to value the interests, or (b) to give credit for value received in due course in the event of a sale. Mr Watson ceased to engage with this initiative. Kea was left to realise value from the interests it had acquired as best it could. Kea also obtained interests in LHRF and Aegean (as well as other cash payments). As explained, the shares in LHHL and LHRF have been reconstructed and sold; the interest in Aegean

remains, and has produced cash from time to time and may continue to do so for a number of years. Kea also retained some interests in carried interests in investments connected with Long Harbour which were not part of the main sale, and which are illiquid. These carried interests (both Aegean and the others) are described in the evidence as the **Retained Interests**. They may give rise to payments to Kea in the future.

124. It is clear from the evidence that Mr Watson is aware that there are carried interests. The ownership of the interest in Aegean was contested in these proceedings and Mr Watson knew about the settlement with Mr Gibson and Ivory Castle. He is also aware that some of these carried interests have survived the sale of the main interests in the Long Harbour group, because a company called Keele Holdings, which is held by a trust of which Mr Watson is a beneficiary, is party to some of the partnerships entitled to the carried interests. He also chose at an earlier stage to put in evidence about what he thought the valuation of the interests which Kea had obtained in Long Harbour should be at the committal proceedings.
125. Kea has in the calculations set out above given credit for sums actually received from the various LH interests, but has not given credit for the illiquid Retained Interests. Kea accepts that it will have to give credit to Mr Watson in the future, if and when the Retained Interests generate further cash for Kea, by crediting those sums against the judgment debt it seeks in order that there is no double recovery.
126. I accept the submissions of Kea that this is the proper approach. It is supported by the decision of the Court of Appeal in *Trustor v Smallbone* (transcript of 9 May 2000) at [72]-[74]. I also accept Kea's submission that this accords with fairness and the overriding objective. The burden of proof in relation to whether a claimant has in fact recovered its loss elsewhere lies on a defendant; see *The World Beauty* [1970] P 144, at 154F and 158C; *Thai Airways International Public Co Ltd v KI Holdings Co Ltd* [2015] 1 CLC 765 at [83]-[92] and [141]-[144]; and *Townsend v Stone Toms & Partners (No. 2)* (1984) 27 BLR 26.
127. Mr Watson has not taken the point that the LH interests should be dealt with by valuation when received rather than by the full amount on actual receipt.
128. I also accept that any valuation of the Retained Interests is likely to be very difficult and contestable.
129. Accordingly I am satisfied that the current application should be granted and the equitable compensation calculated as set out above, and any receipts arising from the Retained Interests should fall to be deducted from the judgment sum awarded, as and when they arise.

### **Disposition**

130. There shall be judgement for the amount of equitable compensation finally due from Mr Watson to Kea in accordance with the above rulings. Kea should provide an updated calculation down to the date of the court's order.