



Neutral Citation Number: [2023] EWHC 3203 (Ch)

Case No: BL 2021 000121

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

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

Date: 13 December 2023

Before :

HHJ JOHNS KC

Sitting as a Judge of the High Court

Between :

MERCY GLOBAL CONSULT LTD (IN LIQUIDATION)

Claimant

- and -

- (1) MR ABAYOMI ADEGBUYI-JACKSON
- (2) ALAIN LUDOVIC BOISDUR
- (3) MR MICHAEL OSEMWEGIE
- (4) MR ABAYOMI AYANKUNLE OLUNLADE
- (5) MRS GIFT ENOCH
- (6) MRS FUNMILAYO OJUOLAPE
ADEGBUYI- JACKSON
- (7) CORNERSTONE GLOBAL SYSTEM UK
LTD
- (8) MERCY GLOBAL PROPERTIES
SOLUTIONS LTD
- (9) DOMINION PAYROLL SOLUTIONS LTD
- (10) OLUGBENGA TITUS JONES SOMADE
- (11) OJUOLAPE ARCADE LTD
- (12) ADEKANMI (ALSO KNOWN AS KANMI)
OLAOLU ADEDIRE
- (13) DMO CONSULTANCY & ACCOUNTING

SERVICES LTD
(14) PURPOSE IP CONSULT LTD
(15) HANSTAL CONSULTING LIMITED

Defendants

MS CLARA JOHNSON & MS HANNAH FRY (instructed by Wedlake Bell LLP) for the
Claimant

Hearing dates: 16-17 November 2023
Written submissions: 20 November 2023

*This judgment is handed down by email to the parties' representatives and release to The
National Archives at 2 pm on Wednesday 13 December 2023*

APPROVED JUDGMENT

HHJ JOHNS KC:

A. Brief introduction

1. The claimant company, Mercy Global Consult Ltd (**Mercy**), was in the business of supplying health workers to recruitment agencies. Those customer agencies would then provide the workers to end users, mostly NHS trusts. The fees payable by the customers to Mercy would be passed on to the workers after deduction of a commission for Mercy and PAYE and national insurance contributions. This case concerns VAT on the supply of these services by Mercy to its customers. According to assessments made by HMRC, there was a massive under-declaration of VAT by Mercy. Those assessments are in a total sum in excess of £21m. By these proceedings brought by Mercy in liquidation, it is alleged that this represented a major fraud by Mr Abayomi Adegbuyi-Jackson in the period from at least July 2015 into 2020. He was the director of, and sole shareholder in, Mercy. The unpaid VAT was, it is said, misappropriated or misapplied by Mr Adegbuyi-Jackson. Mercy seeks equitable compensation in a sum equivalent to the total liability to HMRC, being the unpaid VAT as assessed of over £21m and a penalty assessment of over £2m.
2. Claims in knowing receipt and dishonest assistance are also made against Mrs Adegbuyi-Jackson (the wife of Mr Adegbuyi-Jackson). And against a number of corporate defendants, all of whom have some connection to Mr Adegbuyi-Jackson and are said to have had a role in the fraud, as well as against Mr Somade - the director of one of them, being Dominion Payroll Solutions Ltd (**Dominion**). Three of the other directors of Mercy are also sued for breach of duty, among other things. Further, there are proprietary claims made to assets acquired by Mr & Mrs Adegbuyi-Jackson, and by two of the corporate

defendants, being Ojuolape Arcade Ltd (**Arcade**) and Mercy Global Properties Solutions Ltd (**MGPS**).

B. Trial and evidence

3. None of the defendants participated in the trial. Settlements had been reached with the Fourth Defendant, Mr Olunlade, and the Twelfth Defendant, Mr Adedire; the claim against Mr Olunlade being discontinued by consent and a Tomlin order being made as between Mercy and Mr Adedire.
4. The remaining defendants had been debarred from defending for failure to comply with court orders. The failures included failure to give any disclosure or serve any witness statements for trial. The Second, Fourth and Fifth Defendants were debarred by order of HHJ Baumgartner, sitting as Judge of the High Court, made at the pre-trial review on 13 October 2023. The remaining defendants were the subject of a debarring order made by Mr David Halpern KC, sitting as a Deputy High Court Judge, at an adjourned further hearing of the pre-trial review on 16 October 2023; their Amended Defences or Defences being struck out at the same time.
5. Notwithstanding the debarring orders, it is still necessary to take care in assessing the extent, if any, to which Mercy has made out its claim. As was said by Mr Edwin Johnson QC, sitting as a Deputy Judge of the High Court, in *Times Travel (UK) Limited v Pakistan International Airlines Corp* [2019] EWHC 3732 (Ch) at [55], “*Where a debarring order does have the effect of preventing a defendant from participating in a trial, the position does not then go by default. At the trial the claimant must still demonstrate to the satisfaction of the court that the claimant is entitled to the relief sought in the relevant proceedings.*”

6. That scrutiny at trial led to some concessions by Mercy. I will refer to those in what follows. And examine for the personal claims against each of the defendants, and for each of the proprietary claims, the extent to which those claims have been made out on the evidence.
7. So far as witness evidence is concerned, I heard from four witnesses called by Mercy.
8. Mr Marklew. He is an officer of HMRC working in HMRC's Fraud Investigation Service. He described the nursing agencies concession in respect of VAT; this concession being the principal plank in Mr Adegbuyi-Jackson's now struck out Amended Defence.
9. Mr English. He is another officer of HMRC working in HMRC's Fraud Investigation Service. He told me that "*In the absence of full business records HMRC's assessment against Mercy has been quantified as a matter of best judgment or an estimate or guess honestly made on such materials as are available to the commissioners.*" – see his witness statement at [12]. He gave evidence of those assessments, being assessments of 20 October 2020, 21 January 2021, and of August 2021 covering the 15 VAT return periods from May 2017 to July 2020 totalling £21,984,621.70. And of a penalty issued on 5 July 2022 in the sum of £2,379,777.90 for the period 1 March 2019 to October 2020 comprising failure to notify and inaccuracy penalty assessments.
10. Mr Ainge. He is one of the two joint liquidators of Mercy, the other being Mr Paul Stanley. He said, among other things, that the liquidators expanded on the investigations HMRC had commenced by seeking further information from customers of Mercy. And by obtaining bank statements from some 26 bank accounts to which customer payments had been directed. The liquidators concluded that the VAT amounts were significantly higher than HMRC's initial assessments. He asked Mr Pughe to carry out a tracing

analysis of what had become of Mercy's money representing the unpaid VAT and described the instructions he gave to Mr Pughe for that. He also told me that appeals against HMRC's initial assessments have not been pursued; there having been a lack of cooperation by Mr Adegbuyi-Jackson and his advisers with the liquidators in relation to the appeals. And that no appeal has been made against the latest assessment. He detailed those assets in respect of which a proprietary claim is made and gave evidence in support of those claims.

11. Mr Pughe. He is part of the forensic accounting team for Begbies Traynor Group plc (and therefore in-house so far as the liquidators are concerned). He carried out the tracing exercise and gave detailed evidence of that. His second witness statement contained some examples of his workings. He gave a further helpful description of his work to me orally.
12. Given that Mr Pughe's evidence relied on his expertise as a forensic accountant, I have considered whether it can properly be relied upon; it not having been given by way of expert report and there being no permission under CPR Part 35 for expert evidence.
13. In my judgment, it can properly be relied upon. There is a distinction to be drawn between two types of evidence which may be given by an expert relying on their expertise. It is a distinction between evidence of fact and evidence of opinion. That distinction is noted in *Phipson on Evidence, 20th Ed.* at 33-10, where the editors continue, "*Expert witnesses have the advantage of a particular skill or training. This not only enables them to form opinions and to draw inferences from observed facts, but also to identify facts which may be obscure or invisible to a lay witness.*" Examples of identification of facts relying on expertise given in that textbook are a microbiologist

spotting a microbe using a microscope, or a handwriting expert distinguishing parts of a letter.

14. The distinction seems to me important, as it is only opinion evidence which is generally inadmissible; a general rule to which expert evidence under CPR Part 35 provides an exception. The notes to the *White Book 2023* at 35.0.1.1 under the heading “*Admissibility of Expert Evidence*” begin, “*Expert evidence constitutes an exception to the general rule that only evidence of fact may be adduced*”.
15. The evidence of Mr Pughe was evidence of fact, though of facts at least more readily discernible to someone with his expertise, namely in forensic accountancy.
16. Even if I am wrong to some extent and it could be said he strayed into opinion related to those facts, witnesses of fact are not excluded from offering opinions informed by their expertise. In *Multiplex Constructions (UK) Limited v Cleveland Bridge UK Limited* [2008] EWHC 2220 (TCC), Jackson J stated at [672] that, “*I conclude that in construction litigation an engineer who is giving factual evidence may also proffer (a) statements of opinion which are reasonably related to the facts within his knowledge and (b) relevant comments based upon his own experience.*” That approach is not one confined to TCC cases, as was made clear by Beatson LJ in *Globe Motors Inc v TRW* [2016] EWCA Civ 396 at [92].
17. In receiving this tracing evidence, I am fortified by the example of two decisions in the case of *Umbrella Care Limited v Nisa* with neutral citation numbers [2022] EWHC 86 (Ch) (*Umbrella 1*) and [2022] EWHC 3139 (Ch) (*Umbrella 2*). That was a case of a not dissimilar alleged fraud where there was a witness statement from the liquidator giving the results of a forensic analysis carried out on her instructions. That evidence was

received without any apparent controversy by Edwin Johnson J, and accepted; both at the summary judgment stage in *Umbrella 1* and at the later trial in *Umbrella 2*.

18. There was no evidence at trial from the defendants. I have, though, had some regard to the now struck out Defences and Amended Defences. Mr Edwin Johnson QC continued in the *Times Travel* case, “*The striking out of the defence does not mean that the court cannot have any regard to that defence. It can still be considered by the court for the purposes of understanding the statements of case in the relevant proceedings as a whole.*”

19. The witness evidence for Mercy being unchallenged, and there being no reason at all to doubt the reliability of the witnesses, I accept that evidence save in the few instances I refer to in what follows. Where my judgment refers to a matter of fact without specifically indicating the source of the finding, it comes from my acceptance of this witness evidence.

20. Further, there was no challenge to the approach applied to tracing, and that approach seemed, in any event, appropriate given the nature of the case. If Mercy is correct, this was an alleged fraud involving the movement and diversion of the proceeds of the fraud among a raft of accounts and a significant number of companies in an attempt to conceal the wrongdoing.

C. The alleged fraud

21. It is necessary first to consider whether there was indeed a major VAT fraud by Mr Adegbuyi-Jackson as alleged. Mercy’s case is that there was a failure to declare VAT which was “*deliberate and in furtherance of a VAT fraud planned and carried by or at*

the direction of Mr Adegbuyi-Jackson” – see the Re-Re-Re-Amended Particulars of Claim at [38].

22. On the evidence, Mercy has clearly established, and I find, that there was such a fraud.

23. First, while it was contended by the now struck out Amended Defence of Mr Adegbuyi-Jackson that VAT was not payable on the supply of labour by Mercy, VAT was in fact being billed to, and paid by, customers. Only two customers have been identified, on the evidence of Mr Ainge, as not paying VAT to Mercy. This is not therefore a case of a business trading without realising that VAT is chargeable and only later waking up to an unexpected VAT liability.

24. The core of Mr Adegbuyi-Jackson’s Amended Defence was reliance on what was referred to as the nursing agency concession. *“The Defendants ... aver generally that the Claimant was entitled to avail itself of the Nursing Agency Concession. In the premises, the assessments to VAT made served by and relied upon by HMRC were to the extent of such supplies in breach of the Nursing Agency Concession”* – the Amended Defence at 6(A)(v).

25. But the nursing agency concession was not in fact operated by Mercy, whether or not it was available. VAT was being collected by Mercy. The concession cannot, therefore, begin to provide an explanation for the failure to pass on VAT as a matter of fact. Or as a matter of law. That is because the concession cannot be operated retrospectively. The Court of Appeal so decided in *First Alternative Medical Staffing Ltd v HMRC* [2022] EWCA Civ 249.

“...the short answer to this appeal is that the NAC would be understood by the ordinarily sophisticated taxpayer as requiring a choice to be made in relation to each supply at the

latest by the time the client is invoiced in respect of that supply. That is because the choice to exempt a supply requires positive action by the taxpayer. To “exempt” a supply means not to charge or account for VAT on it. The positive action required by the taxpayer is to exclude, rather than include, VAT when invoicing its client. The choice “to exempt” a supply is therefore one that has necessarily to be made at the time of the supply.” -see the judgment of Zacaroli J at [39].

26. It was also pleaded in the Amended Defence that Mr Adegbuyi-Jackson believed the only sum on which VAT might possibly be charged was merely its profit or commission, which was modest.

“6A(viii) Mercy would receive a sum from a Secondee as consideration for the secondment of the services of an employee. Mercy would from this sum pay over to the employee such sum as would, having deducted income tax and national insurance contributions due under PAYE as respects the payment, leave Mercy with a gross profit which Mercy and the First Defendant considered (albeit erroneously) to be its “commission” as respects the secondment. This “commission” was a weekly variable sum of between £5 to £50 and then later a fixed sum of £15 per week;

6A(ix) Mercy and the First Defendant believed the “commission” constituted the only receipts of its trade and not the total sums it received from the Secondees. Mercy and the First Defendant also believed the amount of the “commission” to be the only consideration for any supplies (for VAT purposes) made by Mercy, whether or not such supplies were taxable;”

27. But the simple fact is that VAT was being billed and paid on the value of the sales to the recruitment agencies, not merely Mercy's modest commission. The evidence is that most of Mercy's customers self-billed, so produced their own invoices which set out the VAT to be paid to Mercy – see the witness statement of Mr Ainge at [40]. The trial bundle included example self-billing agreements made between customers and Mercy, signed by Mr Adegbuyi-Jackson. There is no suggestion in these agreements that the invoices were to specify VAT on anything other than the value of the supply to the customer. Consistently with that, the example self-billing invoices in the trial bundle invoiced VAT on the value of the supply. Likewise, the example invoices in the trial bundle generated by Mercy for those customers which did not self-bill specify VAT on the value of the supply. Further, the evidence is that Mercy's customers reclaimed the VAT as input tax – see the witness statement of Mr Ainge at [100].

28. Second, this VAT was not being passed on to HMRC. That failure is a startling one on the figures. The evidence included a comparison month by month of the VAT in fact received by Mercy on the one hand and the level of VAT it accounted to HMRC for on the other – see the witness statement of Mr Ainge at [98]. To take two examples, for October 2019 Mercy received VAT of £2,582,112 on a turnover for that month of £12,910,559. It accounted for no VAT at all that month. And for January 2020 Mercy received VAT of £2,738,686 on turnover of £13,693,430, while accounting for just £34,108 on stated turnover of £127,097.

29. Third, many of the payments from customers of Mercy were diverted to other companies having a connection with Mr Adegbuyi-Jackson. The evidence of Mr Ainge, which I accept, is that some 26 accounts operated by companies other than Mercy received

money from Mercy's customers. That makes some sense if this was a fraudulent scheme. It does not fit with an innocent failure to account for VAT. On the evidence, this was on a very significant scale indeed. Mr Pughe's evidence was that over £55m was received from Mercy's customers into the accounts of companies with some connection to Mr Adegbuyi-Jackson and his wife; the corporate defendants taking the bulk of that money – see his first witness statement at [22].

30. Further, examples of these diversions of funds given in the evidence only underline that they were part of a fraudulent scheme. The directions given to customers in those examples to pay money to the accounts of companies other than Mercy were misleading in a way which can only have been deliberate. An email from info@mercyglobalconsult.com on 18 June 2018 informed one customer “*that Mercy Global Consult has switched bank account, details of the new bank account is as follows*”. But the details given were not for any account held by Mercy. They match instead an account of Hanstal Consulting Limited (**Hanstal**), the Fifteenth Defendant. An email from the same address and signed by Mr Adegbuyi-Jackson dated 23 August 2018 to a different customer represented that “*We have resolved to move our banking activities to Santander, we therefore request that going forward from today 23/08/2018 payment should be made to our SANTANDER bank account details below*”. Those details were, though, for an account of Cornerstone Global System UK Ltd (**Cornerstone**), the Seventh Defendant, not of Mercy. The same details were given in a letter from Mercy “*to whom it may concern*” dated 18 June 2018 and signed by Mr Adegbuyi-Jackson; introduced by these words “*We write to inform you that we have switched our bank account to SANTANDER BANK, our new bank detail is below*”.

31. The clear impression of fraud is compounded yet further by obviously forged documents designed to disguise these diversions. The documents in the trial bundle included a letter dated 18 June 2017 to Mr Adegbuyi-Jackson of Mercy apparently from Cashplus purportedly in relation to an account of Mercy with Cashplus. It bears the signature of a Sue Douthwaite as “*Managing Director Business*”. But comparison with a strikingly similar letter of the same date from Santander bears the same signature, this time showing her as having that same role at Santander. Her signature appears again on a letter dated 19 June 2018 to the director of Mercy, now on the basis that she works for Barclays. This letter is a particularly clumsy forgery. Barclays is misspelt in the apparently standard header of the letter as “*barciays*”.
32. There is also the point that the sums diverted to the corporate defendants did not feature in the accounts of those companies. In that regard, despite receiving very significant sums they all filed micro-entity accounts. These companies did not, therefore, treat these funds as part of their own legitimate business, insofar as they had any.
33. Fourth, very significant sums representing the VAT were paid out to Mr Adedire, the Twelfth Defendant, for the purpose of converting the funds into Nigerian naira. They should, of course, have been held instead for passing on to HMRC. That these payments were part of a fraud is underlined by the attempts of Mr Adegbuyi-Jackson to justify them. Two of the business names of Mr Adedire are Treynor Ventures and Forte Algors. Over £1m in total was paid to these names directly by Mercy alone. Mr Adegbuyi-Jackson pleaded by the schedule to the Amended Defence that these were consulting companies providing services to and being paid by Mercy – see his schedule at [9], [15] & [16]. But the sworn evidence of Mr Adedire, which I have no reason to doubt and

accept (though it is hearsay), given by his affidavit sworn on 17 August 2022 was that these business names were all used for his trading as a money exchange and that that is the business he did with Mr Adegbuyi-Jackson. He described that business in this way. *“Mr Adegbuyi-Jackson will contact me either on phone or on WhatsApp to indicate how much currency his group of companies want to sell, we would agree the rate of exchange, and then he would provide the instructions of where he wants the naira value paid to and I will pay the naira value to the account specified by him according to his instructions.”* – the affidavit at [18].

34. It is also significant that some of this money, when converted into naira, was then paid to Mr Adegbuyi-Jackson and his wife; that being the evidence of Mr Ainge which I accept.
35. Fifth, neither Mr Adegbuyi-Jackson nor any of the other active defendants have offered any evidence of a different version of events. No witness statements were ever served. Nor have they given disclosure of documents relating to the allegations. Those failures support a conclusion of fraud.
36. I also take into account the fact that very significant sums of money representing the VAT found their way to Mr Adegbuyi-Jackson or were used in the acquisition of assets for him or his wife. Quite apart from the results of the tracing exercise conducted, over £500,000 was paid directly by Mercy to Mr Adegbuyi-Jackson (see the first witness statement of Mr Pughe at [33]), and Mr Adegbuyi-Jackson admitted that the funds for the purchase of a property known as Defoe House, acquired by Mr Adegbuyi-Jackson and his wife jointly at a price of £525,885 in May 2020, were provided largely by Mercy. *“The First Defendant transferred £400,000 from Mercy to their conveyancing solicitors for the*

purchase ...” – the Amended Defence at [72]. In fact, it is apparent from the evidence of Mr Ainge, and I find, that the whole of the purchase price came from Mercy.

37. For all those reasons, I find that there was a large-scale VAT or labour supply fraud here as alleged. Having made that finding, I go on now to consider the personal claims against each of the defendants, taking each in turn and starting with Mr Adegbuyi-Jackson.

D. Personal claims

D.1 Mr Adegbuyi-Jackson

38. Mercy complains that Mr Adegbuyi-Jackson was in breach of his director’s duties in orchestrating the fraud which I have found. It seeks equitable compensation from him in a sum equivalent to the full liability of HMRC including for penalties.

39. There is no doubt, and I find, that Mr Adegbuyi-Jackson was responsible for the fraud. There is no other candidate for it. There is likewise no doubt that it amounted to a breach of duty by him as a director of Mercy. Most obviously, it involved him failing to “*act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole ...*”, contrary to s.172 of the Companies Act 2006. Mercy has been wound up as a result of the fraud and left with an enormous liability to HMRC. And as I find (being an inference from the fact of the fraud and his lack of evidence to explain himself), either he considered the interests of Mercy and did not honestly believe the fraud was in those interests, or he failed to consider them and no intelligent and honest director could reasonably have believed the fraud was in the interests of Mercy. Dishonesty is therefore established.

40. In my judgment, Mercy is entitled by way of equitable compensation to the full amount of its liability to HMRC, subject to appropriate credit being given for recoveries and

realisations. The search is for the sum required to put the company into the position in which it would have been if Mr Adegbuyi-Jackson's breaches of duty had not occurred – see, for example, *Umbrella 2* at [76]. The effect of the fraud is that Mercy has been left with liabilities to HMRC of £21,984,621.70 in respect of unpaid VAT, and incurred a further £2,379,777.90 by way of penalties; a total sum of £24,364,399.60. While those assessments of HMRC have involved some estimating, as Mr English made clear, that fact casts no doubt on the sum to be awarded to Mercy as damages or equitable compensation. The accuracy of the assessments is not a question for me. They exist and there has been no successful appeal against them. The assessments represent Mercy's liability to HMRC and therefore the loss for which it is to be compensated.

41. Ms Johnson provided to me a table setting out what money judgments were sought against each defendant. But it seemed to me, and became accepted by Ms Johnson, that many of the figures in the table involved double counting.
42. The first, and an obvious, example was the claim against Mr Adegbuyi-Jackson as described by the schedule. That put the compensation claimed not at £24,364,399.60 but at £26,267,506.60 plus 679,926,751 naira. That came from adding to the total liability to HMRC to sums received by Mr Adegbuyi-Jackson from Mercy, the corporate defendants, and Mr Adedire's business names. But those further sums must, on Mercy's case, have come from the unpaid VAT which should have been passed on to HMRC but had instead been misappropriated by Mr Adegbuyi-Jackson.
43. My pointing out these problems led to a revised annex being produced. That, correctly, showed the total liability of Mr Adegbuyi-Jackson for equitable compensation as £24,364,399.60, with the further sums being shown only to indicate that there was an

alternative basis for the claim to equitable compensation to the extent of those sums, namely knowing receipt. Had those further sums not formed part of Mercy's loss for which Mr Adegbuyi-Jackson is liable as director as I have found, I would have awarded those sums by way of compensation for knowing receipt. Given he was the perpetrator of the fraud, he clearly had the requisite knowledge to make him so liable.

44. As I have said, appropriate credit must be given for recovery and realisations. As was done in *Umbrella 2*. In that regard, Mercy asserts equitable interests in a number of assets. I deal with those proprietary claims later in this judgment. Further, on the evidence of Mr Ainge, which I accept, there have already been other recoveries and realisations. He set those out in his witness statement at [26]. They include £2,907,271 recovered from accounts of Mercy which had been frozen by the court at the request of HMRC.

45. What credit should be given and how is a question I will take submissions on as part of making an order consequential on this judgment. It is a question which also arises, and will need to be addressed at that stage, in relation to the personal claims against the other defendants insofar as those are established.

46. A yet further alternative for the basis of Mr Adegbuyi-Jackson's liability appeared on the annex as revised. That was for Mr Adegbuyi-Jackson to be liable in the sum of the HMRC liability without the penalty, so £21,984,621.70, on the footing that such sum had been misappropriated or misapplied by him. I would not have awarded that sum but would instead have directed an inquiry had that analysis been called upon, as the substantial sum left in Mercy at the time of the liquidation (in excess of £2m), meant I

could not be satisfied that the whole of the unpaid VAT had been paid away. As it is, my decision on loss means that there is no need for any such inquiry.

D.2 The other defendant directors of Mercy

47. It is convenient to consider next, and together, the claims against the Second, Third and Fifth Defendants, being Mr Boisdur, Mr Osemwegie, and Mrs Enoch. Their liability is said to flow from them having been directors of Mercy for periods during the fraud. The evidence, which I accept, as to those periods is as follows: Mr Boisdur was a director from 8 July 2015 to 31 January 2019, Mr Osemwegie was a director from 1 August 2015 to 1 October 2015 and from 24 July 2017 to 1 September 2019, and Mrs Enoch was a director from 12 October 2016 to 20 September 2018. Mercy seeks against each of them equitable compensation in sums equivalent to the liability to HMRC incurred during their period of directorship. I note that reflects the result in *Umbrella 2* against other directors. For Mr Boisdur that was £8,761,651.49. For Mr Osemwegie, including the penalty, it was £23,113,666.05. And for Mrs Enoch £5,951,397.

48. It appeared to be being argued that they were liable simply by virtue of having been in office, without more. In response to some probing from me, however, it was accepted it was not enough to show only that they were in office. Some breach of duty by them had to be established. I consider also that causation of the loss claimed must also be established. These points are apparent from *Lexi Holdings plc v Luqman* [2009] EWCA Civ 117 (Ch). But I am satisfied breach and causation have been shown here.

49. Starting with the question of breach of duty, having found the fraud being orchestrated by Mr Adegbuyi-Jackson, I have concluded there was a breach of duty by each of these other directors. The duties of a director include taking reasonable steps to prevent and

detect fraud, and do not permit them to be dominated or bamboozled by one of their number – see *Luqman* at [36] & [37]. Certainly without any evidenced explanation from these other directors, the inference I draw is that they failed in these respects. Any proper grasp of Mercy’s affairs commensurate with the duties of a director would have revealed that there was a massive under-declaration of VAT and that Mercy’s accounts did not reflect the scale of its business. The company’s documents show it was billing and receiving VAT but not passing it on, and not reflecting its true turnover in its accounts.

50. Turning to causation, that involves considering what these directors ought to have done.

Given that they could not allow themselves to be bamboozled or dominated by Mr Adegbuyi-Jackson, I conclude that they ought to have acted so as to ensure Mercy filed correct accounts and accounted to HMRC for the VAT it was collecting. That is what one would expect of directors and there is no evidence from these defendants of any reason why they could not do that. On that basis, the liability to HMRC brought about by the fraud in the period of their directorships is indeed one caused by their own breach of duty.

51. It follows that equitable compensation is due from each of these director defendants in the sums claimed; those sums being calculated from the evidence of Mr English, which I accept and gives a breakdown of each of the HMRC assessments by VAT period.

52. Mr Boisdur and Mr Osemwegie also received significant sums from Mercy. On the evidence of Mr Pughe, Mr Boisdur received £131,734 and Mr Osemwegie received £552,883 from Mercy; with Mr Osemwegie receiving a further sum of £153,203 of Mercy’s money from the corporate defendants, principally Cornerstone. While Mr Ainge’s evidence referred to a larger figure having been received from Mercy by Mr

Osemwegie, it is the figure of £552,883 relied on in the revised annex, which matches the evidence resulting from the detailed tracing work of Mr Pughe, and appears to give credit for sums invoiced for Mr Osemwegie in the total sum of £124,200 inc VAT (see Mr Ainge's witness statement at [86]). I therefore use that sum. Being payments by Mercy, or from Mercy's money, to directors, unless justified these are misappropriations for which the directors are liable under s.172 of the Companies Act 2006. Ms Johnson submitted that where payment of company money is made to a director, it is for him to show it was proper. I agree - see *GHLM Trading Limited v Maroo* [2012] EWHC 61 (Ch) at [149] and *Umbrella 1* at [197]. Mr Boisdur and Mr Osemwegie not having given evidence, no justification for the payments has been shown save only that the evidence includes invoices from Mr Osemwegie to Mercy for £49,500 and it is accepted by Mercy that he did provide some services which may explain some payments. Given that, I find the payments to Mr Osemwegie were proper to the extent of £49,500 but not otherwise, and that all the payments to Mr Boisdur were misappropriations. While many of the payments to Mr Boisdur seem to have had the reference "salary" on them, I am not satisfied that they in fact represented salary. There appeared to be no documents, such as Mercy's payroll records, which showed him as properly entitled to a salary. Certainly, I was not taken to any.

53. Misappropriation is therefore an alternative basis of liability to the extent of these sums for the equitable compensation due from these two defendants. I make clear I would not have found that knowing receipt provided a further alternative basis. The skeleton argument for Mercy made clear that no allegation of fraud was made against them and I was not able to discern from the written or oral argument what guilty knowledge they

were said to possess, still less what material was relied on to justify inferring any such knowledge.

D.3 Mrs Adegbuyi-Jackson

54. The Sixth Defendant is Mrs Adegbuyi-Jackson. There are two bases for the personal claim against Mrs Adegbuyi-Jackson which must be considered.

55. The first is knowing receipt. There is no need for Mercy to establish dishonesty on the part of Mrs Adegbuyi-Jackson in order to make out its case against her on this basis. There will be knowing receipt if there is receipt of Mercy's assets, such receipt arises from Mr Adegbuyi-Jackson's breach of fiduciary duty, and there is knowledge on the part of Mrs Adegbuyi-Jackson that the assets are traceable to a breach of duty sufficient to make it unconscionable for her to retain the benefit. I take these points from *BCCI (Overseas) Ltd v Akindele* [2001] Ch 437.

56. The tracing evidence of Mr Pughe, which I accept, is that Mrs Adegbuyi-Jackson received £94,296 directly from Mercy, and was the recipient of £1,340,266 of Mercy's money from various of the corporate defendants. The evidence of Mr Ainge, which I also accept, is that she received a further 560,034,384 naira from Mr Adedire's business names. There is no legitimate explanation for these transfers. I therefore find both that they are the fruit of Mr Adegbuyi-Jackson's breaches of duty and that Mrs Adegbuyi-Jackson knew that.

57. The second basis for the claim against Mrs Adegbuyi-Jackson is dishonest assistance. This does require Mercy to establish dishonesty against her. It requires too that Mercy show she assisted in the breaches of duty by her husband. Complaint is made on this basis of sums paid through corporate defendants connected to Mrs Adegbuyi-Jackson,

namely £7,051,101 paid through MGPS (the Eighth Defendant), £1,964,950 paid through Dominion (the Ninth Defendant), £935,784 paid through DMO Consultancy & Accounting Services Ltd (**DMO**) (the Thirteenth Defendant), and £1,480,094 paid through Hanstal. As I note later, I will need to be satisfied of these figures by further submissions; the calculations from Mr Pughe's evidence not yet being provided.

58. Mrs Adegbuyi-Jackson has been the director of MGPS at all times from 12 September 2012, of DMO from 14 July 2018, and of Hanstal from 21 July 2019 and for a period before that. While not a director, she was on the bank mandate for Dominion; a fact for which no proper explanation has been given.

59. In the absence of evidence from Mrs Adegbuyi-Jackson, I find that she did in fact assist in the breaches of duty by Mr Adegbuyi-Jackson by causing these companies to deal with these proceeds of the fraud.

60. Plainly, part of the fraud involved getting the unpaid VAT out of Mercy. These payments were part of that. Indeed, facilitating the onward payment of misappropriated money is a classic example of actionable assistance. A company can only act by its people, and Mrs Adegbuyi-Jackson was a director of three of the companies. I have paused to consider whether it is right to conclude that she also assisted in the dealing by Dominion with the sums passing through that company, given she was not a director. But, in my judgment, that is the right conclusion. She has not given evidence addressing that allegation, she is on the bank mandate for that company, and there is the compelling point that the bulk of the money was paid out of Dominion to her, to the tune of £1,196,930. Further, the now struck out Defence of Mr Somade gives further support for her involvement. He pleaded, in what I will come on to say is part of a plausible account set out in his Defence, at

[37.2] his understanding that Mrs Adegbuyi-Jackson was helping Mr Adegbuyi-Jackson with the day-to-day administration of Dominion.

61. I further find that in so assisting in the fraud, she was dishonest. Given the scale of these payments for which there is no legitimate explanation, which were not accounted for by these companies as their own funds, and that a very significant slice ended up with Mrs Adegbuyi-Jackson (again without any legitimate explanation), the inference I draw is that, as with the payments to her, she knew these were the fruits of Mr Adegbuyi-Jackson's fraud.

62. In addition, therefore, to her liability in knowing receipt, Mrs Adegbuyi-Jackson also has a substantial liability for dishonest assistance. I was concerned, however, that simply adding one set of figures to the other would involve double counting. Some of the money which she assisted to pass through the corporate defendants also made its way on to her so would already be included in the knowing receipt claim.

63. Having raised this concern with Ms Johnson, she accepted there was some double counting, and helpfully produced a revised calculation stripping out the duplication. That involved deducting from what would otherwise have been the liability for dishonest assistance, the sum of £1,196,930. The resulting figure for the equitable compensation sought on this basis given my findings is £10,234,999.

64. If, on the calculations being provided, those figures are correct, then putting the two bases together, the personal claim established against Mrs Adegbuyi-Jackson will be in a total sum of £11,669,561 and 560,034,384 naira.

65. While the claim against Mrs Adegbuyi-Jackson was also put in terms of unjust enrichment, Ms Johnson volunteered that that analysis added nothing and, in the end, I was invited to make no determination about it.

66. Likewise, I was told that the claim against her in unlawful means conspiracy added nothing. I need not therefore address that either.

D.4 Mr Somade

67. Before turning to the corporate defendants, I will consider the claim against Mr Somade, the Tenth Defendant. He is Mr Adegbuyi-Jackson's step-brother.

68. The claim against Mr Somade is put exclusively on the basis of dishonest assistance. It is not alleged that Mr Somade received any of the proceeds of the fraud. The claim relies on the receipt by Dominion of £1,964,950 forming part of the proceeds of the fraud.

69. My assessment of the evidence is that Mercy has not established dishonesty against Mr Somade. Nor assistance.

70. Mr Somade set out by his now struck out Defence a detailed and plausible account addressing the allegations made against him. The thrust of that account included that he knew nothing of the VAT fraud, and that it was Mr Adegbuyi-Jackson that had day-to-day control of Dominion, with the help of Mrs Adegbuyi-Jackson. That latter point fitted with Mercy's allegation that it was Mr Adegbuyi-Jackson that was the de facto director of Dominion; an allegation which was admitted by Mr Adegbuyi-Jackson in his Amended Defence (at [25]). In summary, he was an innocent dupe of Mr Adegbuyi-Jackson. There is very little in the documents to contradict what must, at least, be considered this possible explanation of Mr Somade's role. I do not ignore his signature on a handful of documents, but given the serious nature of the allegation against him which has

something of an inherent unlikelihood and for which there is a ready alternative explanation, I am not satisfied he was dishonest. Nor is it shown that he assisted in any meaningful way with the fraud, at least in relation to the full sum claimed.

71. The claim against him will be dismissed.

D.5 The corporate defendants

72. I turn to address the personal claims against the corporate defendants.

73. The Seventh Defendant is Cornerstone. On the evidence, it received £2,817,800 directly from Mercy, and a further £156,764 of Mercy's money from other corporate defendants.

74. Mr Adegbuyi-Jackson has been its director for most of the relevant period and owns all its shares. It is his knowledge which should be attributed to Cornerstone. Plainly, therefore, Cornerstone knew that these payments were traceable to a breach of duty sufficient to make it unconscionable for it to retain the benefit. Equitable compensation is payable under this head in the total sum of £2,974,564.

75. On the evidence, there are also substantial sums which have passed through Cornerstone as part of operating or disguising the fraud. That would, in my judgment, make Cornerstone liable for dishonest assistance in respect of those sums. It is not clear to me that the total figure for those sums given in the revised annex, being £8,713,225, is correct, at least without any double counting alongside the liability in knowing receipt. The calculation from the figures in Mr Pughe's evidence has not been provided. I will invite further submissions which can be considered when making the order consequent on this judgment.

76. The Eighth Defendant is MGPS. On the evidence, it received £646,500 directly from Mercy, and an even more substantial sum representing the proceeds of the fraud from the

other corporate defendants, namely £6,298,170. Its directors and shareholders for the relevant period have been Mr & Mrs Adegbuyi-Jackson. Given their knowledge, which can be attributed to MGPS, MGPS knew that these payments were traceable to a breach of duty sufficient to make it unconscionable for it to retain the benefit. Equitable compensation is payable under this head in the total sum of £6,944,670. On the evidence, some money passed through MGPS as part of operating or disguising the fraud. That would, in my judgment, make MGPS liable for dishonest assistance in respect of such money. It is not clear to me that the total figure for that given in the revised annex, being £106,431, is correct. Again, I will invite further submissions to be considered when making the order consequent on this judgment.

77. The Ninth Defendant is Dominion. The evidence is that it received only a relatively modest sum representing the proceeds of the fraud from other corporate defendants, being £13,500, and none from Mercy directly. However, a significant sum did pass through it from customers of Mercy and out to other corporate defendants. That would, in my judgment, involve it in dishonest assistance so as to be liable in the total sum handled. As already found, it was Mr Adegbuyi-Jackson, with the help of Mrs Adegbuyi-Jackson, running Dominion. Their dishonesty is therefore Dominion's. For like reasons, the receipt of the £13,500 by Dominion makes it liable in knowing receipt for that sum. I do not ignore the agreement for services document dated 5 April 2019 in the trial bundle between Mercy and Dominion. But while it refers to payroll services, there is no evidence of Dominion providing any such services to Mercy. Given that and my finding as to the fraud, I consider it does not reflect the substance of any arrangement between the two

companies. The figure given for the total sum handled in the revised annex is £1,951,450.

I will take submissions as to whether that is the correct figure.

78. The Thirteenth Defendant is DMO. Mr Adegbuyi-Jackson was its director until July 2018 when he was replaced by Mrs Adegbuyi-Jackson. The majority of its shares have, since July 2018, been held by Mrs Adegbuyi-Jackson; having previously been held by Mr Adegbuyi-Jackson.

79. On the evidence, DMO received £36,689 directly from Mercy out of the proceeds of the fraud, and £624,335 from other corporate defendants from such proceeds. Such receipt makes it liable for those sums in knowing receipt, as it is right to attribute the knowledge of Mr and Mrs Adegbuyi-Jackson to it. A further sum of £274,760 is sought by way of liability for dishonest assistance, being sums going through DMO. As with the other corporate defendants, liability in those sums for dishonest assistance seems to me to follow, and I will receive submissions before making my order as to whether the sum has been correctly calculated on the evidence.

80. The next corporate defendant is Purpose IP Consult Ltd. It received, on the evidence, a small sum out of the fraud proceeds directly from Mercy, being £5000, and a somewhat larger sum, being £107,266 from the other corporate defendants from those proceeds. It has also had further sums out of the proceeds of the fraud going through it. £3,081,709 is the figure put on that in the revised annex. Its director for most of the relevant period has been, and remains, Mr Adegbuyi-Jackson. He has been the controlling shareholder throughout the period. Given that, I infer it had the requisite knowledge to found liability in knowing receipt and dishonest assistance for all those sums, but will await submissions as to the correctness of the figure for dishonest assistance before having any order drawn.

81. Finally, there is the Fifteenth Defendant, Hanstal. This is another company that has dealt with substantial sums representing the proceeds of the VAT fraud. On the evidence, it received £134,000 directly from Mercy, £285,504 from the other corporate defendants, and handled a further substantial sum put at £1,060,590. This defendant is another to which the knowledge of Mr and Mrs Adegbuyi-Jackson can, in my judgment, be attributed. As well as it being used to deal with the proceeds of Mr Adegbuyi-Jackson's fraud, Mr and Mrs Adegbuyi-Jackson have between them been registered directors of the company from May 2018 to date, and Mrs Adegbuyi-Jackson has been a mandate holder for the company's bank accounts. Given that knowledge, Hanstal is liable in knowing receipt and dishonest assistance for those sums; subject only to hearing about the correctness of the sum so far given for dishonest assistance.

E. The proprietary claims

82. It remains for me to tackle the proprietary claims. It was Mr Ainge that gave evidence of the use of Mercy's money, as traced by Mr Pughe, for the acquisition of property, mostly real property.

83. I was able to explore that evidence orally with him a little. It emerged that the properties in respect of which a proprietary claim was made fell into three evidential categories. One, where the liquidators had obtained documents from the conveyancing lawyer's file so that it could be shown clearly that the property was purchased using traceable money. Two, where the liquidators had evidence of traceable money being paid to the conveyancing lawyer and of a property being purchased but, having no documents from the solicitor's file, must invite an inference that it was the traceable money which was used for the acquisition of the property. Three, where the liquidators lacked evidence of

any traceable money being paid to the conveyancing lawyer and could show only the acquisition of the property.

84. In her submissions made on the second day of the trial, assisted by a helpful spreadsheet listing the properties, Ms Johnson made clear (subject to the discussion at the end of this judgment) that the proprietary claims were not pressed for any of the category 3 properties, of which there were several. Nor for the only category 2 property, being 73 Wood Street. And nor for the properties acquired before 2015; being before the relevant period.

85. Accordingly, all the proprietary claims ultimately pursued (against defendants other than MGPS) were category 1 claims and so had a plainly solid evidential foundation. The evidence of Mr Ainge included diagrams for each of these properties showing the movement of money used in their acquisition.

86. I am satisfied from the evidence of Mr Ainge and find that this handful of properties, save for two, were acquired with the traceable proceeds of the fraud, and so with Mercy's money. My detailed findings from Mr Ainge's evidence, in particular his flow charts for each of the properties, and my resulting determinations as to proprietary interests in each of these properties are as follows.

87. 504 Defoe House, 123 City Island Way, London E14 0TU was purchased on 21 May 2020 in the names of Mr & Mrs Adegbuyi-Jackson. The price was £525,885. The whole of the funds for that price came from Mercy, some going directly from Mercy to the conveyancing lawyers, Jackson Longe, but the bulk going via Mrs Jackson. Mercy is entitled in my judgment to the whole of the equitable interest in this property.

88. 19 Groombridge Drive, Gillingham, Kent ME7 2QJ and 35 Moonstone Square, Sittingbourne, Kent ME10 5JN were both acquired in the name of Mrs Adegbuyi-Jackson in August 2017 at prices of £282,500 and £265,000 respectively. The pleaded case of Mercy is that £100,000 of its money was used in the purchase of these properties. However, as I read the evidence of Mr Ainge, including the flow charts for these properties, only a relatively small sum representing traceable money was applied to the purchase; being a total of £9000 split between the two properties. Further, contrary to the evidence of Mr Ainge, I am told these properties are also subject to mortgages. Given the small sum, that a total sum significantly greater than the purchase price was paid to the solicitors to cover the total cost of acquisition, and the fact of mortgages which Mr Ainge's evidence takes no account of, I am not satisfied that Mercy has established an equitable interest in these properties.

89. 53 Week Street, Maidstone, Kent ME14 1QT was acquired by Arcade on 21 October 2019 at a price of £1.25m. The vast majority of that was provided by Mercy directly to the conveyancing solicitors, Jackson Longe, by way of a transfer of £1,183,669 on 10 October 2019. I was told in closing submissions that the source of the balance (save for another £1000 from Mercy coming via MGPS) appears from Mrs Adegbuyi-Jackson's statements to be Dominion via her. This was not, though, the witness evidence and, in any event, Dominion is not said to be a company which received large sums from Mercy. My conclusion is that Mercy is entitled to 95 percent of the equitable interest in this property.

90. In respect of 53 Week Street, Mr Adegbuyi-Jackson contended by his now struck out Amended Defence that this property was acquired using a loan from Mercy. But not only

has he not given any evidence supporting that contention, there is no loan recorded in Mercy's books, and the loan documents which were provided to the solicitor rather undermine the contention. There are two loan agreements. While one purports to be for a loan from Mercy, there is what appears to be an identical document for a loan from Dominion. Further, whereas they both refer to being secured on the property, no charge is registered against 53 Week Street. The loan agreements seem therefore to be produced simply in an attempt to satisfy the solicitor rather than reflect a real loan. There is also the point that Mrs Adegbuyi-Jackson, named with Arcade as borrower in these agreements, made no mention of any loan in her Defence.

91. 24-26 Trelowarren Street, Camborne, Cornwall TR14 8AB was purchased in the name of Arcade on 27 January 2020 (not on 16 June 2014 as wrongly stated in Mr Ainge's diagram for this property. The true date appears on the TR1 transfer in the trial bundle). The price was £750,000 and the full costs of the purchase came to £803,437. The whole of that sum came directly from Mercy. While Mr Ainge's diagram also referred to payments from MGPS and Arcade, they cannot in fact be referable to the purchase as they came too late, falling between the end of March 2020 and the end of November 2020. Accordingly, I determine that Mercy is entitled to the entire equitable interest in this property.

92. Four properties to be considered were acquired in the name of MGPS, the Eighth Defendant.

93. 12a Ufton Lane, Sittingbourne, Kent ME10 1JB was purchased on 22 March 2018 at a price of £197,000. That purchase was entirely out of Mercy's money, the solicitors Jackson Longe being put in the necessary funds by DMO, save for £1000 paid directly by

Mercy to those solicitors. Mercy is therefore entitled to the whole of the equitable interest in this property.

94. Filmer House, 21 High Street, Sittingbourne, Kent ME10 4AY was acquired on 23 April 2018 at a price of £460,000. Again, that was funded entirely out of Mercy's money, the bulk being provided to the conveyancing solicitors Jackson Longe by DMO. Mercy is also entitled to the whole of the equitable interest in this property.

95. Trinity House, 43-45 Trinity Street, Stoke on Trent, Staffordshire was acquired on 21 November 2016. It cost £335,000. There were different conveyancing lawyers, namely Hawkrige & Co. A large slice of the purchase money was certainly Mercy's. £85,500 came from Mercy directly. Hence it was Mr Ainge's evidence that there was a proprietary claim to this property to that extent. That was reflected in Mercy's skeleton argument. I do not ignore that another £117,000 came from MGPS according to Mr Ainge's flow chart. But he did not say, and the skeleton argument did not contend, that this was traceable money. The source of the rest, made up of two payments to Hawkrige & Co totalling £108,000, is unknown. While it is, of course, inherently unlikely that some disinterested third party was joining in the purchase, and this, with the other acquisitions I have referred to by MGPS, were in the nature of turning proceeds of the fraud into assets, given the lack of evidence and that this acquisition is nearer the period for which no complaint is made about Mercy's business (being the period to July 2015), I am not satisfied these are traceable funds either. I determine that Mercy is entitled to 25 percent of the equitable interest in this property.

96. 51 County Street, Oldham OL8 3RN was purchased at a price of £20,706 on 7 September 2018 entirely using Mercy's money, the bulk of which came through DMO. Mercy is therefore entitled to the whole of the equitable interest in this property.
97. I would add that the details of these acquisitions also serve to highlight the fact of the VAT fraud and the involvement of these companies in it by way of dishonest assistance. Why else would DMO, or Mercy, be purchasing property for MGPS?
98. There are two other assets to consider. The first is an investment account with Hargreaves Lansdown. By his affidavit made in response to a freezing order, Mr Adegbuyi-Jackson valued the portfolio in this account at £1.5m. The evidence of Mr Pughe, which I accept, is that £1,026,245 has been paid into this account from Mercy's money; £245,000 of that coming from Mercy directly, the rest representing traceable proceeds of the fraud. The total figure is a correction on the sum given in Mr Pughe's first witness statement at [99] made by a third witness statement submitted following the hearing. I permit that late evidence as hearsay. It appears from the table in Mr Pughe's first witness statement that there is an error, and Mr Pughe's further evidence merely confirms that. There is no prejudice to Mr Adegbuyi-Jackson from the evidence being late, and there would be substantial potential prejudice to Mercy if the late evidence was not permitted. The correction involves identifying a further sum of £225,000 of traceable money having gone to this investment account. In respect of this asset, Mercy seeks only a declaration that it has a proprietary interest in the sum of £1,026,245 which has gone into the account and in any substitute. From my finding on the evidence of Mr Pughe, it should have that declaration.

99. The second asset is Bitcoin. The police have seized 75 Bitcoin acquired from the same wallet address. On the evidence, there were a series of payments to Raph UK made by Cornerstone in November and December 2018 totalling £239,698.30. While Mr Adegbuyi-Jackson sought to explain these sums as relating to personal shopping services (see his response to the schedules to the Particulars of Claim at [19]), the timing of them corresponds to the acquisition of Bitcoin as detailed in a letter dated 26 July 2023 from the liquidators' solicitors, Wedlake Bell LLP. Mr Pughe traces at least 74 percent of that sum, so £176,329,77, as having come from Mercy's customers. I infer the balance was also money of Mercy's in substance; no other source of money for the Bitcoin having been identified by the defendants despite Wedlake Bell's letter. I will declare that Mercy is the owner of this asset.

100. Having circulated my judgment in draft, a misunderstanding became apparent. Ms Johnson prepared a note in response to the draft judgment saying that Mercy had intended to press its proprietary claims for the category 3 properties owned by MGPS. It was thus not all the category 3 properties where a decision on the merits was no longer required. On reviewing Ms Johnson's speaking note for trial, I am satisfied that that was indeed the position and that my proceeding on the basis that all category 3 claims were not pursued represented a misunderstanding which had crept in in preparing the draft judgment. These circumstances mean it is right to change course and address these claims on their merits in this judgment as delivered.

101. The category 3 properties owned by MGPS are now listed in a schedule to this judgment. On the evidence, they were acquired between 2015 and 2020 at a total cost of around £4.3m. Being category 3 properties, the liquidators are unable to adduce evidence

of any traceable money being paid to the relevant conveyancing lawyer. They invite an inference that these properties were acquired with traceable money.

102. I have decided that that inference should be drawn so that these properties were acquired with Mercy's money and Mercy is the owner in equity of all of these properties. My reasons for that decision are these.

103. MGPS received more than enough of Mercy's money to acquire these properties with. On the evidence, over £6m of traceable money went to MGPS. It was alleged squarely by Mercy that such money was used to acquire MGPS's properties – see the Re-Re-Amended Particulars of Claim at [73]. Neither of MGPS's shareholders and directors, namely Mr & Mrs Adegbuyi-Jackson, denied that use of the money or made any positive case as to how the properties were otherwise acquired. The Defence of Mrs Adegbuyi-Jackson contained at [57(2)] only a non-admission. Mr Adegbuyi-Jackson was pressed by way of a request for further information for a response to the allegation. He responded only that *“the Defendants are unable to find out precisely which properties were funded wholly or partly by monies from the Claimant. If the properties were purchased wholly or partly using the Claimant's funds, it is the Defendants' case that it was in the interests of the business group as a whole.”* Further, MGPS has failed to give any other account of the use of the over £6m received by MGPS, despite a court order. A freezing injunction granted by Mr Simon Salzedo KC, sitting as Deputy High Court Judge, on 29 September 2022 included, at [9(a)] an order for information as to what had become of that money. No such information has been provided.

104. For their part, Estate & Corporate Solicitors responded to the draft judgment by indicating that they were unable to comment and requesting, on behalf of those

defendants for whom they act, that the delivery of this judgment be delayed having regard to outstanding appeals against the debarring orders made at the pre-trial review as well as an application to the Supreme Court for permission to appeal a decision of the Court of Appeal in this case under neutral citation number [2023] EWCA Civ 1073. I make clear I was aware of these appeals and the application when hearing the trial. I do not see them as a reason for delaying delivery of judgment. Instead, as I confirmed with Ms Johnson at the trial, they meant that Mercy was proceeding with the trial at such risk as those appeals and application represent for the result.

SCHEDULE

- a. Ground floor and basement 90 High Street, Chatham, ME4 4DS, registered under title number TT52030;
- b. 88 High Street, Chatham, ME4 4DS, registered under title number TT60641;
- c. 68 Sandy Lane, Mansfield, NG18 2LU, registered under title number NT192427;
- d. 195 Westminster Road, Morecombe, LA3 1SL, registered under title number LA682977;
- e. 8 Hutchings Close, Sittingbourne, ME10 3QA, registered under title number K379704;
- f. 3 Spring Wood Park, Sittingbourne, ME10 2FN, registered under title number TT92184;
- g. 7 Spring Wood Park, Sittingbourne, ME10 2FN, registered under title number TT92178;
- h. 14 Spring Wood Park, Sittingbourne, ME10 2FN, registered under title number TT87307;
- i. Flat 4, 36 Preston Street, Faversham, ME13 8PE, registered under title number K893433;
- j. 1 Tiberius Close, Highwoods, Colchester, CO4 9FW, registered under title number EX650639;

- k. 14 Petronius Way, Highwoods, Colchester, CO4 9FY, registered under title number EX647859;
- l. 22 Petronius Way, Highwoods, Colchester, CO4 9FY, registered under title number EX646403;
- m. Flat 5, Riverside House, 36 Preston Street, Faversham, ME13 8PE, registered under title number K878479;
- n. 46/46A St James Street and 1A/1B Manchester Road, Burnley, Lancashire, BB11 1NH, registered under title number LA705665; and
- o. 3 Lune Street, Preston, PR1 2NL, registered under title number LAN172335.