Neutral Citation Number: [2023] EWHC 3124 (Ch)

Case No: BL-2019-001329

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

The Rolls Building
London

Date: 20 December 2023

Before :

HER HONOUR JUDGE CLAIRE JACKSON
Sitting as a Judge of the High Court

- -

Between :

(1) NORTHERN POWERHOUSE DEVELOPMENTS LIMITED (IN LIQUIDATION, ACTING BY ITS JOINT LIQUIDATORS ROBERT ARMSTRONG AND ANDREW KNOWLES)

(2) WOODHOUSE FAMILY LIMITED (IN LIQUIDATION, ACTING BY ITS JOINT LIQUIDATORS ROBERT ARMSTRONG AND ANDREW KNOWLES)

(3) LBHS MANAGEMENT LIMITED (IN LIQUIDATION, ACTING BY ITS JOINT LIQUIDATORS ROBERT ARMSTRONG AND ANDREW KNOWLES)

(4) FOURCROFT HOTEL (TENBY) LIMITED (IN LIQUIDATION, ACTING BY ITS JOINT LIQUIDATORS ROBERT ARMSTRONG AND ANDREW KNOWLES)

Claimants

-and-

GAVIN LEE WOODHOUSE

Defendant

- -
- -

Mr Paul O'Doherty (instructed by **Hewlett Swanson Limited**) for the **Claimants**
Mr Max Cole (instructed by **Preiskel & Co LLP**) for the **Defendant**

Hearing dates: 10th to 20th November 2023

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APPROVED JUDGMENT

This judgment was handed down remotely at 2pm on 20 December 2023 by circulation to the parties or their representatives by email and by release to The National Archives.

Her Honour Judge Claire Jackson :

1. The four Claimant companies, who act by their joint liquidators, Robert Armstrong and Andrew Knowles (as agents of the Claimants without personal liability) each bring claims against their sole director, Gavin Lee Woodhouse, for breach of his directors' duties and/or for repayment of sums owed to them by him pursuant to overdrawn directors' loan accounts operated by him in each of the Companies.

2. The claim of the Third and Fourth Claimants is brought as a debt claim for £20,000 per Claimant. The Defendant admits these claims and judgment will be entered accordingly.

3. The claims of the First and Second Claimants are admitted by the Defendant to an extent. The Defendant admits that he operated a director's loan account with each Claimant (together "the Loan Accounts"), that each loan account is overdrawn and that this is recoverable as a simple debt. The Defendant however puts the First and Second Claimants to proof of the sum due to each of them. The Defendant further denies that the sums are recoverable as a result of a breach of duties he owed to each respective Claimant.

4. This judgment follows the trial of the claim and deals with what sums are payable by the Defendant to the First and Second Claimants and on what basis (i.e. as a debt claim or as compensation for breach of duty). It does not address the remedies or form of Order the First and Second Claimants are entitled to as a result (e.g. tracing remedies, equitable compensation and/or continuation or dismissal of an extant freezing injunction). If this is not agreed by the parties following handing down of

this judgment, then the form of the Order will be considered at a hearing listed on 6 February 2024.

Background

5. The Defendant was a joint founder of a business, the MBi Group, with a Robin Forster. The MBi Group operated within the care home, student housing and hotel sectors. The MBi Group raised money for its properties by promoting and selling rooms in properties to individuals (a process known as "unitised sales" or "fractional ownership"). The individuals were promised a yearly return on their monies (usually 10%) together with a full repayment with a bonus payment (usually 25%) at a future date (usually 10 years). The individuals had the option of paying less than 100% of the purchase price for the room by utilising the first three to four years' return to pay any deficit in the sums paid for the room ("developer deferred option"). The MBi Group schemes were a mixture of existing operational businesses and off-plan property development projects. Commission of 10% was paid to unregulated sales agents.

6. That business operated from 2012 to around 2016. In 2016 Mr Forster and the Defendant had a falling out and determined that they did not wish to continue in business together. The business of the MBi Group was therefore divided between them with the Defendant taking control, as sole director and member, of three of the companies which had formerly operated within the Group: MBi Hawthorn Care Limited ("Hawthorn"), MBi Clifton Moor Limited ("Clifton Moor") and MBi Smithy Bridge Limited ("Smithy Bridge"). Each of these companies was an off-plan care home project, with construction having started only on Smithy Bridge. Despite this

returns were already being paid to those who had purchased rooms in the three developments. Clifton Moor was balance sheet insolvent as at 31 March 2016.

7. The Defendant then founded the Northern Powerhouse Developments Group (the "NPD Group"). An organisation chart of the Group and other companies operated by the Defendant is attached to this judgment at Appendix A.

8. At all material times, the Defendant was in control of, and was the ultimate beneficial owner of, the NPD Group. NPD Group operated from 2016 to July 2019. It operated, mainly, in the hotel and leisure sector, although its business model (i.e. unitised sales) was the same as the MBi Group. Ultimately the NPD Group operated or proposed to operate twenty-four hotels on this business model together with a leisure park. Each site was owned by a special purpose vehicle ("SPV").

9. The First Claimant is a company within the NPD Group used to promote and own the SPVs for hotels. For some hotels, the operation was conducted by a separate SPV, which was a wholly owned subsidiary of Giant Hospitality Limited ("Giant"), a sister company of the First Claimant. The Defendant was appointed the sole director of the First Claimant on incorporation on 6 January 2016 and remains the sole director. The First Claimant was placed into Interim Management on 7 July 2019, administration on 16 August 2019 and liquidation on 18 August 2022.

10. The three MBi companies were not initially, on paper, part of the NPD Group, however they did receive funding from it. Indeed, so far as Clifton Moor and Hawthorn were concerned, from 2016, the only means of paying returns to those who had bought rooms was through the NPD Group given that neither property had been constructed. By 31 March 2017 Clifton Moor owed the First Claimant £203,104 and Hawthorn owed the First Claimant £10,600 (debts entirely incurred in the year 1 April

2016 to 31 March 2017). The First Claimant was therefore funding the returns to individuals owed by those companies. Yet as at 31 March 2017 both Clifton Moor and Hawthorn were balance sheet insolvent, with millions due to creditors in the next year. Despite this, in Spring 2018 the Defendant told those who had bought rooms through those two companies that: *"I am delighted to report we are now back on track and still in a position to deliver Hawthorn and Clifton Moor Care Homes, on time and on budget."*.

11. In 2018 Smithy Bridge became a wholly owned subsidiary of the First Claimant. This transaction is considered in detail later in this judgment.

12. The Second Claimant is a company which was set up to hold investments for the Defendant and his family. It is not part of the NPD Group. The Defendant was appointed a director of the Second Claimant on its incorporation on 6 October 2015 and is now the sole director. The Defendant's wife, Charlotte Hannah Woodhouse, was also a director of the Second Claimant from 6 October 2015 but resigned on 28 June 2019. The Second Claimant was placed into administration on 29 July 2019 and liquidation on 23 July 2022.

13. The Third Claimant is a company which was formed for and participated in the operation of Llandudno Bay Hotel & Spa, one of the NPD Group hotels. The Defendant was a director of the Third Claimant from 20 July 2017 to 15 July 2019. The Third Claimant is a subsidiary of Giant. The Third Claimant went into administration on 13 August 2019 and liquidation on 3 December 2020.

14. The Fourth Claimant is a subsidiary company of the First Claimant. It was formed to promote and own the Fourcroft Hotel in Tenby, one of the NPD Group hotels. The

Defendant was a director from 30 March 2017 to 9 July 2019. The Fourth Claimant went into administration on 8 August 2019 and liquidation on 3 December 2020.

15. Each of the Claimants is insolvent. Indeed, all the NPD Group companies are now in liquidation. The Claimants say that approximately £73 million was received by the NPD Group from individuals in relation to unitised sales up to July 2019.

16. At the date each of the Claimants entered into Interim Management or Administration the Defendant was indebted to them by way of overdrawn directors' loan accounts. In these proceedings the Claimants each seek to recover the sum showing in their respective account as due and owing to them.

17. I note that the bundles in this case were lengthy (exceeding 9,500 pages) with numerous additional pages of evidence or analysis handed up during the course of the hearing. As a result it is not possible for this judgment to refer to every piece of evidence submitted by the parties. I have however in preparing this judgment considered all documents the parties asked me to read or to which the Court or witnesses were referred during the trial. This includes Counsels submissions, the pleadings and the witness statements. A failure to refer to a document herein does not mean it was not considered by the Court.

The Claimant's Case

18. In his skeleton argument Mr O'Doherty, Counsel for the Claimants, summarised the claim as follows (cross-references removed for ease of reading):

"*This case is centred around and about D's conduct in operating the businesses of NPD Ltd and WFL. ...*

Cs contend that D was in wholesale breach of his directors' duties. These breaches can be summarised as follows:

i) *D was the sole director of NPD Ltd, a business which promoted, operated and managed a series of collective investment schemes (the Schemes) through special purpose vehicle companies (SPVs) (the Investment Activities). It is Cs' case that the Investment Activities were unlawful: the Schemes were within the ambit of s.235 of the Financial Services and Markets Act 2000 (FSMA) which sets out the characteristics required for an investment scheme to be considered a collective investment scheme (CIS). The Investment Activities were carried out in breach of the general prohibition under s.19 FSMA. In order to carry out its business NPD Ltd was required to be authorised by the Financial Conduct Authority (FCA). It was not, and its promotion and operation of the CIS Schemes was a criminal offence and gave rise automatically to civil liabilities to the investors in the Schemes. NPD Ltd should not have traded at all, unless and until NPD Ltd was authorised by the FCA. D knew, or ought to have known that NPD Ltd's Investment Activities were unlawful; but in any event this matters not - as a matter of law Cs submit that it is clear that NPD Ltd was carrying out regulated activities where it was not appropriately authorised;*

ii) *D managed the NPD Group's Activities from January 2016 to July 2019, when NPD Ltd and a series of related companies were placed into interim management (which led to them being placed subsequently into administration and thereafter into liquidation). It is also Cs' case that, from the outset, it was clear that the businesses of NPD Ltd and the NPD Group, as well as being involved in the promotion and operation of unlawful CISs, were financially unsustainable and insolvent;*

iii) *During the course of the operation of NPD Ltd, D extracted significant sums from NPD Ltd and WFL, by way of director's loan account (DLA) drawings, for his own personal gain. D had also done this previously in the MBi Group. After the split with Mr Forster, NPD Ltd was left supporting earlier defunct MBi Group Schemes. The DLA drawings, which supported an expensive lifestyle for D, were extracted when it was clear that none of the Schemes (either NPD Group Schemes or MBi Group Schemes) had reached profitability and could not afford their own operational and financing costs, let alone support D's significant DLA drawings (paid on top of a substantial salary). NPD Ltd and WFL were insolvent and these drawings were extracted in breach of D's duties to the creditors of each;*

iv) *D admits that the DLAs are repayable but not the amount that is owed, nor that the DLAs were run up in breach of duty. Cs rely at trial on a detailed analysis of the NPD Ltd's and WFL's DLAs, undertaken from the books and records of Cs by Victoria Richards (Ms Richards) of the joint liquidators' team, to prove the quantum of the outstanding DLAs;*

v) *WFL was a separate business to NPD Ltd. WFL was a business set up, D says, to manage his family's personal investments. In managing the operation of WFL's business, D utilised assets from NPD Group Schemes, to build up a portfolio of buy-to-let property assets. WFL did not pay for these assets, rather, it built up a significant inter-company loan to NPD Ltd, which remains outstanding. Cs say that this was a misuse of NPD Ltd's assets (which had been funded by moneys received from investors in the various NPD Group*

Schemes). D's explanation of why he managed the business of WFL in this way, using NPD Group investors' moneys, lacks any credibility;

vi) *Overall, Cs submit that it can be inferred from the circumstances of the Investment Activities that D's conduct was dishonest. NPD Ltd was insolvent, none of the Schemes were profitable, and D knew (or ought to have known) that the funds that he had drawn were required for the purposes of, not least to complete and deliver, the NPD Group Schemes as promoted to their investors. As to his dishonesty, the court must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the relevant facts. The court must then determine whether the individual's conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. There is no requirement that the individual was subjectively aware that, by those standards, they have behaved dishonestly: Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club) [2017] UKSC 67;[2018] A.C. 391 paragraphs 62 and 74. It is submitted that, against this test, it is clear that D acted dishonestly.*

vii) *It should be noted that even if the court is not satisfied that NPD Ltd and the NPD Group Companies generally were insolvent at any given point, which Cs submit they clearly were, none of the Schemes had made any profit and therefore it was wholly wrong for D to have drawn any money by way of DLAs. By doing so he was funding an extravagant lifestyle with investors' money when the Schemes had not been completed and had not achieved profitability. A number of the off-plan schemes had not even been constructed over 3 years after investment moneys had been raised and at D's direction paid away. The fact that the DLAs were drawn in the context of the insolvency of NPD Ltd and the NPD Group generally, whilst these companies were conducting an unlawful CIS, make D's conduct even more egregious.*

viii) *Cs seek proprietary remedies against D, and personal remedies in the alternative. NPD Ltd claims the sum of £1,522,228* [being the amount of the overdrawn loan account of £559,228 and reversal of a credit to the Directors loan account relating to MBi Smithy Bridge in the sum of £963,000*] in total, plus compound interest of £453,344 at 8%, being £1,975,572. WFL claims the sum of £798,963 in total, plus compound interest of £319,007 at 8%, being £1,117,970.*"

The Defendant's Case

19. The Defendant accepts part of the Claimants' claims but denies breach of duty in any of the ways claimed by the Claimants. The Defendant's position was further outlined in the skeleton argument for trial by Mr Cole, Counsel for the Defendant (cross-references removed for ease of reading):

"D accepts his liability to repay the value of his loan accounts. In the case of C1 and C2 he requires the sums to be quantified.
In the case of C3 and C4 he accepts that he received loans from each in the sum of £20,000.

This apparently straightforward claim is beset by a pleaded case which is excessively complicated and, in crucial respects, lacking in particulars. This is clear from D's Defence. It has not been improved by two subsequent rounds of amendments and a Response to a request for further information under CPR 18. These are not simply "pleading points"; they affect the substance of the claims advanced and fairness to D in respect of the claims he is required to meet.

…

This is not a claim about how monies came into Cs, or (more generally) how the business of the NPD group (and associated companies) was conducted.

…

They may be matters of great importance to individuals such as Allaway, Aggarwal and Devadoss and they may be of interest to the office holders of the companies in the NPD group in their general investigations. But they are outside the proper of scope of these proceedings. That is a consequence of the way in which Cs have pleaded their case and framed the relief sought.

This is a case about money paid out of Cs to D. Since the amounts paid of C3 and C4 are admitted, and are not said to be a breach of fiduciary duty, the focus of enquiry is on C1 and C2: what was the amount of the payments and were they a breach of fiduciary duty?

...

D's position on the loan accounts is as follows:

C1: £615,468 - Cs are required to prove the sum claimed [note the sum claimed was reduced by the Claimants in their skeleton argument to £559,228]

C2: £798,863 - Cs are required to prove the sum claimed

C3: £20,000 - admitted

C4: £20,000 - admitted

...

The value of the shares in MBi Smithy Bridge Limited as at 21 December 2107 (sic) *was £963,000. This was the valuation given by C1's Finance Director Robert Atkin and used by C1's external advisers in advising C1 in the tax consequences of the transaction. Cs have not produced any evidence to suggest that Mr Atkin's valuation was wrong. In those circumstances D submits that Cs have no proper basis to dispute that valuation and it should be adopted by the court.*

…

D's case is that the sums paid out of C1 and C2 were directors loans. D relies on the fact that:

i) each transaction was recorded in the relevant company's sage account as directors loans;

ii) In the case of C1 the company's finance director treated them as such for year end tax and accounting purposes;

iii) D does not dispute his obligation to repay the sums in question and has never done so (so that he does not, for instance say that they should be treated as remuneration or dividends).

Since D accepts that he must repay the value of his loan account, the question of whether these monies were paid in breach of duty is relevant only to the nature of the remedies available – in particular whether C1 or C2 is able to assert a proprietary claim and constructive trust over the loan monies."

The Law

20. The claim before the Court is a civil claim. The relevant standard of proof is therefore the balance of probabilities. This has been applied throughout the judgment. The burden of proof generally lies on the person asserting a claim and therefore in this case it generally lies on the Claimants. However, in relation to the items for which the Defendant seeks credit on the Loan Accounts the burden of proof is on the Defendant (see paragraph 21(v) below).

21. Counsel were broadly agreed on the legal principles applicable to the claim, albeit they relied on different precedent cases to come to the same principle. The agreed applicable principles were:

    i) Given that this is a commercial case the Court should prefer contemporaneous documentary evidence and accounting records to oral evidence: *Blue v Ashley* [2017] EWHC 1928 (Comm);

    ii) The duties owed by a director to a company are now set out in sections 171 to 177 of the Companies Act 2006 ("the 2006 Act"). I do not set out the duties in this judgment but have had full regard to the provisions when preparing this judgment;

    iii) The duties are owed to an individual company even if the company is part of a corporate group. The Court should also have regard to sections 180, 197, 213 and 239 of the 2006 Act;

    iv) The statutory provisions applicable to a regulated investment scheme are sections 19-25 and 235 of the Financial Services and Markets Act 2000 ("FSMA");

v) As a director challenging entries on his directors' loan accounts the Defendant bears the onus of proof on items for which he is seeking credit: *GHLM Trading Ltd v Maroo* [2012] EWHC 61(Ch) and *Re Idessa (UK) Limited* [2011] EWHC 804;

vi) Section 1157 of the 2006 Act cannot be relied upon by the Defendant so as to relieve him of liability where he received monies from a company (*Henderson & Jones Limited v Price* [2020] EWHC 3276 (Ch) at 62);

vii) The test for dishonesty is that set by *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2017] UKSC 67. The Court must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the relevant facts. The Court must then determine whether the individual's conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. There is no requirement that the individual was subjectively aware that, by those standards, they have behaved dishonestly;

viii) Whilst directors of a company are not strictly speaking trustees of company property they are treated as such as respects company assets which are under their control: *Auden McKenzie (Pharma Division) Ltd v Patel* [2019] EWCA Civ 2291 and *JJ Harrison (Properties) Limited v Harrison* (CA) [2001] EWCA Civ 1467, and;

ix) Where a director disposes of company property in breach of their fiduciary duty that breach is also treated as a breach of trust.

22. Mr O'Doherty additionally relied on the following principles:

i) The correct approach to determining whether a power was exercised for a proper purpose (section 171 of the 2006 Act) is set out in *Extrasure Travel Insurances Ltd v Scattergood* [2003] 1 B.C.L.C. 598; [2003] C.L.Y. 523 at [92]:

> *"92. The law relating to proper purposes is clear, and was not in issue. It is unnecessary for a claimant to prove that a director was dishonest, or that he knew he was pursuing a collateral purpose. In that sense, the test is an objective one. It was suggested by the parties that the court must apply a three-part test, but it may be more convenient to add a fourth stage. The court must:*
>
> *92.1. identify the power whose exercise is in question;*
>
> *92.2. identify the proper purpose for which that power was delegated to the directors;*
>
> *92.3. identify the substantial purpose for which the power was in fact exercised; and*
>
> *92.4. decide whether that purpose was proper."*

ii) Where the power in question is to deal with the company's assets in the course of its business, the proper purpose is to advance the company's business and commercial interests: *Re HLC Environmental Projects Ltd* [2013] EWHC 2876;

iii) The duty under section 172 of the 2006 Act is to promote the success of the company for the benefit of its members, not to promote the interests of its members directly: *Palmer's Company Law* (Looseleaf, updated April 2022) at 8.2605. Section 172(3) includes the "*creditor duty*" or the "*rule in West Mercia*": *BTI 2014 LLC v Sequana SA* [2022] UKSC 25; [2022] Bus. L.R. 920. Where the creditor duty is engaged, the directors have a duty to consider

the interests of creditors. The creditor duty is engaged when the directors know or ought to know that either: (a) the company is insolvent or bordering on insolvency; or (b) an insolvent liquidation or administration is probable: *Sequana*. Members cannot ratify a decision of the directors "*which is either (i) made at a time when the company is already insolvent or (ii) the implementation of which would render the company insolvent*": *Sequana*, paragraph [149]. The insolvency of the company can also change the duty from a subjective duty to an objective duty: *Re HLC Environmental Projects Ltd* [2013] EWHC 2876 (Ch) at 91-92;

iv) Section 235 of FSMA is satisfied in respect of assets where the investors collectively surrender control over their property to the operator of a scheme so that it can be either pooled or managed in common in return for a share of the profits generated by the collective fund: *FCA v Asset LI Inc* [2016] UKSC 17, and;

v) Where a person has sought and obtained a legal opinion as to the legality of his activities or confirmation as to particular treatments from the FCA based on a false or knowingly incomplete set of facts, that can be clear confirmation both of the existence of a suspicion of a breach of the statute, and a desire for the true position not to be investigated: *Financial Conduct Authority v Forster* [2023] EWHC 1973 (Ch).

23. Mr Cole relied on two additional authorities:

i) A loan made to a director is not of itself a misapplication of the company's monies (or put another way a breach of fiduciary duty): *Re Ciro Citterio Menswear plc v Thakrar* [2002] EWHC 622 (Ch), and;

ii) In relation to inferences drawn from a failure to call a witness at trial the applicable principle is that set out in *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324 at 340:

"*1. In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action. 2. If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness. 3. There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue. 4. If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified*."

24. Having read the authorities filed by the parties I accept that the principles set out above are derived from the relevant authority. When considering the relevant issues in the case I have applied the principles.

The Issues

25. The parties filed a lengthy agreed list of issues for trial. The list read as follows:

Valuations

1. What was the total outstanding value of D's director's loan account (DLA) with each C?
Cs allege as follows:
C1: £[559,228]
C2: £798,863
C3: £20,000
C4: £20,000
2. What is the total outstanding value of the "inter-company transfers" made from C1 to C2 and three other companies within the NPD Group as set out below (whilst these are not pursued as a money claim, Cs seek a finding as to how much was transferred as

corroboration for Cs' allegations of breach of duty in respect of the sums set out at paragraph 1 above):-
Cs allege as follows:
To Ideal Management Limited: £237,646
To Ideal Rooms Limited: £405,918
To C2: £2,305,809
To Campus House Limited (CHL): £77,219
3. What was the value of D's shares in MBi Smithy Bridge Limited as at 21 December 2017?3
Breach of directors' duties
4. In relation to his DLA with each of C1 and C2, did D:
a. make payments which did not relate to the proper business of C1 and C2?
b. Use company assets for improper purposes?
c. Misuse company assets?
5. Did D raise investments into unregulated investment schemes, where the schemes were regulated under FSMA 2000 and could only be promoted/operated by regulated entities?
6. Did D continue to trade and raise investment monies from investors when C1 (and other companies) were insolvent and had no prospect of trading out of insolvency?
7. In each case, did D breach his duties as a director/fiduciary duties to C1 or C2?
8. Did D breach his duties as a director/fiduciary duties by authorising the purchase by C1 from D of his shares in MBi Smithy Bridge Limited and crediting his loan account with C1 with the £963,000 consideration?
9. Did D breach his duties as a director/fiduciary duties by transferring (or authorising the transfer) of the "inter-company transfers" (set out in [issue 2] above)?
10. If D breached his duties in the ways outlined above, were those breaches Dishonest?
11. If D has breached his duties in the ways outlined above to what remedies are C1/C2 entitled?
12. Is D entitled to relief under s1157 of the Companies Act 2006?
Restitution
13. Is C1 entitled to repayment/restitution of the value of D's DLA with C1?
14. Is C2 entitled to repayment/restitution of the value of D's DLA with C2?
Claim in negligence
15. This claim is not pursued.
Claim in contract
16. Is C1 entitled to claim as a debt, alternatively damages for:
a. the value of D's DLA with C1;
b. £963,000 (the consideration paid for D's shares MBi Smithy Bridge Limited)?
17. Is C2 entitled to claim as a debt, alternatively damages the value of D's DLA with C2?
18. Is C3 entitled to claim as a debt, alternatively damages the value of D's DLA with C3?
19. Is C4 entitled to claim as a debt, alternatively damages the value of D's DLA with C4?

26. Upon reading the papers for the trial I appreciated that this was a comprehensive list of all the issues raised by the pleadings in the case, but it was not a list focused on the real issues between the parties or the key issues the Court would need to determine at trial.

27. A more concise list of the key issues in the case would have been:

    i) Did the Defendant operate the First Claimant and its SPVs lawfully?

    ii) Did the Defendant wrongly take monies for himself from the First and Second Claimant and, if so, how much?

    iii) Did the Defendant otherwise wrongly deprive the First and Second Claimants of money?

    iv) What remedies should be granted given the findings on the above?

28. At the start of the trial Mr Cole made a request for a ruling by the Court that the issues regarding whether the Defendant had breached his duties to the First and Second Claimants by operating unregulated investment schemes should be struck out. I was aware from my pre-reading that a similar application had been made, and determined, at the Pre-Trial Review by Joanne Wicks KC sitting as a Deputy Judge of the High Court. The relevant Order from that hearing provided that "*The Defendant's application for an order pursuant to CPR 3.1(2)(k) is dismissed. The Defendant has permission to restore at trial before the trial judge.*"

29. No formal application to restore was made prior to the trial and indeed Mr Cole's skeleton argument noted that "*D anticipates that the court will not wish to make determinations before Cs put their case. However the court is asked to have these matters in mind.*" Despite this in his opening submissions Mr Cole invited the Court to strike out parts of the claim. I did not do so for reasons explained on day one of the trial.

30. Instead, I provided guidance to the parties as to how I would deal with the case. I therefore informed the parties that I would hear all the evidence they wanted to put before the Court but I would then decide the case on the key issues before the Court. I would not engage with issues which did not impact on the outcome of the case or likely remedies Therefore given no relief was sought in relation to items 1 and 3 of the concise list following the narrowing of relief sought by the Claimants in their skeleton argument at paragraph 160, the key issues were 2 and 4 and that would be where I would concentrate. I accepted however that to answer issue 2 I may need to consider the other wider issues raised in the case, especially group insolvency and inter-company loans given the decision in *Sequana*.

31. I confirmed to Mr Cole that given the serious consequences for the Defendant in relation to the Court's potential findings on the unregulated investment scheme point that I would only address this if necessary and that I would at the relevant times during his evidence ensure that the Defendant received a warning against self-incrimination.

32. At the close of Day 6 of the trial, and prior to the parties preparing their closing submissions, Mr Cole sought further confirmation from the Court as to whether the Court was proposing to consider remedies in this judgment. Having heard from Mr Cole and Mr O'Doherty I confirmed that this judgment would deal with two broad topics: How much was the Defendant indebted to a particular company for and how was the Defendant indebted to each company (i.e. simple debt, or breach of duty I note that the parties did not address the restitution or contractual damages claims at trial). The parties could then consider whether they could agree the remedy that the

Claimants were entitled to and, if this could not be agreed, it would be addressed at a hearing.

The Witnesses

33. The Court received witness statements from five witnesses: Four for the Claimants and one for the Defendant. Hearsay notices were filed on behalf of three of the Claimants' witnesses: Mr Devadoss, Ms Allaway and Mr Aggarwal. The hearsay notices state that the evidence "*is peripheral in nature*". I have therefore read the statements of those witnesses and have taken them into account in reaching my decision. However, I have borne in mind that the witnesses were not subject to scrutiny on the contents of their statements and that on the Claimants' case they are, in any event, peripheral to the issues before me (the Defendant says that they are irrelevant). I have therefore placed limited weight on those statement unless otherwise stated in this judgment.

34. The remaining witnesses attended trial and gave evidence to the Court. My findings on the witnesses are as follows:

i) Victoria Richards: Ms Richards was a straightforward witness who accepted she had no contemporaneous knowledge of the operation of the Claimants or of the transactions and entries in the Loan Accounts. This is unsurprising given Ms Richards is an employee of the firm of the office holders.

ii) Ms Richards gave her evidence in a precise, controlled and compelling manner. She did not stray beyond the limits of her actual knowledge. She corrected Counsel when they made mistakes but equally made concessions, for example in relation to the Brierstone invoices. She answered all questions

openly. Her evidence was supported by the documentation she placed before the Court. In my judgment she was a credible witness.

iii) Mr Woodhouse: The Defendant is plainly an intelligent individual. He is also an individual who can be persuasive when dealing with others. After all he was able to establish and operate for three years a web of companies with interlocking financial relationships and to obtain money for those companies running to over £70,000,000 from many individuals and from finance companies.

iv) As a witness however the Defendant was not compelling and was not credible. He frequently did not answer the question asked of him, even when the right against self-incrimination was not relevant. For example, when asked about monies that were paid into NPD Group he would answer not by reference to money but by reference to conversations. He would also confuse finance facilities which were available to the First Claimant with discussions he was having with finance providers for facilities. When he did answer questions his answers were frequently unclear, confused the Group with other companies and himself, and appeared to be attempts by him to distort or confuse issues rather than to provide information to the Court, for example in relation to Biomass boilers.

v) In his witness statement and in his oral evidence the Defendant sought to explain how entries could have been incorrectly entered onto his Loan Accounts with the First and Second Claimant. The explanation given by the Defendant was:

"*I cannot explain why the various entries described above have been logged in against my DLA. They should have been logged in against the business ledger. I do not know why they have not been. I did not manually enter these transactions. I am not trying to point fingers but it was really a job of a book keeper to ensure various expenses are recorded in correct ledgers. This is clearly not the case here. The invoices were not apportioned when they should have been and business expenses are said to be my personal expenses. As can be seen from my DLA, a lot of the entries were entered by Victoria Wetherill, an accountant, who at the time was in an intimate relationship with Dax Bradley and expecting a baby. It is not impossible that her attention got diverted away because of these events and mistakes happened. I cannot be held responsible for incompetency of other people, I am not an accountant. A lot of the entries were entered by Victoria Wetherill, an accountant. She made mistakes. However, I do think that Victoria Richards should have spotted at least some of these.*"

vi) The Defendant's position is therefore he does not know why errors occurred but he is willing to engage in speculation and guesswork as to why this is the case. This was a repeated theme of the Defendant's evidence. As will be noted below in relation to the Loan Accounts, the Defendant on many occasions did not know why he was challenging an entry or how much of an entry he was challenging so he would simply engage in guesswork or hypothesis and then come up with a figure he was willing to dispute. Guesswork is not evidence. Nor is hypothesis. An honest witness knows that and simply accepts what they do not know.

vii) In any event the guesswork engaged in by the Defendant was frequently obviously wrong on the documents before the Court and his guesswork on the

particular point above is demonstrably wrong from a review of the Loan Accounts. Leaving to one side that people who are in a relationship and who are pregnant are frequently able to hold down extremely senior jobs without making mistakes, whilst Ms Wetherill did make entries on both Loan Accounts she did not make the majority of entries, or even a lot of entries, on either account. So far as the First Claimant's loan account is concerned there are approximately 210 entries of which Ms Wetherill made 46, so less than 21%, and for the Second Claimant's loan account there are 15 entries of which Ms Wetherill made one entry (6%). Further of the entries challenged by the Defendant in the First Claimant's loan account seven out of twenty-seven entries (25%) were made by Ms Wetherill and none of the entries challenged in the Second Claimant's loan account were made by Ms Weatherill.

viii) Overall, the distinct impression I was left with was that the Defendant did not recognise the distinct legal personality of each company or that a company's assets did not belong to him as the ultimate sole shareholder. He did understand basic principles of company finances including that capital and turnover are not the same as profit but he did not want to admit this to the Court as he knew it undermined his actions in relation to the companies. Indeed, having heard the Defendant give evidence it was clear that he did not want to accept he had done anything wrong. He therefore sought to use his time in the witness box to create explanations for his actions. They were not believable. Even if therefore Counsel had not agreed that the Court should prefer contemporaneous documentary evidence over oral testimony I would prefer such documents to the testimony of Mr Woodhouse which lacked credibility, and integrity.

How much is due under the Defendant's Directors Loan account with the First Claimant ("the Loan Account")

The Account Entries

35. The correct sum due under the Loan Account operated by the Defendant with the First Claimant was the subject of a number of concessions by both sides in the lead up to, and at, trial. Counsel agreed in closing submissions that, taking into account all concessions made, the balance the First Claimant sought to recover was £552,564 and that the Defendant challenged 27 entries on the Loan Account seeking deductions of £414,889.

36. Given that the parties agree that the Defendant operated a loan account with the First Claimant and that this was overdrawn the burden of proof is on the Defendant to show why any particular item on the Loan Account is incorrect.

37. I set out at paragraphs 34v-vii above the Defendant's evidence on why there were errors on the Loan Accounts and that this evidence amounted to guesswork not supported by the documents before the Court. I am therefore satisfied that the Defendant's explanation for why errors were made on the Loan Accounts is not sufficient to show that the entries generally are wrong. His explanation is unsubstantiated guesswork which is undermined by the actual evidence before the Court. I therefore turn to the 27 individual item challenges. Given however many of the challenges are the same or similar to other challenged entries I consider them under composite headings. To aid the reader of the judgment in understanding the challenged entries, my judgment and the effect of this on the Loan Account is set out in tabular form at Appendix B to this judgment. Reference to the entries in this

section of the judgment are by way of cross reference to the line on which the entry is found in the nominal ledger of the Loan Account ("the Ledger").

Brierstone Invoices

38. The Defendant challenged 6 entries on the Loan Account relating to invoices submitted by Brierstone for construction work. Brierstone was a construction company which operated from the NPD Group premises. It undertook work on NPD Group premises, the premises of other companies owned or operated by the Defendant and on the Defendant's residential property, Barkisland Hall.

39. Each of the entries challenged by the Defendant is supported by a contemporaneous invoice. The invoices can be divided into three categories:

    i) Entries 25, 60 and 70: These are invoices addressed to the Defendant at his residential property. They state that they are for work undertaken "*To valuation [x] at the above*". They are stamped as having been processed by the First Claimant's accounts team and show the Loan Account as the relevant nominal account;

    ii) Entry 33: This is an invoice addressed to the Defendant at his residential property. It states that it is for work undertaken "*To valuation 3 at the above*". It has not been stamped by the First Claimant's accounts team;

    iii) Entries 108 and 155. These are invoices addressed to the Defendant at his residential property. They state on their face that they are for "*works carried out at Barkisland Hall*".

40. Each entry on the Loan Account is therefore supported by an invoice from the contractor. Each invoice refers to the work being carried out at Barkisland Hall, either directly or by implication. Each invoice is addressed to the Defendant and not to the First Claimant.

41. Against this, the evidence of the Defendant was that without seeing the valuations referred to in each of the invoices he could not state whether the work was undertaken to Barkisland Hall, NPD Properties or Barkisland Cottages. As a result the Defendant's position at trial was "*I have no means of exact apportionment, but I would estimate that around 50% of work done by Brierstones was carried out on Barkisland Hall and the remaining 50% on the hotel sites. 50% of the Brierstone invoices, except for Item 38 below, is £359,375.*"

42. The Court therefore has clear contemporaneous documents all of which refer directly or indirectly to works at Barkisland Hall, with three of the indirect invoices having been stamped by the First Claimant's accounts team as being personal expenditure. Against that is guesswork by the Defendant.

43. In my judgment the contemporaneous documents should be preferred to the Defendant's objections given first the burden of proof and second the clarity of the invoices.

44. In this later regard I note that the Defendant's position is based on an incorrect statement regarding the evidence before the Court. As noted only four of the invoices refer to valuations. Two of the invoices are extremely clear and refer solely to work carried out at Barkisland Hall. There can be no confusion as to the location of works to which those invoices relate. The lumping together of the explicit invoices with the valuation invoices in my judgment shows that the Defendant's objections to the

invoices from Brierstone is a smokescreen devoid of any factual basis. It is an objection which seeks to exploit indirect wording. Yet the four indirect invoices still state that the work was carried out "*at the above*" and the only property shown above is Barkisland Hall. Therefore, even reading those four invoices in the most favourable way to the Defendant there is no doubt as to the location of the works.

45. I therefore dismiss this dispute and order that there be no adjustment to the Loan Account in this regard.

Land Rover Payments

46. The Defendant challenges seven entries on the Loan Account relating to payments toward a Land Rover. There is no contemporaneous documentation relating to the payments save for the Ledger entries. The Ledger shows that entries were made contemporaneously by the accounts team of the First Claimant by way of reference to bank payments to Brierstone for "*Gavins car*" or "*GW car*".

47. Ms Richards accepted that she did not have first-hand knowledge of what the car was used for or who it was used by. However, she stated that it did not make sense for payments to be made to Brierstone if the car was a company car. The First Claimant therefore relied on the Ledger.

48. The Defendant's witness statement asserts that the vehicle was used by a lot of the First Claimant's employees. He therefore asserts that it was a company car and therefore the payments relating to it were a business expense.

49. In his oral evidence the Defendant stated that he was buying the car from Brierstone. However, the transaction had not completed and therefore Dax Bradley rented the car

to the First Claimant until the sale completed and therefore the payments were a business expense.

50. The Defendant has therefore sought to give two reasons why the payments were a business expense. Those explanations are not consistent and in my judgment, it was obvious from the Defendant's demeanour when giving evidence on this point that the Defendant was changing his evidence as he knew his written account did not stand scrutiny but that even he had no belief in his new account.

51. Leaving this to one side however, simply because a car is used by other employees of a business this does not make a car a business asset and hence all expenses relating to the car a business expense. As the Ledger makes clear this was a vehicle sourced from Brierstone as a vehicle for the Defendant, not for the First Claimant. The fact that the Defendant let others use the vehicle did not mean the vehicle belonged to the First Claimant so as to make it a company car, nor did it make the First Claimant liable for the cost of the car. I accept it may have entitled the Defendant to seek to recover some of the running costs of the vehicle e.g. fuel or mileage. That has not been sought.

52. Having considered the evidence before me on this point I find that the payments were properly accounted for on the Loan Account. No adjustment is made in this regard.

Furniture

53. The Defendant challenges two entries on the Loan Account relating to furniture supplied by Top Secret Furniture. The Ledger notes that the entries relate to "*chairs and seaters for Gavin*" and "*wing desk and chair for Gavin*".

54. The invoices for the furniture are in the papers before the Court. They are addressed to the First Claimant. Each invoice is stamped by the First Claimant's accounts team who have entered the Loan Account details as the relevant ledger together with a notation that such posting has been authorised by "*Gavin*". The Defendant accepts that he was the only Gavin who worked at the First Claimant.

55. The Defendant points to the invoices being addressed to the First Claimant as evidence that the invoices are a business expense. He also asserts that the furniture went to the First Claimant's offices in Halifax and Caer Rhun Hall. Further furniture at Barkisland Hall as supplied under the invoices was swapped with Caer Rhun Hall. The Defendant therefore accepts 30% of the first invoice. He disputes the entire second invoice stating that this was for his room in the Group office in Halifax and was therefore a business expense. The Defendant's evidence was that he did not recall authorising the invoice to be put on the Loan Account.

56. Looking at all the evidence before the Court the Defendant has not shown that on the balance of probabilities the furniture supplied was a business expense. The contemporaneous evidence is extremely clear: The accounts staff who dealt with the invoices at the relevant time considered that the expense was personal to the Defendant and they were authorised to post the entry to the Loan Account by the Defendant. The inability of the Defendant to remember such authorisation does not mean it did not happen. Given the contemporaneous evidence the furniture was a personal expenditure by the Defendant. The fact that the Defendant may have, subsequent to its purchase, chosen to put it into the Group office or to swap pieces of it with property in a hotel does not change the basis of the expenditure.

57. No adjustment is made in this regard.

Gramra Incinerator

58. The Defendant challenges two entries on the Loan Account relating to a Gramra incinerator. The Ledger shows that the entries were made on two separate occasions by different individuals (neither of whom were Ms Wetherill). The entries show that two sources of information were used for the entries: First electronic bank payments, and, second "*POS*".

59. In his witness statement the Defendant stated that Gramra Limited was a company purchased by the First Claimant to manufacture and create a new style incinerator. The Defendant states that the payments referred to are payments made on behalf of Gramra which were posted on his ledger pending a new ledger being set up for Gramra.

60. In his oral evidence the Defendant was less clear as to who owned Gramra. The Defendant continued to assert that the expense, being the cost for developing the incinerator for use in the NPD Group, was not a personal expense.

61. Ms Richard's evidence was that she did not believe Gramra Limited was ever owned by the First Claimant. She understood it was owned by the Defendant. She could not understand why items would be posted to one ledger when all that needed to be done was to set up a new ledger which was a quick process. In the interim the invoice could have been posted to a suspense ledger. Ms Richards therefore questioned the accounting methodology used if the Defendant was correct in his assertions.

62. This is an issue which can easily be resolved by having regard to publicly available documents accessible from Companies House. Gramra Limited was a company (it is now dissolved) which originally had one issued share. That share was transferred to

Shays Assets Limited on 25 January 2018. A further 99 shares were issued around 17 April 2018 and 50 of those shares were owned by the Second Claimant. The Defendant was a director of Gramra Limited from 13 June 2018, but he was not a shareholder.

63. Grama Limited was not therefore a company owned by the First Claimant or by the Defendant. It was a company owned (in part) at the relevant dates by the Second Claimant. If invoices were delivered to Gramra Limited which required settlement but settlement came from the First Claimant's accounts then either it should have been posted to an account in the name of Gramra Limited or to the Second Claimant's account. There was no basis to post the entry against the Loan Account. This is supported by notations on a debit on the Ledger relating to a third Gramra entry (line 140) which was subsequently credited on the Ledger at a later date.

64. An adjustment to the Loan Account is therefore made for the two entries challenged by the Defendant in this regard.

BT

65. The Defendant challenges three entries on the Loan Account relating to BT. The Ledger refers to each debit being for an account at Barkisland. The evidence used for the entries are invoices and the entries were made by two separate individuals (not Ms Wetherill).

66. The invoices are addressed to the First Claimant. They each show the same account number 41842334. The first and second invoices show that the nominal code was noted as being 700280 (which is not the nominal code for the Loan Account). The

third invoice shows the Loan Account nominal code. The contemporaneous notations therefore are inconsistent.

67. The Defendant's evidence is that the invoices are from BT addressed to the First Claimant and that this therefore confirms that they are a business expense. He states that his job was well beyond normal/ traditional office hours and working from home was very common. He needed the infrastructure to do so including a very fast and reliable internet connection. Therefore the sum is a business expense. In his oral evidence the Defendant described the internet at Barkisland Hall as severe and that it had to be upgraded to enable him to perform his business duties at home as he worked beyond business hours. The Defendant refused to acknowledge that he would have used the high speed access for personal use as well.

68. Ms Richards evidence was that the account to which the invoices related was for Barkisland House as shown by the Ledger. This would therefore appear to be a personal expense. If the Defendant used the services at home then the correct way to account for that would be for the whole invoice to be put onto the Loan Account but with a credit for business usage. Given this had not been done she assumed it was for personal use but she accepted it could potentially be for business use.

69. It is clear from the evidence before the Court that the services provided by BT were provided to the Defendant's home address and not to the First Claimant's address. The Defendant's explanation for this is that he worked from home. However, there is no evidence from the Defendant that the work he was undertaking at home was work for the First Claimant. It is clear from the evidence before the Court, and from Appendix A, that the Defendant was involved in more businesses than the First Claimant. Even if the internet services were solely provided for the business use of

the Defendant and were not used for his personal use, which I find to be unlikely, the Defendant's rather vague answers as to what he used the internet for at home have not satisfied me that this was an expense relating to the First Claimant. No adjustment is therefore made in this regard.

Marketing Services

70. This entry relates to a monthly content marketing retainer with Stada Video. The Ledger shows an entry on the Loan Account for 50% of an invoice, not the whole invoice.

71. The invoice is annotated with two nominal ledger codes: One of which is the Loan Account code. The invoice notes that Stada Video provided, first, services for creative and project management to Northern Powerhouse Developments Marketing and, second, services to "*Gavin Woodhouse Personal Brand*". The services to the Personal Brand are noted to include replying to comments, fan interaction and YouTube channel management.

72. The Defendant's evidence is that the invoice was addressed to the First Claimant, and not him, and therefore this confirms it is a business expense. The invoice was for promotion work done by Stada Video to promote him as Chief Executive Officer of the First Claimant and to boost awareness of the Group overall. The Defendant gave similar evidence during cross examination.

73. Ms Richards relies on the invoice on its face.

74. It is patently obvious on all the evidence before the Court, including the Defendant's accepted shareholding in Stada Video (see the Defendant's fifth witness statement) that the Defendant's business interests went well beyond the First Claimant or even

the NPD Group. The Defendant at this time was active with many companies. The Gavin Woodhouse brand therefore extended beyond NPD Group.

75. The face of this invoice is also clear: Stada Video provided two sets of services. One for creative and project management to a company and the other for the Gavin Woodhouse Personal Brand. The word "*personal*" in the description is in my judgment key to this invoice. The services in that regard were for the Defendant personally and not for the First Claimant.

76. Having considered all the evidence before the Court on this point I accept the invoice on its face and I therefore accept that 50% of the invoice was correctly entered on the Loan Account. No adjustment is made in this regard.

Valuation/Re-finance

77. Four challenged entries on the Loan Account relate to either valuation of property or valuation/refinance of Barkisland Hall. The invoices originate from Bruton Knowles, Mark Brearley and Metis Law (x 2). The invoices were all incurred on or after 15 March 2019 and therefore at a time when, for the reasons set out below, the First Claimant was insolvent and the Defendant either knew or ought to have known this.

78. The details for each entry are:

    i) Bruton Knowles: Entered on the Ledger as Barkisland Hall valuation. Invoice is dated 15 March 2019 and is addressed to the Defendant at the First Claimant expressly for the Defendant's attention. The description refers to "*recent valuation in respect of"* Barkisland Hall. From the reference on the invoice the valuation was for Leeds West One loans. The invoice has been stamped by

the First Claimant's accounts team as an invoice for entry on the Loan Account.

ii) Mark Brearley: Entered on Ledger as PURCHASE INVOICE. The invoice is addressed to the First Claimant for the attention of Tara Davies. It relates to Barkisland Cottages & Land for a report and valuation for Ultimate Bridging Finance Ltd. It is stamped by the First Claimant's accounts department, but no nominal code has been entered on the invoice.

iii) Metis Law: Entered on the Ledger as Barkisland Hall disbursements and Barkisland Hall refinance. The first invoice is addressed to the First Claimant and relates to "*Disbursement Only Bill – West One Loans*" for "*Refinance of Barkisland Hall*". The second invoice is addressed to the First Claimant and relates to professional fees "*West One Loan – refinance of Barkisland Hall*". Both invoices have been stamped by the First Claimant's accounts department but no nominal code has been entered on the stamp.

79. The Defendant's evidence is that the invoices relate to valuations of Barkisland Hall which were used for the benefit of lenders looking to lend money to the NPD Group using the Hall and Cottages as security. The invoices all relate to valuations for lending purposes and therefore this is a business expense. The Defendant did not accept that he was the cause of the valuations. He did however accept that nobody forced him to offer the properties as security for a loan.

80. Ms Richards' evidence was that the invoices could potentially be a business expenses if the First Claimant was the sole borrower of the finance facilities. However, Barkisland Hall was not owned by the First Claimant and Ms Richards was unaware

of any finance having in fact been obtained by the First Claimant as a result of the valuations.

81. Having considered all the evidence before the Court I am not satisfied that the invoices were incorrectly entered onto the Loan Account By March 2019, the date of the earliest invoice challenged in this regard it is clear that the financial problems surrounding the Defendant and the web of companies with which he was concerned extended far beyond the NPD Group (see for example paragraph 10 above).

82. There is no evidence that the valuations sought relate solely to the First Claimant. Rather the contemporaneous evidence is that the valuation obtained for Ultimate Bridging Finance Limited was not for lending to the First Claimant or even solely for use within the NPD Group. The relevant offers of finance which are in the bundle before the Court relate to Woodhouse Family Properties Limited, Woolacombe Apartments Limited and Smithy Bridge. There is therefore no evidence that the First Claimant was the proposed borrower or even a beneficiary of the loans for which the valuations were sought.

83. No adjustments are therefore made in this regard.

Bradford Directors Hospitality

84. Entry 197 on the Ledger relates to an invoice from Halifax Rugby League Football Club Ltd. The Ledger refers to the invoice and states that the entry relates to hospitality.

85. The invoice is addressed to the First Claimant and states that it is for "*8 x Bradford Directors Hospitality*". The invoice has been stamped by the First Claimant's

accounts department. No nominal code has been written within the stamp, however a manuscript annotation of "*DLA*" has been made on the invoice.

86. The Defendant's written evidence states that this invoice is addressed to the First Claimant and not to him personally, that it related to hospitality/entertainment and that it is a business expense. In his oral evidence the Defendant accepted that the manuscript note had been put on the invoice. He noted that "*we did a lot of sponsorship with Halifax Rugby and football Club. We – and there was a lot of hospitality taking our guests and colleagues that we worked with to these events. That's what it was for*".

87. Ms Richards accepted her knowledge of the invoice was limited. She noted that it was not coded for the Loan Account but that it had the manuscript note of DLA. She accepted that leaving that to one side it would be proper for the First Claimant to pay for hospitality, if that is what the invoice represents.

88. Given the evidence before the Court I accept that this was a business expense and that an adjustment should be made to the Loan Account. The only indication that this is not a business expense, which is what the details on the invoice indicate, is the handwritten notation DLA and the invoices subsequent entry on the Ledger. The author of the note is not however known nor the reason why they made the annotation. A credit is therefore made in this regard from the Loan Account.

Great Outdoor Gym Company Limited

89. The final entry challenged by the Defendant relates to an invoice from Great Outdoor Gym Company Limited dated 27 June 2019. The Ledger shows this entry with the note "*supply and install*".

90. The invoice is addressed to the First Claimant. The Order No is "*BH01*" and the description is "*other equipment*." Details are then provided of the equipment supplied and installed which appears to consist of a sports pitch ("*Muga*") with recessed goals, chicane entrances and a basketball backboard and hoops. The delivery address given is Halifax. The invoice has been stamped and the Loan Account entered on the invoice together with a manuscript notation of "*DLA*".

91. The Defendant's evidence is that the invoice is addressed to the First Claimant and not to him. It refers to outdoor basketball/pitch /gym equipment. The Defendant does not have a basketball pitch at Barkisland Hall nor an outdoor gym (a point contradicted by a valuation of Barkisland Hall dated April 2019, although I accept that the Defendant was not taken to this document during his evidence and therefore I have placed no weight on the valuation in this judgment). The equipment was intended for Caer Rhun Hall. The equipment was delivered but the Defendant does not know if it was installed. The equipment is therefore a business expense. The Defendant gave similar evidence in cross examination.

92. Ms Richards evidence was that she does not know what the invoice refers to or where the equipment was installed as it is not stated on the invoice. She therefore relies on the reference BH, the Ledger and the notations on the face of the invoice.

93. Having considered all the evidence in this regard I am satisfied that on the balance of probabilities the Loan Account is accurate. Two separate notations were made on the invoice to show that this invoice related to the Loan Account: The invoice was then added to it. At the time it was therefore considered a personal expense.

94. Further and in any event the invoice is clear on its face that it was for the supply and installation of equipment with delivery in Halifax. The hotel that the Defendant

asserts that the equipment relates to was in Conwy. It is in my judgment highly unlikely that large pieces of gym equipment destined for Conwy would be delivered to Halifax in West Yorkshire. No adjustment is made on this basis.

95. I therefore find on the evidence before the Court, taking into account the burden and standard of proof, that adjustments, by way of credit, of £18,320 should be made from the Loan Account balance set out at paragraph 35 above.

The Smithy Bridge Credit

96. The challenges raised by the Defendant to the Loan Account are not however the end of the court's consideration in that regard. The First Claimant seeks for an addition to be made to the Loan Account balance by way of reversal of a credit made to the Loan Account relating to the shareholding in Smithy Bridge. The burden of proof in this regard is on the First Claimant.

97. The relevant series of transactions, including the credit to the Loan Account, took place on 21 December 2017. On that date the Ledger shows a credit was made to the Loan Account by Ms Wetherill for the sum of £963,000. The details given in the Ledger are that the credit related to J000000152. The effect of the credit was to move the Loan Account from an overdrawn position of £865,603.39 to an account in credit in the sum of £97,396.61.

98. The First Claimant seeks to reverse the credit on the grounds that it was obtained due to a breach of duty by the Defendant toward the First Claimant as the credit related to a share transfer at a value the Defendant knew to be wrong. It is asserted that the Defendant knew that the shares transferred to the First Claimant were either valueless

or worth less than the value stated in the share transfer form. The First Claimant therefore submits it has suffered a loss as a result and it should be compensated for the loss by reversal of the credit on the Loan Account.

99. The Defendant accepts that if he sold shares to the First Claimant for £963,000 but the shares were worth nil, that would be a breach of duty. However, he denies the claim in this regard as he submits that is not what happened. The Defendant submits that the value of the shares in Smithy Bridge as at 21 December 2017 was £963,000. This was the valuation given by the First Claimant's Finance Director, Robert Atkin, to the shares and used by the First Claimant's external advisers in advising the First Claimant on the tax consequences of the transaction. The Defendant submits that the First Claimant has not produced any evidence to suggest that Mr Atkin's valuation was wrong. In those circumstances the Defendant submits that the shares were valued by a senior employee of the First Claimant as the purchaser. There can be no real objection to the purchase of a care home by a business which operates care homes for arm's length consideration.

100. The dispute between the parties is not therefore one of law but of fact: Has the First Claimant shown that the valuation of the shares used in the transaction was wrong and that the Defendant knew this. There is no dispute raised that if the valuation is wrong and the shares were worthless at the relevant time that the First Claimant would be entitled to the relief sought. In this part of the judgment therefore I simply deal with the factual dispute between the parties.

101. Immediately prior to the sale of the shares by the Defendant to the First Claimant the Defendant owned 100% of the shares in Smithy Bridge. At the time of the share sale Smithy Bridge owned a partially constructed care home. The care home was not

complete and was not operational. Smithy Bridge had no turnover. The care home property was the sole fixed asset of Smithy Bridge. Any valuation of the shares of Smithy Bridge therefore would substantially depend on the value of the care home.

102. The care home had been the subject of a prior professional valuation. This valuation had been undertaken on the basis of instructions by a finance provider, RQ Capital Ltd, to Christie & Co. The valuation was undertaken on a "Red Book" valuation basis. The valuation was therefore undertaken by a professional valuer on an arm's length basis from the Defendant.

103. It is clear from the instructions given to Christie & Co that the actual state of the building needed to be assessed for the purposes of their valuation as they were to provide a valuation for the purpose of loan security in respect of the financing of turnkey facilities. Turnkey is defined in the report as being "*the development has been completed and the Property is fully equipped and ready to commence trade as a 57 bed care home*".

104. The valuation is dated 25 February 2016. Christie & Co provided valuations on several bases. First, the then current (partially complete) market value was estimated at £2,000,000. This valuation assumed the property was a "*partially completed care home with the condition of the property being as at the date of inspection*". It was noted in the report that the Defendant had stated that it would cost £812,507 to complete the property. On the basis that the care home property was at turnkey status and completed to a high standard being comparable with a corporate standard purpose-built care facility to ensure that it becomes the home of choice across the local area, Christie & Co estimated the value of the Property would then be

£3,850,000. The valuation assumed that the building would be at that turnkey stage within a six-month period.

105. It is of course now known that Smithy Bridge was not complete in 2016 or 2017. The six-month completion assumption in the turnkey valuation was not therefore met and therefore as at August 2017 that valuation was not a valuation of the actual property. Further, absent exceptional developments in the property market it was improbable that the value of the incomplete care home would have been as high as £3,850,000. No such developments have been drawn to my attention by the parties. The only valuation the Court has for an incomplete property is therefore the Christie & Co valuation of £2,000,000.

106. By late August 2017 the Defendant was indebted to the First Claimant in the sum of £823,296.20.

107. On 31 August 2017 Robert Atkin, an accountant employed by the First Claimant and by NPD Group, valued the shares in Smithy Bridge. He confirms that this was the date of the valuation in an email to Daniel Moon, an external tax adviser, on 18 October 2017. The suggestion by the Defendant that Mr Atkins was the Financial Director of the First Claimant is simply wrong in law and no evidence was provided to the Court that he was a de facto or shadow director of the First Claimant. The Defendant may have given Mr Atkin the title of Finance Director and permitted him to use such, but Mr Atkin was not a director of the First Claimant or the NPD Group. Rather Mr Atkin was an employee of the NPD Group.

108. Given Mr Atkin was an employee of the First Claimant and not a director his valuation was not at arm's length from the First Claimant. Further he must have been instructed to undertake the valuation. The sole director of the First Claimant was the

Defendant and therefore I accept the submission of the First Claimant that the valuation must have been undertaken at the instruction of the Defendant. As a result, the valuation was also not at arm's length from the Defendant.

109. Why the Defendant chose Mr Atkin is not clear. He was not, on the evidence before me, qualified to act as a valuer of either properties or companies, nor is there evidence he had any experience of doing so before this. Accordingly, I accept that the valuation was not independent, and its accuracy can be scrutinised by the Court.

110. The valuation of the shares undertaken by Mr Atkin is not before the Court. Ms Richards confirmed in her oral evidence that the office holders had met with Mr Atkin and had sought information from him about the share valuation. She confirmed that Mr Atkin had undertaken the valuation himself but that she had no further information in that regard. She did not know if Mr Atkin had been influenced by others when undertaking the valuation, the assumptions he used or the circumstances when he prepared the valuation. She confirmed that the office holders had asked for documents relating to the valuation and for how Mr Atkin did the valuation, but he did not provide that information.

111. Mr Atkin was not called as a witness in the trial by either party. Mr Cole asks me to draw an adverse inference in this regard against the First Claimant given Mr Atkin's contact with the office holders. Having considered the principles set out at paragraph 23 above I do not consider that it is appropriate for me to draw adverse inferences against the First Claimant as regards the absence of Mr Atkin.

112. No evidence has been produced by the Defendant as to how Mr Atkin valued the shares. All that the Defendant says is that there was a valuation and the First Claimant relied on it, but the fact of the valuation is already agreed by the First

Claimant. There is therefore no case to answer in that regard. The dispute in this case is whether the valuation was appropriate or not and the Defendant has produced no evidence in this regard above the fact of the valuation happening. Even if the Defendant had adduced some evidence in this regard the reason the First Claimant did not call Mr Atkin is obvious from Ms Richards' evidence: Mr Atkin had no evidence to provide the Court so far as the First Claimant was aware. I accept that that was his evidence to the Office Holders and on that basis, I am satisfied that the reason for Mr Atkin's absence as a witness for the First Claimant is satisfactory.

113. It was of course open to the Defendant to call Mr Atkin as a witness if he had wished to do so given there is no property in a witness.

114. The Court is therefore limited in considering the accuracy of the valuation undertaken by Mr Atkin to considering the contemporaneous documentation.

115. As noted, Smithy Bridge was a special purpose vehicle, with only one tangible asset, the part-built care home. The starting point in considering the valuation of the shares is therefore Smithy Bridge's statutory accounts and the tangible asset value of the land and property. I have before me the accounts as at 31 March 2018, i.e. after the date of the share sale. These confirm that Smithy Bridge had no turnover. Note 6 of the accounts records that as at 1 April 2017 the land and buildings belonging to Smithy Bridge were valued at £2,165,828. However, by 31 March 2018 the land and buildings had been revalued at £4.4 million. This despite the accounts noting that the assets "*are currently under construction*". No details are given as to the basis of the revaluation, who conducted this or on what basis.

116. From an email sent by Mr Atkin to Mr Moon on 18 October 2017 it is however clear that the valuation of £4.4 million was central to Mr Atkin's valuation: "*Based on the*

valuation I did at 31/08/17 the market value will be £963k, which will be credited against the directors loan account (sic)*… . The disposal must happen before we enter agreement to sell the property for an agreed price as a lower price than £4.4m would affect the market value we have placed on the company."*

117. No valuation of the care home in the period 1 April 2017 to 31 March 2018 has been found by the Office Holders, and no such valuation is before the Court. The Court does however have before it a marketing document prepared by Bishops. The marketing document shows that the Property had been placed on the market for sale with a guide price of £4.4 million on 1 August 2017.

118. A guide price is not however a valuation. It is the price that the owner wishes to market the property for sale at, not the likely price that will be realised on a sale or the value of the property in accordance with the recognised standards.

119. There is therefore no valuation of the property at the relevant time before the Court, let alone an independent, professionally prepared valuation. Yet despite this Mr Atkin, an employee with no valuation qualifications or experience, appears to have based his valuation of the company shares on the property having a valuation of £4.4 million, with no supporting evidence for such.

120. On the evidence before the Court the valuation of the Property at £4.4 million was, in my judgment, obviously wrong. First, it was highly unlikely that the property had more than doubled in value from the date of the Christie & Co valuation given it remained incomplete. There is no suggestion on any of the evidence before the Court that the property market for incomplete care homes surged in the year between the Christie & Co valuation and Mr Atkin's revaluation. Second, if a property is marketed for sale at £4.4 million it is unlikely that the owner of the property expects

to actually receive £4.4 million for the property, especially where the property is incomplete. Indeed, Mr Atkin's email from 18 October 2017 as set out above is clear that a lower price may be received for the property than the £4.4 million.

121. Third, the date of valuation of the property and of the shares was 31 August 2017. However, the sale did not occur until 21 December 2017, so nearly four months later. During that time the property had remained on the market. It had not sold. It does not however appear on the papers before the Court that any reassessment of the value of the property or the shares took place. Instead as the email dated 18 October 2017 made clear it was vital to the parties to the transaction that the valuation of the property remained at £4.4 million. (The Smithy Bridge care home was eventually sold for £2,700,000 on 29 July 2020.)

122. Mr Atkin's valuation is therefore not independent, was prepared by someone unqualified and is not based on proper evidence of the valuation of the sole physical asset of the Company. This was known by the Defendant, given as the sole director of Smithy Bridge he must have known that there was no up to date valuation of the property.

123. In his Defence the Defendant also asserted that "*the purchase consideration was calculated by Williamson & Croft accountants*". That is however clearly incorrect on the papers before the Court. Williamson & Croft were instructed to provide tax advice based on the valuation provided by Mr Atkin. This was made clear in their instructions including their Working Together document and in the advice they provided (see for example the email from Daniel Moon dated 18 October 2017). To the extent that the Defendant seeks to rely on the advice of Williamson & Croft this is not advice which related to the legality of the transaction (beyond tax), the

commercial reality of the transaction or the compatibility of the transaction with the Defendant's duties.

124. On the evidence before the Court therefore, the valuation of the shares was not independent nor were the figures on which the valuation rested verified. Instead, the valuation was prepared by an unqualified employee on the instruction of the Defendant with no evidential basis. The Court does not have an expert's report on the valuation of the shares before it nor of the care home at the relevant date. However, it is in my judgment clear that on all the evidence before the Court the valuation of the shares was not conducted on a proper factual basis by Mr Atkin. Further, given Mr Atkin appears to have used the Bishops' guide price as the value of the care home, the assets of Smithy Bridge were, in my judgment, clearly overstated by Mr Atkin in his valuation by at least £550,000 (£4,400,000 being the value used less £3,850,000 being the, inapplicable, turnkey valuation by Christie & Co).

125. In the absence of a valuation of the property, in my judgment, the value of the land and buildings in Smithy Bridge should have been taken by Mr Atkin as they were stated in the accounts on 1 April 2017. This would have resulted in the company being either insolvent (as it had been in the accounts for year-end 31 March 2017) or on the verge of insolvency, at the date of the transfer.

126. In my judgment it therefore follows that not only was the share valuation by Mr Atkin wrong, but the shares were, on the balance of probabilities, worthless at the date of the transfer. Hence relying on the concession by the Defendant, the credit to the Loan Account was a breach of his duties to the First Claimant. The appropriate remedy to compensate the First Claimant for this breach is for the credit to be reversed.

127. Mr O'Doherty relies in his submissions on events which followed the share transfer and the credit to the Loan Account. He relies on a "debt for equity swap" which followed the transfer and by which the First Claimant received in excess of a further 2 million shares in Smithy Bridge in exchange for writing off a loan due to it from Smithy Bridge for the same sum. Mr O'Doherty says that that second deal made no sense for the First Claimant. Whilst I accept that the commerciality of that deal does raise questions, it does not in my judgment assist in the Court's decision regarding the valuation of the shares by Mr Atkin.

128. Taking into account all my findings on the Loan Account the outstanding balance due to the First Claimant is therefore £1,497,244.57.

Is the Loan Account repayable to the First Claimant on grounds other than as a simple debt?

129. There is no dispute between the parties that the Defendant is indebted, and must repay the balance of the Loan Account, to the First Claimant. The dispute before me is whether it is payable on additional grounds which would entitle the First Claimant to seek remedies other than a repayment of the debt with simple interest thereon at a rate to be fixed by the Court.

130. The First (and Second) Claimants say that they are entitled to proprietary remedies and/or equitable compensation, including compound interest, as the Defendant operated the First and Second Claimants in breach of his duties to the relevant Claimant as a director thereof. A number of breaches are pleaded by the Claimants.

131. The Defendant says that he did not breach his duties and therefore the First and Second Claimants are not entitled to a remedy other than that for a simple debt claim.

132. The Claimants put their claims for breach of duty in the pleadings on a number of grounds. The allegations became more focused during the trial and by the conclusion of the trial, so far as they related to the First Claimant, the allegations were (in no particular order):

i) Making and/or procuring payments and/or transfers (including those identified as "inter-company loans") which did not relate to the proper business of the First Claimant;

ii) Continuing to trade, and in particular to raise monies from the public, when it was clear that the First Claimant was insolvent and had no realistic (or indeed any) prospect of trading out of such insolvency;

iii) Using company assets for improper purposes / misusing company assets, including by building up a substantial directors' loan account in the First Claimant which did not in any way relate to the proper business of the First Claimant; and

iv) Raising investments into purportedly unregulated investment schemes in breach of FSMA.

133. The First Claimant's pleaded case therefore goes beyond section 172 of the 2006 Act and expressly engages section 171. I therefore do not accept Mr Cole's submission in closing that the only duty in play is that under section 172 as modified by the duty to have regard to the interest of creditors. I do however accept his submission that this is not a case about the duties under section 174 of the Act, as this is not a fiduciary duty,

and section 175 of the Act, given that the impugned transaction was between the First Claimant and the Defendant.

134. In addition, the First Claimant pleads that the Defendant's breaches of duty were dishonest.

135. I will consider the allegations in turn.

Payments/Transfers for an Improper Purpose

136. The Defendant sought clarification of the transactions relied upon by the First Claimant in regard to part of this allegation by way of a Request for Further Information. Confusingly given the case as pleaded at paragraph 21(a) in the Re-Re-Amended Particulars of Claim refers to inter-company loans, the Reply only referred to transactions as noted in the Loan Account. I will in a later section of this judgment deal with whether the operation of the Loan Account constituted a breach of the Defendant's duties to the First Claimant. In this section I consider transfers to other persons.

137. If paragraph 21(a) had been the only reference to a breach of duties by way of payments to third parties I would therefore have refused to deal with this allegation in this judgment, as a result of paragraph 9.2 of CPR PD16. However, the allegation that inter-company loans were a breach of directors' duty was repeated in the Re-Re-Amended Particulars of Claim at paragraph 37, where details of the relevant loans were particularised. Questions were asked in the Request for Further Information in this regard and information on the inter-company loans was provided. I am therefore

satisfied that the Defendant could and should have understood the case that was being made against him in this regard.

138. What may not have been clear to the Defendant, however until he saw the Claimant's skeleton argument for trial was that no relief is sought against him in relation to the inter-company loans referred to in the Re-Re-Amended Particulars of Claim. In particular the Court is not asked to make an award to the First Claimant for the amount of the inter-company loans. Rather this allegation of breach of duty is a step in the allegations made by the First Claimant in relation to the Loan Account. It is part of the background to the actual operation of the First Claimant, and a consideration in relation to the determination of the proper purpose of the First Claimant and the solvency position of the First Claimant. It is on this basis that I have considered this allegation, despite the objections of Mr Cole as to its relevance.

139. As to the amounts said to be due as a result of the inter-company loans the Defendant put the First Claimant to proof in this regard. Having considered the accounts information before the Court from the First Claimant I am satisfied that the First Claimant has shown that the sums claimed are due to it as stated in paragraph 37 of the Re-Re-Amended Particulars of Claim and in issue 2 of the comprehensive list of issues in the case. The inter-company loans are therefore to be taken into account when assessing the solvency of the First Claimant.

140. As regards proper purpose and the wider context into which the Loan Account fitted, the First Claimant was a group company which initially was the owner of the shareholdings in the hotel owning SPVs operated by the NPD Group. In 2017 it also became the owner of the entire shareholding in Smithy Bridge as addressed earlier in this judgment. The First Claimant's role in the Group was not however limited to

holding the shares in subsidiary companies: The First Claimant also provided banking facilities for the Group. The role and purpose of the First Claimant is therefore clear from the evidence before the Court: To hold shares and to assist in the financial management of the business of the hotel owning SPVs.

141. It is further clear that the Defendant knew this as he directly addresses this in his witness statement at paragraphs 25 to 27:

"*The business model was based on financing the purchase, renovation and construction of hotels by selling individual rooms. ...*

In its first years, the model relied on the money received from room buyers to set up each project. I call it a seed funding mechanism. It worked as follows. We bought a hotel for a fixed amount of money, we would then pre-sell hotel rooms by ensuring that a total raised from the room sales was more than the actual purchase price so that the business model made a profit. The profit money was then used to renovate hotels and to support the operation of the business through its teething phase until projects reached operational stability which was usually in years 4/5.

Thereafter, we would intend to re-finance the hotels with the help of traditional mainstream lenders. This would release extra cash and also provide capital into the group at a lower cost which would keep the business growing. ...".

142. Allowing for the role of the First Claimant in the NPD Group the business model should have operated as follows:

i) When an individual chose to take a lease or an agreement for a lease in one of the hotels the individual would, usually, transfer the monies for the lease to the SPV (see the section of this judgment dealing with the Second Claimant for exceptions to this);

ii) The SPV would then transfer any surplus funds after purchase of the hotel to the First Claimant, receiving in return an inter-company loan, and;

iii) This would enable the First Claimant to provide a treasury function for all the hotels.

143. It appears from the papers before the Court that monies paid by individuals were frequently paid not to the SPV but rather directly to the First Claimant (C/1372). In my judgment whether the monies were paid to the SPVs and transferred to the First Claimant or were paid directly to the First Claimant does not affect the outcome of this case.

144. The difficulty in this case for the Defendant is that the accounts of the First Claimant and companies associated with the Defendant show that the monies received by the First Claimant from the hotel room leases were not then used for the hotels. Rather, the accounts show that the monies transferred to the First Claimant were, in part, paid to and used to finance non-hotel companies in which the Defendant had an interest, but not the First Claimant, and that this commenced soon after incorporation of the First Claimant. There are numerous examples of this in the papers before the Court including, but not limited to,:

i) The loans to the obviously insolvent, Clifton Moor and Hawthorn between 1 April 2016 and 31 March 2017;

ii) Payment of expenses of £163,669 for Afan Valley Limited (a company with no turnover and outside of the hotel businesses) between 14 April 2016 and 31 March 2017 (C/1317), and;

iii) A payment for the Defendant personally of £200,000 for the purchase of his family home in October 2016.

145. Supporting companies outside of the NPD Group was not however a purpose of the First Claimant. It may, in my judgment have been acceptable for the First Claimant to make inter-company loans beyond the hotel wing of the Group if it or the SPVs as a whole had achieved operational stability and/or had been making a profit. The accounts before the Court however show that this was not the case. Therefore, in transferring monies beyond the reach of the SPVs relating to the hotels, the First Claimant, and the SPVs, were denuded of the funds needed for the hotels.

146. The payments identified in paragraph 37 of the Particulars of Claim being payments to companies outside of the NPD Group therefore removed needed money from the First Claimant and from the SPVs. The loans were not made on commercial terms such that the First Claimant would make a profit from the loans and they were made to companies which were either insolvent at the time of the loan or where an insolvency was probable due to the manner in which the Defendant operated his web of companies: Taking money from one company to pay creditors in another or to make investments for his personal benefit irrespective of the original company's need for working capital.

147. I am therefore satisfied that the inter-company loans made by the First Claimant and referred to in paragraph 37 of the Particulars of Claim did not further the proper purpose of the First Claimant. They did not further the hotel business, instead they

deprived that part of the Group of capital money needed for the hotels. Given the Defendant was the sole director of the First Claimant he must have been aware of those transfers as he is the only person who could have authorised them on behalf of the First Claimant. In doing so the Defendant failed to use his powers for a proper purpose of the First Claimant in breach of section 171 of the 2006 Act.

148. Further, the result of the transfers was that the First Claimant and its related SPVs were left with insufficient monies to operate the hotels according to the business model of the NPD Group. This was at a time when the individual hotels were not operationally stable and when the Group was not trading profitably. Hence the First Defendant must have known that the result of the transfers would be to make an insolvency of both the First Claimant and its related SPVs probable as, on his evidence, until the hotels were at operational stability, traditional finance to permit a refinancing would not be available to the First Claimant or the SPVs (see paragraph 39 of his fourth witness statement).

149. In diverting monies from the First Claimant intended for the hotels' operations, the Defendant ensured that either the hotels could not reach operational stability or could only do so by utilising additional expensive bridging finance when there was no surplus in the business model to permit such funding to be incurred. Yet despite this, the Defendant has produced no evidence that at any time he considered or had regard to whether the inter-company loans would promote the success of the First Claimant, given the need to consider such when authorising the inter-company loans. The evidence is silent in this regard despite the Defendant clearly knowing the dire financial position the transfers left the First Claimant facing (see further the next section of this judgment).

150. The highest the Defendant's evidence gets in this regard is an attempt by the Defendant to seek to rely on advice received by him that monies within the NPD Group could be utilised for inter-company loans and that the "board" of the NPD Group did not stop the inter-company loans. The Defendant therefore seeks to rely on section 1157 of the 2006 Act.

151. Having considered all the evidence before the Court I am not satisfied that the Defendant or NPD Group received the alleged advice that it could make inter-company loans. First, the Defendant's evidence on what the advice was changed during his oral evidence. Initially he stated that the advice was that the money could be used within the NPD Group. This then changed to a position whereby the money could be used for inter-company transfers, including outside the NPD Group. This is of course a crucial difference which was never explained by the Defendant. Second, and as Mr O'Doherty submitted during closing arguments, when pressed on the issue in cross examination it became evident that there was no such advice. It was simply the case that Metis Law, and its predecessor conveyancer Linda Heald, were prepared to allow the pooling of completion balances from the sales of rooms in different SPVs within the First Claimant and, following such, the payment of those monies to other companies at the direction of Defendant. Allowing something to happen is not the same thing as advising it is correct. I therefore find that the Defendant's claim that advice had been given as to the creation of inter-company loans was false.

152. As to the Defendant's reliance on the "board", in his evidence the Defendant sought to portray the "board" as a board of the NPD Group. In his fifth witness statement he stated that the "board" were non-executive directors. They were no such thing: The members of the "board" were never appointed as *de jure* directors and there is no

evidence that they acted as *de facto* or shadow directors. They were advisors to the First Claimant. However, there is no evidence that the "board" was ever asked to advise on the operation of inter-company loans outside of the hotel group or outside of the NPD Group. Further the "board" were restricted in their considerations to the evidence the Defendant put before them, which in accountancy terms was not always correct. In my judgment therefore their failure to object to the inter-company loans does not amount to advice that the loans could and should happen. In essence the Defendant's case in this regard is that he did what he did and nobody stopped him. That is not the same as relying on advice.

153. There is therefore no subjective evidence of the Defendant complying with his duty under section 172 of the 2006 Act as regards the inter-company loans. As a result, I must apply an objective standard and look to whether an intelligent and honest person in the position of the Defendant could in the circumstances have reasonably believed that the transaction was for the benefit of the First Claimant.

154. In my judgment it is obvious that no director acting in such a way could have considered that the making of inter-company loans was in the best interests of the First Claimant given it meant ignoring the First Claimant's, and the NPD Group's, business model, the need for working capital and the dire financial position the transfers clearly left the First Claimant facing (see further the next section of this judgment). The making of the inter-company loans as complained of in paragraph 37 of the Re-Re-Amended Particulars of Claim was therefore also a breach of duty by the Defendant under section 172 of the 2006 Act as the duty to creditors was engaged.

155. I am therefore satisfied on the balance of probabilities that the Defendant breached his duties as a director of the First Claimant in making and/or procuring payments and/or

transfers by way of the four inter-company loans complained of and which did not relate to the proper business of the First Claimant. No relief is however sought in this regard, and I make this finding as background to the consideration of the key issue in the case of the First Claimant being the operation of the Loan Account.

Trading whilst Insolvent

156. The First Claimant was incorporated in January 2016. By the time it was placed into interim management in July 2019 the SPVs had raised £73,255,769 in cash from investors. Albeit the total purchase price of the rooms was £99,099.435 taking into account investors who took advantage of the developer deferred option. Despite the SPVs raising these sums and transferring the monies, unless used for purchase of a property, to the First Claimant, the First Claimant suffered severe cashflow issues which led to the intervention of the Court and the appointment of interim managers.

157. In my judgment, taking into account my findings on the business model of the Group, the purpose of the First Claimant and the actual operation of the First Claimant by the Defendant as set out above, on incorporation it was probable that the First Claimant was going to enter insolvency in the foreseeable future. The Defendant knew this as he knew that he intended to use monies which would be needed by NPD Group for his own private interests and for his other companies. He also knew that this was not a successful business model for the companies in the MBi Group. There was no suggestion in the evidence before me that the outcome of a similar business model in NPD Group would result in a different outcome.

158. The Defendant on incorporation of the First Claimant therefore in my judgment knew, given how he intended to actually trade the NPD Group that the promised returns to the public who had paid for rooms with SPVs were impossible to achieve and could

only be paid by raising additional debt finance or using other investors' investment monies, resulting simply in a growing list of creditors that the NPD Group had no probability of repaying. As the First Claimant was the linchpin of the finances for the NPD Group the Defendant knew that the probable insolvency of the NPD Group would result in insolvency for the First Claimant.

159. By mid-2017 the First Claimant was no longer probably insolvent, it was insolvent as the accounts demonstrate. So far as the NPD Group was concerned, Group management accounts for October 2017 show net losses across the hotel operations for October 2017, and very significant net losses for the year to date, with only Fishguard making a modest profit. By December 2017, the management accounts showed net losses for December 2017 at all hotels, and net losses for year to date (i.e. to December 2017) of £1,399,000. A report stated that "*all hotels are now in a loss-making position due to the last quarters (sic) revenue*".

160. Things did not improve and having regard to the accounting information before the Court it is obvious that the First Claimant and the NPD Group were both insolvent by 31 March 2018.

161. As at that date the First Claimant was balance sheet insolvent with a deficiency to creditors of £210,003. It was also either cash flow insolvent or on the verge of cash flow insolvency as it had £125,236 cash but owed creditors falling due within one year £19,758,512. The only real hope for the financial future of the First Claimant was that its debtors (which stood at £11,932,445) would repay their debts within the next year. However, over £11.5 million was owed by Group undertakings and associates and the accounts for the NPD Group show that the prospects of repayment

were low as the Group was also at that time cash poor and in reality balance sheet insolvent (as explained below).

162. During the financial year things did not improve. The First Claimant's management accounts for June 2018 show that the First Claimant was loss making: EBITDA for June 2018 was (£48,477) and for year to date it was (£500,787).

163. In December 2018, the management accounts show year to date EBITDA of (£1,541,931) after paying rent of £2,082,97. By February 2019 this was (£2,759,262) after paying rent of £2,739,955. Albeit it is to be noted that in January 2019 the Defendant stated at a meeting that the management accounts for the First Claimant were not a true reflection as they had forecasts in them rather than true figures.

164. Turning to the NPD Group, by 31 March 2018, the statutory accounts show that resources were insufficient. However, the accounts painted NPD Group as both profitable and balance sheet solvent as at 31 March 2018. This was as a result of property revaluations undertaken in the past year. Having heard detailed evidence on the revaluation it was, in my judgment, plainly wrong and undertaken without any evidential basis.

165. The revaluation relied on a report by HVS Global Hospitality Services. However, that report has been produced to the Court and it is clear that it is a draft report: It has a watermark of Working Draft throughout. It is also unsigned. No finalised report was produced.

166. The report also values the properties on an unencumbered basis with exclusive ownership, yet the properties were encumbered at the time of valuation due to the interests of those who had leased rooms in each property. Indeed, the Report notes

that the "valuation" has been undertaken on an incorrect factual basis: "*Despite Northern Powerhouse Development Ltd's fragmented ownership, the properties are valued as though 'free and clear'*".

167. In his oral evidence the Defendant admitted that he knew this was the basis of the valuation as that was the value the Group wanted to know. It is in my judgment extraordinary that the properties were revalued in the accounts on the basis of a draft report which was known to have been prepared on an inapplicable factual basis. In my judgment the revaluation in the accounts was therefore unjustified and the Defendant knew this at the time. As sole director of the Group the Defendant therefore approved accounts he knew were not accurate.

168. Even if however, one ignores this point and accepts the HVS valuation, it was clear from the Group accounts to 31 March 2018 that the NPD Group was making losses which were more than twice the Group turnover and had insufficient cash to support its business model (£402,890). Creditors falling due within 1 year totalled £19,055,076, which was nearly three times the NPD Group's annual turnover. The Group did not have the cash to pay its creditors despite its business model. As can be seen from the Consolidated Statement of Cash Flows the Group had raised millions from the public yet had just £402,890 cash at bank. There was no cash in reserve to see the SPVs through to operational stability. From its standing start in 2016, the NPD Group would plainly run out of cash by the end of 2018. Insolvency was inevitable.

169. Despite therefore knowing that the First Claimant was insolvent and that the Group was, save for an inaccurate balance sheet, insolvent, the Defendant as director of the First Claimant and of the Group companies allowed the companies to continue to trade and he actively sought to enter into a progression of schemes and arrangements

to avoid admitting the insolvency. Knowing this the Defendant continued to withdraw monies from the Loan Account and to make loans to non-Group companies.

170. By January 2019, finally (and in my judgment belatedly) the Defendant considered that insolvency was a sufficient likelihood and he took advice from Williamson and Croft and Marshall Peters. It was clear from the advice that the individual SPVs were insolvent and could only continue to trade with Group support which would require fresh cash inputs as without this the Group would be cash flow insolvent by 25 February 2019. It was also clear that the accounting systems were not fit for purpose and could not be relied on. Management accounts were no longer produced timeously.

171. Attempts were made to refinance the money obtained from the public, which was considered too expensive by the Defendant (at 10% per annum), whilst at the same time continuing to accept money from the public as the papers before the Court evidence. The only refinancing available was even more expensive bridging finance or dubious schemes such as Biomass boilers which would on the documents before the Court have negatively affected the Group's cash flow for a number of years. The Group could not therefore avoid insolvency.

172. In my judgment, in trading the First Claimant as he did, in other words by removing monies from it for companies which fell outside the NPD Group including investment companies for himself and/or which were already insolvent such as Clifton Moor and Hawthorn on non-commercial terms, the Defendant drove the First Claimant into the insolvency which had been probable from the outset. In seeking to deny this and to blame media organisations such as the Guardian and ITV for the Group's insolvency the Defendant, in my judgment, is being intellectually dishonest.

173. There is some limited evidence before the Court of the Defendant considering whether the First Claimant was insolvent and hence whether it should continue trading. However this is limited to 2019 and it is clear from the evidence that the consideration was focused on whether, in continuing to trade, the Defendant could be incurring liabilities for wrongful trading. There is no evidence that the Defendant at any time considered whether continued trading of the First Claimant promoted the success of the First Claimant as a whole, including for creditors.

174. In trading the First Claimant as he did, without regard to the interest of the creditors which was engaged from the outset given the actual trading of the First Claimant, the Defendant did not objectively, in my judgment, act in the best interests of the First Claimant as the continued trading increased the deficiency to creditors thereby reducing the return they could expect on the probable insolvency occurring. This was a breach of duty by the Defendant pursuant to section 172 of the 2006 Act. Again, no direct relief is sought in this regard.

175. Further, as a result the Defendant cannot rely on any alleged consent, approval, authorisation or ratification of his actions under section 180 of the 2006 Act. Ratification is also not available as a defence for the Defendant pursuant to section 239 of the 2006 Act as there were no members of the First Claimant who could pass a resolution: The only member being connected with the Defendant (as he was its sole shareholder and its director).

Using Company assets for an Improper Purpose/Misusing company assets as a result of the Directors' Loan Account

176. It is against the above background that the key issue in the First Claimant's case falls for consideration.

177. The Defendant sought clarification of what the pleaded case regarding use of assets for an improper purpose was in a Request for Further Information. This stated that:

"*The Joint Administrators' investigations into these matters is ongoing. The best particulars that can be provided at this stage are that the Claimants will rely at trial on the attached Director's Loan Account Sage accounting ledgers, referred to above in Response 9, in respect of improper use by the Defendant of company assets through his Director's Loan Accounts for NPD Ltd and WFL.*

It is the Claimants' case that any personal and/or non-business expenditure incurred by the Defendant using money from the NPD Ltd and/or WFL accounts which has not been repaid amounts to an improper use of company assets."

178. In an answer for clarification of the claim relating to misuse of company assets the Claimants relied on the same factual matters.

179. It is therefore apparent that the complaint regarding use of assets for an improper purpose and misuse of company assets both relate to the operation of the Loan Account and arise from the same facts. I therefore consider the allegations together in this judgment.

180. There is no dispute between the parties that in appropriate cases a director can borrow money from a company without breaching their fiduciary duties to the company: Mr Cole did not put his case as high as the Defendant who stated in his fourth witness statement that he was "*entitled*" to take director's loans. The dispute before me is whether this was an appropriate case for the operation of a loan account.

181. I have set out the business model of the SPVs and the NPD Group at paragraph 141 above. The appointment of interim managers over the First Claimant occurred within its fourth year of trading. As a result, it is clear that the hotels would not, on the Defendant's evidence, have reached operational stability. This is also clear from the financial position of the First Claimant and the Group as already analysed. As a result, the monies raised from the public was all required throughout the life of the First Claimant within it, Giant or the SPVs to purchase, renovate and then operate the hotels. It was the working capital for the first five years of each SPV, not profit as the Defendant wrongly sought to classify it in his oral evidence. The First Claimant did not produce profits nor did the SPVs. Accordingly it must be the case that the Loan Account was funded by monies paid into the SPVs by the public.

182. Yet as Mr O'Doherty said in his skeleton argument and as already demonstrated by the earlier sections of this judgment "*Plain and simple: there was no money to extract without causing harm to the business of NPD Ltd and the investment SPVs*".

183. From his evidence it is clear that the actual operation of the First Claimant and the NPD Group was not a surprise to the Defendant but rather was a pre-planned procedure adopted by the Defendant to shore up his other businesses when they were plainly insolvent with no turnover or cash flow, such as Clifton Moor and Hawthorn. Yet at the same time, the First Claimant, and the SPVs had restricted cash flows: After a year of trading the First Claimant's subsidiaries were taking investments in 8 hotel schemes but only 3 of the hotels were operational. As a result, and as already analysed, from the incorporation of the First Claimant given its actual operation an insolvency procedure was probable.

184. In diverting further money from the First Claimant to himself by way of the Loan Account the Defendant exacerbated this situation for his own benefit. This case therefore in my judgment falls well outside the use of the loan account in *Re Ciro Citterio Menswear plc.*

185. At the time of his operation of the Loan Account the Defendant had duties to use his powers as a director of the First Claimant for a proper purpose (i.e. to promote the business and operations of the First Claimant) and to promote the success of the First Claimant having regard to the interest of the creditors of the First Claimant.

186. As regards the duty to use the powers of the First Claimant for a proper purpose: The Defendant, as a director of the First Claimant, had the power to use the monies held by the First Claimant to promote its business and operations. Therefore, the Defendant was permitted to use the money to make payments to meet the capital needs of the hotels. In operating the Loan Account the purpose for which the power was used was to make a loan on uncommercial terms to the Defendant. This was not a proper purpose as the monies were not therefore available to meet the capital needs of the hotels. The Defendant knew that when he operated the Loan Account. The operation of the Loan Account was not, in my judgment, therefore the use of the Defendant's powers for a proper purpose. The Defendant, in operating the Loan Account, acted in breach of his directors duties under section 171 of the 2006 Act.

187. Further, there is no evidence that the Defendant considered whether his operation of the Loan Account and the transactions thereon promoted the success of the First Claimant, probably due to the Defendant's clear view that he was entitled to the loan. The highest the evidence gets in this regard is that from January 2019 the Defendant

sought to "*minimise my spending on the directors loan account for my own use*". This is not evidence of consideration of the duty under section 172.

188. The operation of the Loan Account and whether such promoted the success of the First Claimant therefore falls to be assessed on an objective basis. In my judgment for the same reasons why the inter-company loans did not promote the success of the First Claimant, the operation of the Loan Account did not promote the success of the First Claimant. In my judgment the operation of the Loan Account was not an action which a reasonable director would have undertaken given the financial position of the First Claimant.

189. The operation of the Loan Account, by means of the Defendant withdrawing much needed cash from the First Claimant for his own benefit, was in those circumstances a clear breach of duty pursuant to sections 171 and 172 of the 2006 Act.

190. As a result of my findings on insolvency and reasonableness the Defendant cannot rely on any alleged consent, approval, authorisation or ratification of his actions under section 180 of the 2006 Act. Ratification is also not available as a defence for the Defendant pursuant to section 239 of the 2006 Act as there were no members of the First Claimant who could pass a resolution: Again, the only member being connected with the Defendant (as he was its sole shareholder and its director). Finally given the operation of the Loan Account was a transaction between the First Claimant and the Defendant the Defendant cannot rely on section 1157 of the 2006 Act in defending this claim.

Unregulated Investment Scheme

191. Given my conclusions above it is not therefore necessary for me to consider whether the Defendant breached his duties as a result of the provisions of FSMA as such will neither enhance nor change the entitlement of the First Claimant to such remedies as are appropriate in this case (as shown by paragraph 160 of Mr O'Doherty's skeleton argument).

192. Nor do I consider it right to do so given the lack of clarity of the Claimants' case on this issue, as complained of by Mr Cole in his opening and closing submissions, which became wholly apparent in the Claimant's closing submissions. Mr O'Doherty submitted that "*What is not clear because of the structure of s.235 is whether you are dealing with one single collective investment scheme or whether each of the SPV's business amounts to a single collective investment scheme and then all of them together amount to a larger collected collective investment scheme. But I say it does not matter because, if you find one, it is a fine distinction without any consequences to whether all of them together amount to one collective investment scheme or there are a series of them that need to be treated as single investment schemes*". I disagree that this is a distinction without a difference. The Claimants' pleaded case in this regard is that there were schemes. If it is not clear to the Claimants at the conclusion of the trial whether that is still contended for or not, then I struggle to see how it is supposed to be clear to the Defendant or the Court.

193. Further I note that if I had been required to deal with this issue in detail the First Claimant has not persuaded me on the evidence before the Court that there is a causal link (*Target Holdings v Redferns* 1 AC 421 at 434F) between the breach of duty claimed in this regard (raising investment for an unregulated scheme) and the operation of the Loan Account. Simply because monies are paid into an unregulated

scheme and are therefore returnable to the payee on demand does not mean that the monies will be disposed of by a director through distribution to himself under a directors' loan account. Other steps are needed for that to happen. In this case I have already found that something else included distinct breaches of duty. Further it is clear, in my judgment, from his dealings with the Second Claimant which was not subject to the allegations of unregulated investment schemes but in which the Defendant did operate another loan account when that company was insolvent, that the Defendant would have acted as he did irrespective of the regulation position.

Dishonesty

194. Whilst no relief is sought directly from a finding as to the honesty or otherwise of the Defendant in relation to the breaches of duty it is clear from the authorities that this may affect remedy and therefore to aid the parties in considering their submissions on remedy, I set out my findings on the Defendant's honesty in this judgment.

195. It is clear from the evidence before the Court that the Defendant allowed the public to believe that any monies paid for rooms in the SPVs would be ringfenced. This word was used in marketing. However, it is equally clear that the Defendant knew that this was not the case. I find that the projects were therefore falsely marketed to the public.

196. The Defendant further knew, for the reasons already set out, that ringfencing the money to an SPV, or at least to the hotels, was necessary in order to fulfil the business model he said each project operated under. Yet he knew, for the reasons already set out, that this would not be the way he operated the SPVs or even the Group and, as already established, this was not the way he operated the companies.

197. In knowingly allowing monies to be used by other companies the Defendant knew that he made an insolvency of the First Claimant and the SPVs more probable. When this insolvency became obvious from the Group's financial documents, the Defendant approved accounts which he knew were not accurate.

198. By late 2018, the Defendant knew that the Group's accounting records were not fit for purpose. Yet knowing this and knowing that the First Claimant and the Group were at that time insolvent and suffering from cash flow difficulties, the Defendant simply allowed the First Claimant and the Group to trade on taking money from the public, whilst he continued to extract monies from the Group to non-Group companies and to himself.

199. The subjective knowledge of the Defendant from the outset of the trading of the NPD Group, and of the First Claimant, was therefore that it would not trade according to its own business model. As a result, money which the public had been told was ringfenced was not ringfenced. Instead, the money was loaned to companies in which the Defendant was a shareholder or to the Defendant personally at no benefit to the First Claimant whilst making its insolvency inevitable.

200. Taking this knowledge into account I am left in no doubt that the actions of the Defendant in relation to his breaches of duty were dishonest by an objective standard. The Defendant attracted the monies into the First Claimant, through the SPVs, by way of lies, then stopped the public seeking to recoup their monies by more lies made both directly to them and in publicly available documents, such as company accounts. Yet at the same time he personally profited from the money whilst the First Claimant swiftly achieved the probable financial outcome at its incorporation of insolvency.

This is so obviously not how an honest individual acts in relation to monies obtained from third parties that in my judgment it requires no further comment.

201. For the reasons set out in this section of the judgment I therefore find that the Defendant was dishonest in relation to his breaches of his duties toward the First Claimant including operation of the Loan Account.

202. In addition to remedies to recover the balance of the Loan Account as a simple debt the First Claimant is therefore entitled, in my judgment, to seek remedies to recover it as a result of the Defendant's breaches of duty.

How much is due under the Defendant's Directors Loan Account with the Second Claimant ("the Second Loan Account")

203. The Second Claimant's claim is solely in relation to the Second Loan Account in the sum of £798,963. In closing submissions Mr Cole conceded that given the majority of the transactions resulting in the deficiency on it occurred prior to the 31 March 2018 accounts, which were approved by the Defendant, that the Defendant could only properly challenge sums on the Second Loan Account postdating that date.

204. As a result, the Defendant's challenge to the entries on the Second Loan Account is limited to a single challenge being a debit of £10,231.50 entered onto the ledger with Unique Reference Number 117 by Robert Atkin dated 2 July 2018. The nominal ledger shows that the source of information for this entry was "*EBP NPD*". The entry on the nominal ledger was therefore made before office holders were appointed in relation to the Second Claimant.

205. Given that the entry was made at such a time I am satisfied that the Second Claimant has shown that the relevant payment was made by the Second Claimant and that the

relevant debit was made to the Second Loan Account. I note however that the Second Claimant accepts in its summary of the loan account transactions that it has identified no evidence regarding this transaction but that on the evidence before it the debt relates to "*payments of personal credit cards bills made from Woodhouse Family Limited bank account"*. The burden of proof is therefore on the Defendant to explain the debit, and more particularly why it should be reversed.

206. The Defendant denies that the sum was a proper debit to make on the Second Loan Account. He deals with this transaction at paragraph 47 of his fifth witness statement where he states "*As I explained in my trial witness statements, both my Amex and Barclays credit cards were used and held by the operations team within the business including Giant Hospitality and business expenses were all paid using my credit cards. Without the statements which I tried to obtain when preparing for the Unless Order application hearing, it is impossible to identify the split of business to personal. If I was to make a guess it would be 50/50 but again without statements, I cannot be exact*."

207. The explanation by the Defendant is therefore a guess: Given his card details were held within the web of companies he operated and could be used by companies in the web, it must have been used for that purpose and the debit, or approximately 50%, is therefore a business expense. This is not an explanation: It is a theory with no facts to support it.

208. It is in any event an explanation undermined by an earlier entry in the Second Loan Account. On 31 March 2018 Matthew Ambler made a debit entry on the ledger with unique reference number 1766. That entry was for "*Amex direct debits during year*" and was in the sum of £82,749.59. That entry was agreed by the Defendant as shown

by his approval of the Second Claimant's financial statements dated 31 March 2018. It is clear from that entry, latterly accepted by the Defendant in the proceedings as correct, that the Defendant had previously sought payment of his credit cards from the Second Claimant, that such payment related to his personal liability under the credit cards and thus it resulted in a debit on the Second Loan Account.

209. Given this history of payments from the Second Loan Account, the reversal of the debit sought by the Defendant requires a proper explanation. Given that the explanation given is a guess unsupported by any evidence I am not satisfied that the Defendant has shown that the debit entry he challenges does relate to a business expense.

210. I therefore find that the sum due from the Defendant to the Second Claimant under the Second Loan Account is £798,963.17, as claimed by the Second Claimant.

Is the Second Loan Account repayable to the Second Claimant on grounds other than as a simple debt?

211. I have commented in this judgment on the inability of the Defendant to acknowledge the separation of personality between himself and the companies of which he was a director and member and also between the companies. It is crucial to the decision of this Court that that separation of personality is respected. Hence my conclusions in relation to the First Claimant's claim on breach of duty do not determine the claim of the Second Claimant. Rather I must consider the claim of the Second Claimant on its own merits. I do so with regard to the allegations relating to operation of the Second Loan Account.

212. The Second Claimant was formed to hold properties for the benefit of the Defendant and his family. It was registered with Companies House with the principal activity of "*Buying and selling of own real estate*". Despite the Defendant having a personal interest in the success of the Second Claimant this did not mean that the Defendant was the Second Claimant or that the Defendant did not owe duties to the Second Claimant in accordance with Part 10 of the 2006 Act.

213. Most of the evidence at trial focused on the breach of duty claim in relation to the First Claimant. There was limited evidence in relation to the operation and management of the Second Claimant. In his closing submissions Mr O'Doherty stressed the similar pattern of actions and dishonesty in relation to the Second Claimant as with the First Claimant. In his closing submissions Mr Cole conceded that his client's explanations in his witness statement about the Second Claimant were limited and that he could not go beyond that evidence. He further conceded that the Second Claimant was balance sheet insolvent by 31 March 2018.

214. It is common ground that the Second Claimant was not part of the NPD Group. Nevertheless, its business model and its finances were demonstrably, from its financial statements, intimately linked with the NPD Group.

215. The Second Claimant's main physical assets took the form of properties. Six of those properties were acquired as part of NPD Group's dealings with individuals. As explained by the Defendant in his fourth witness statement

"*Some of the potential room buyers did not have cash to buy a room but they had other assets such as buy to let properties. They told me this, and asked if it would be possible to swap these buy to let properties for rooms. I gave it some thought and considered that this swapping mechanism can work if people do not have liquid cash but want to join the project.*

In the scheme of things, this swapping took place on 6 properties with only 3 clients which is less than 1% of the overall number of the projects These part-exchanged properties were:

Property	*Relevant NPD hotel*	*Purchase Price*
Evergreen Road	*Villa at Caer Ryun Villa and 3 hotel rooms at Carmarthen Bay*	*£375,000*
Flat 1 to 4 Bouverie Road	*Dunsmore Hardland Eden Country Spa Caer Rhun Hall Lodge Atlantic Bay Hotel*	*£725,000*
Flat 2 Byron Studios	*Eden Country Spa*	*£65,000*

216. The individual would therefore transfer the property to the Second Claimant and the value of the property as agreed in the transfer would then be credited to the individual by the Second Claimant. As between the Second Claimant and the relevant SPV/First Claimant no monies would change hands but rather an inter-company loan would be established.

217. A further property, Barkisland cottages, was purchased by the Second Claimant for £500,000. This was funded by an inter-company debt owed to the First Claimant.

218. The Second Claimant therefore, at the date of the appointment of the Interim Managers, did hold assets, namely the properties it had received and the cottages, but it was indebted to the First Claimant and the SPVs for the value of the properties. The transactions should therefore have been balance sheet neutral. However, by 31 March 2017, and continued beyond 31 March 2018, that was not the case and the Second Claimant was balance sheet insolvent. A brief look at the Second Claimant's accounts shows why that was the case.

219. By 31 March 2018 the Second Claimant, despite members investing only £100 in it by way of share capital, had made significant loans to other companies and to the Defendant personally. These loans were funded by either further inter-company borrowings or by funding from third parties, with the Second Claimant having only £12,484 cash on 31 March 2018.

220. On 31 March 2017 the balance sheet position of the Second Claimant was a deficiency of £111,494. By 31 March 2018 the balance sheet position of the Second Claimant was a deficiency of £351,275. The situation was getting worse. Despite this the Defendant, and Mrs Woodhouse, did nothing in relation to the Second Claimant. They did not place it into a form of insolvency proceedings, the Defendant did not repay the Second Loan Account, he did not cease to use the Second Loan Account and instead increased its balance as found above.

221. Having considered all the evidence before the Court I am satisfied that the Defendant acted in breach of his duties to the Second Claimant in operating the Second Loan Account as he did.

222. First, the purpose of the Second Claimant was to make investments, not to make loans on non-commercial terms. There is no evidence that the monies when paid to the Defendant were used to benefit the Second Claimant in any way. The withdrawals of monies from the Second Claimant for his sole benefit was therefore not an exercise of the Defendant's powers as a director for a proper purpose. The operation of the Second Loan Account was therefore a breach of section 171 of the 2006 Act.

223. Second, the Defendant knew at all relevant times, and not just from 31 March 2018, that the Second Claimant owed monies to the First Claimant and the SPVs. He knew that monies which came into the Second Claimant whether by way of realisation of

assets, returns on investments or loans from other companies or third parties was needed to pay those debts. He also knew that any diversion of monies from the Second Claimant other than by way of repayment of the inter-company loans represented a worsening of the position of the Second Claimant that would likely require further borrowing by it.

224. Yet the Defendant did not use monies which came into the Second Claimant as was needed. Instead, he diverted monies to other companies or to himself by the Second Loan Account. The payments of monies to the Defendant therefore reduced the ability of the Second Claimant to meet its liabilities and moved it to the verge of insolvency, if not insolvency, with no benefit for the Second Claimant. Again, I consider that this case falls well outside the use of the loan account in *Re Ciro Citterio Menswear plc.*

225. As a result, when seeking to make withdrawals through his loan account the Defendant was required to have regard to the interests of the creditors of the Second Claimant. There is no evidence that the Defendant did so in relation either to the operation of the Second Loan Account generally or in relation to the individual transactions on it. The Defendant does not even make the limited concession of minimisation of spending in 2019 that he made in relation to the First Claimant. The Court must therefore consider this allegation on an objective basis.

226. In my judgment an intelligent and honest person in the position of the Defendant could not have reasonably believed that the Second Loan Account benefitted the Second Claimant as it diverted monies that were needed by the Second Claimant to repay creditors of the Second Claimant to the Defendant on uncommercial terms. This is particularly so in relation to the payment after 31 March 2018 given this diverted monies from an admittedly insolvent company, thereby reducing the monies

available for creditors, on uncommercial terms The operation of the Second Loan Account therefore did not promote the success of the Second Claimant. The Defendant therefore further breached his fiduciary duty to the Second Defendant pursuant to section 172 of the Companies Act 2006 by the operation of the Second Loan Account.

227. Given the financial position of the Second Claimant the Defendant again cannot rely on section 180 of the 2006 Act. Nor does section 239 apply on the facts of this case given there was no shareholder in the Second Claimant who was neither the Defendant or a person connected with him. Section 1157 does not apply given that the monies extracted through the Second Loan Account went to the Defendant.

228. For these reasons I find that the Second Loan Account is repayable to the Second Claimant both as a debt claim and as damages for breach of fiduciary duty pursuant to sections 171 and 172 of the 2006 Act.

229. Given what I have found to be the knowledge of the Defendant in relation to the Second Claimant, it follows that the conduct of the Defendant was objectively dishonest as he knowingly put his own interests before those of the Second Claimant and its creditors for pure personal financial gain.

Conclusion

230. I therefore make the following findings on the case before me:

i) The Defendant breached his duties as a director under sections 171 and 172 of the 2006 Act as regards both the First and the Second Claimant;

ii) The Defendant was dishonest in this regard;

iii) The First Claimant is entitled to recover £1,497,244.57 from the Defendant following the breaches of the Defendant's duties owed to the First Claimant, alternatively as a simple debt;

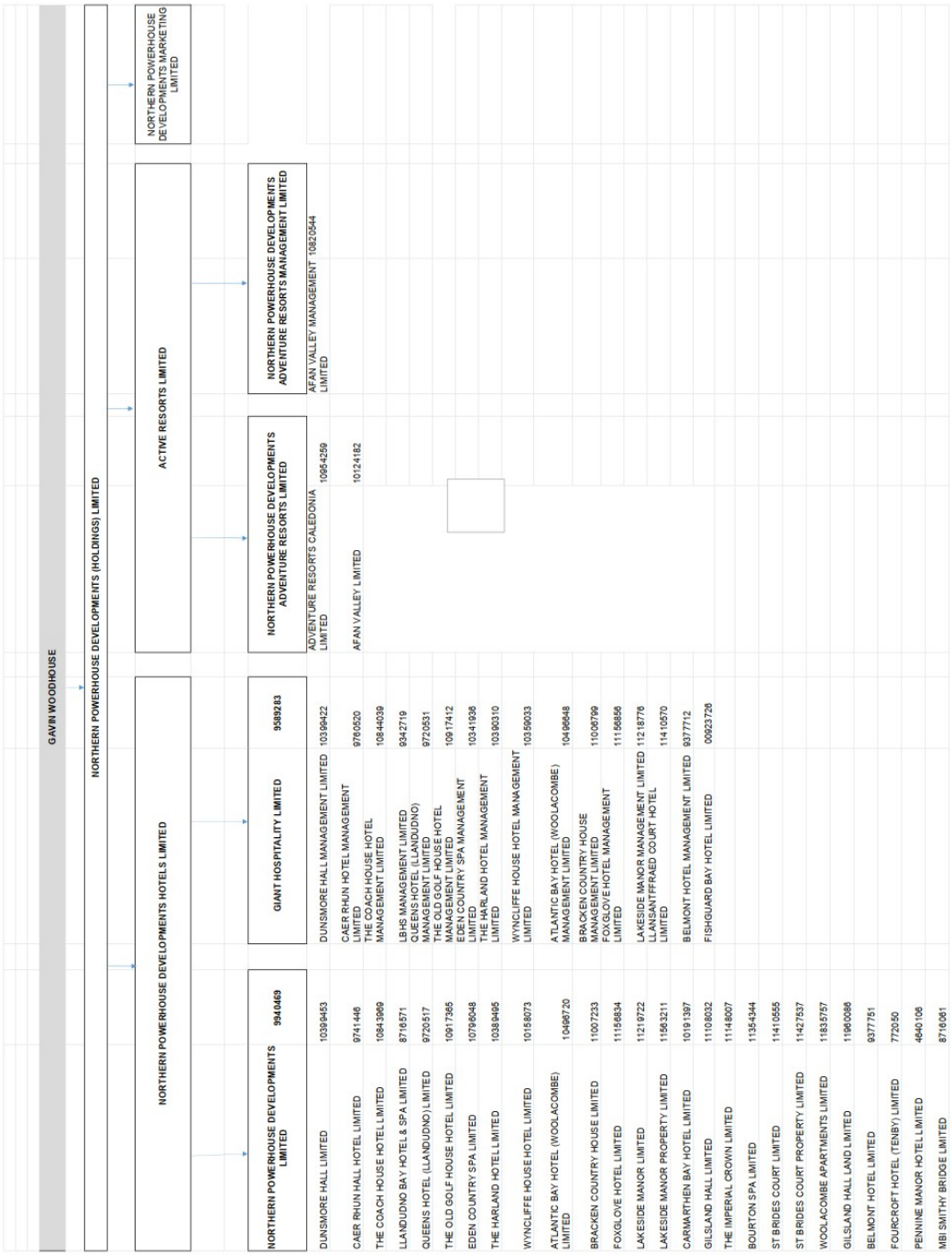
iv) The Second Claimant is entitled to recover £798,963.17 from the Defendant following the breaches of the Defendant's duties owed to the Second Claimant pursuant to section 171 and 172 of the 2006 Act, alternatively as a simple debt;

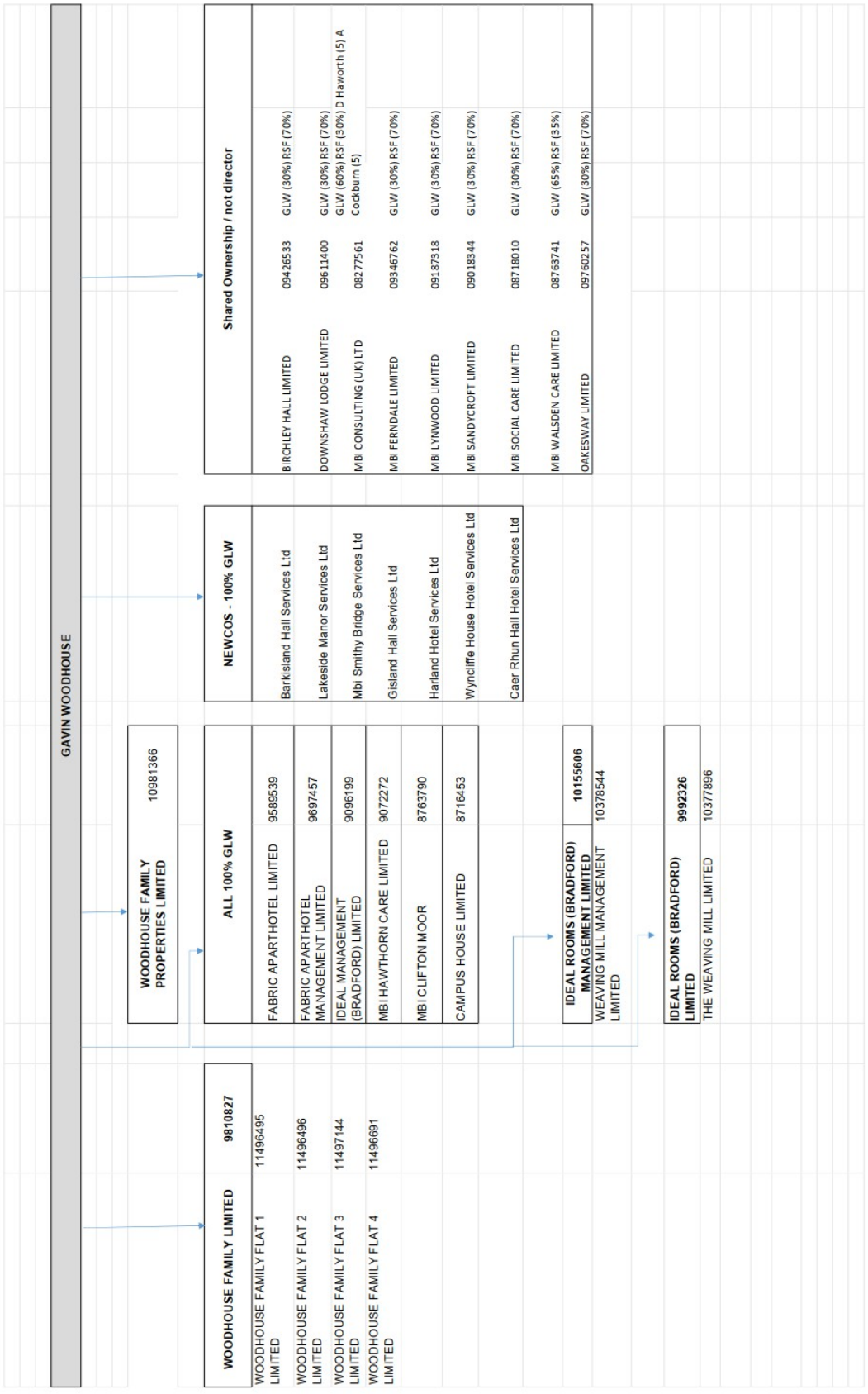
v) The Third Claimant is entitled to recover £20,000 from the Defendant as a simple debt, and;

vi) The Fourth Claimant is entitled to recover £20,000 from the Defendant as a simple debt.

231. Attendance is not required when this judgment is handed down. I invite Counsel, or the solicitors for the parties in the absence of Counsel, to endeavour to agree the terms of an order, including costs. Should this not be possible then the claim is listed for a hearing on 6 February 2024 to address the form of order following this judgment and costs. I will extend the time for filing any Appellant's notice until 21 days after the later of the date of approval of any order agreed without the need for a hearing, or that further hearing.

Appendix A: Organisation Chart of Companies with which the Defendant is concerned





Appendix B: Decisions on the Claimed Deductions in respect of the Loan Account

Cell in DLA Spreadsheet	Date	Provider	What For	Amount on the Loan Account (£)	Credit Allowed (£)
25	30.04.17	Brierstone	Construction Work	148,450	0
31	25.05.17	-	Land Rover Payment	1998.60	0
33	31.05.17	Brierstone	Construction Work	24,135	0
44	19.06.17	Top Secret Furniture	Furniture	5,400	0
45	23.06.17	Top Secret Furniture	Furniture	1,700	0
47	29.06.97	-	Land Rover Payment	999.30	0
57	21.07.17	-	Land Rover Payment	999.30	0
60	31.07.17	Brierstone -	Construction Work	119,928	0
68	25.08.17	-	Land Rover Payment	999.30	0
70	31.08.17	Brierstone	Construction Work	153,777	0
80	24.10.17	-	Land Rover Payment	999.30	0
85	04.12.17	-	Land Rover Payment	999.30	0
90	11.01.18	-	Land Rover Payment	1998.60	0
108	31.05.18	Brierstone	Construction Work	248,850	0
115	31.07.018	Brierstone	Construction Work	23,880	0
121	31.08.18	-	Gramra Incinerator	2,000	2,000
124	19.09.18	BT	Internet	640	0
129	22.10.18	-	Gramra Incinerator	16,000	16,000
131	02.11.18	Stada Video	Marketing Services	2,100	0

139	19.12.18	BT	Internet	644.40	0
147	20.01.19	BT	Internet	684.10	0
169	15.03.19	Bruton Knowles	Valuation	2,340	0
194	29.05.19	Mark Brearley	Valuation	300	0
197	30.05.19	Halifax Rugby Football Club Ltd	Bradford Directors Hospitality	320	320
202	10.06.19	Metis Law	Valuation/ Refinance	11	0
204	17.06.19	Metis Law	Valuation/ Refinance	401	0
208	27.06.19	Great Outdoor Gym Company Limited	Installation of Other Equipment	15,600	0
				Total Credit Ordered	£18,320