



Neutral Citation Number: [2023] EWHC 454 (Ch)

Case No: BL-2020-002148

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
BUSINESS LIST

Rolls Building, Fetter Lane
London EC4A 1NL

Date: 02/03/2023

Before:

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE
(Sitting as a Judge of the Chancery Division)

Between:

(1) SYED AHMED
(2) PANACHE LEASING LTD, T/A 5 STAR
PCO RENTALS
- and -
TIPU SULTAN AHMED

Claimants

Defendant

KAMAR UDDIN (instructed by **Direct Access**) for the **First and Second Claimants**
CLIFFORD DARTON KC (instructed by **Direct Access**) for the **Defendant**

Hearing dates: 13 to 17 and 20 February 2023

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This judgment was handed down remotely at 10.30pm on 3 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Chief ICC Judge Briggs:**Introduction**

1. The Claim made seeks restitution of monies said to have been unlawfully extracted from Panache Leasing Ltd, that trades a 5 Star PCO Rentals, (the “Company”). Although the first Claimant is a director of the Company, the claims made are vested in the Company.
2. The first Claimant holds all the issued shares in the Company. The counterclaim seeks a declaration that the Defendant is the beneficial owner of 50% of the share capital. The Defendant also seeks damages for unlawful dismissal and other losses arising from an injunction made on 17 November 2020.
3. The first Claimant and the Defendant are brothers. To avoid name confusion, I shall refer to each by their first name. This was the approach of the advocates before me with the consent of the litigants.

The Company

4. The Company was incorporated on 29 April 2015 under the Companies Act 2006. The Company initially used Syed’s home address as its registered office. The registered address later moved to Empson Street London E3.
5. The sole appointed director of the Company is Syed. He was appointed on the day of the Company’s incorporation.
6. The Company’s articles of association follow in most parts the model articles for private companies limited by shares contained in schedule 1 of the Companies (Model Articles) Regulations 2008.
7. There was only 1 share allocated initially but a new issue increased the number of shares to 100,000 in or around September 2018.
8. There is no shareholder agreement. Generally, there are few contemporaneous documents that relate to the incorporation and early days of the Company. There are no documents that record any agreements between Syed and Tipu in respect of their individual rights or obligations *inter-se*, or expectations in respect of the Company. A business plan is said to have been produced but it was not available at trial. Some documentation produced after incorporation has been retained. There are two meetings in 2020, recorded or recorded in part that took on some significance at trial. The recordings are relied on by Syed and Tipu to support their case. There are some Company records and text messages that assist in determining the issues of fact.
9. The Company acquires motor cars using hire purchase agreements. The cars are leased to taxi and private hire drivers. The Company began leasing 16 cars and now is the lessor of about 170 vehicles. The cars rented by the Company were acquired on hire purchase and fitted with Prohire fleet management software. The software tracks payments made by a driver for use of the vehicle and enables the Company to stop the vehicle from moving if the lessee fails to pay the rental charges.

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10. The Company now occupies 17-25 Shirley Street, London EC16 1HU (the “Premises”). Some of the Premises is currently sublet to tenants on short subleases.
11. It is common ground that the Company began to trade in January 2016 and from that time until November 2020, when a restraining injunction prevented Tipu from attending the Premises, Tipu was in control of and ran the business.
12. Tipu says the Company was formed on his initiative. He produced a 5-year plan for leasing the vehicles, secured asset finance with Close Brothers and obtained the required insurance. He says he took the idea to his brother who wanted to help him re-establish himself after he had served a prison sentence. There is some argument about who had the original idea for the business, but nothing turns on this. All agree that the idea did not come from Syed.
13. Counsel for Syed and Tipu have produced a chronology. I have adapted Tipu’s chronology to reflect the contentious issues in the case and incorporate some of the chronology produced by Syed:

Date	Event
2015	Tipu says he formulates a 5 Year business plan for a leasing vehicle business where vehicles will be leased to taxis/uber drivers. Tipu, on his case, secures HP/Asset Finance from Close Brothers Bank and (ii) Private Hire Vehicle insurance from Have Insurance.
2015;	There is a dispute about the an agreement between the brothers (the “ 2015 Agreement ”) and its terms including whether it was agreed that the share capital of the Company was held (beneficially) in equal amount.
29.4.2015	Syed provides a loan of £200,000 to the Company.
01. 2016	The Company commences trading from Isle of Dogs East London, depot.
03.2016	The Company starts leasing/hiring vehicles with an initial fleet of just 16 cars. The Company accounts are maintained by AF Accountants (Mr Hussain) and signed off by Syed.
2016 onward	Syed provides personal guarantees on all finance agreements for the vehicles under the hire purchase agreements and personal guarantees for unsecured loans made to the Company.
2017	At the conclusion of its first year of trading the Company achieves a turnover of £225,751.
03/04.2017	Negotiations for new business premises is led by Tipu. The lease of the Premises is secured. Payments of rents and obligations are guaranteed by Syed. The rent is £1 per year.
6.9.2017	The Company commences trading from the Premises.

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- 31.1.2018 Tipu claims he advanced £177,396.05 to the Company by this date in a series of tranches since 1 February 2017.
- 05.2018 The Company grants subtenancies/licences over parts of the Premises. Tipu says there was an agreement between him and Syed that he would keep the income from the licences on the condition he pays for the outgoings including business rates and insurance.
- 31.1.2019 Tipu says he advanced £125,997.14 to the Company by this date through a series of payments made since 1 February 2018.
- 2020 The Company's turnover for the preceding 12 months totals £998,072.
- 02.2020 Pandemic has an effect on the business.
- 04.2020 The Company has repaid £102,000 of the Syed's £200,000 advance through a series of payments since January 2016.
- 08.2020 Tipu's salary increases to £3,378 per month following his marriage.
- 08.09.2020 There is a discussion between the parties in respect of an offer made by Syed to Tipu to purchase his interest in the Company and secure his release from certain guarantees.
- Autumn 2020 Negotiations begin for the sale of Syed's interest in the Company to the Tipu. Tipu records the meeting of 24 September 2020 and part of the meeting on 3 November 2020.
- 13.11.2020 Syed and the Company issue an application for a without notice injunction to exclude Tipu from the business and the Premises. The evidence filed in support of the application alleges that the Tipu had stolen £106,075.96 from the Company.
- 16.11.2020 Roth J refuses to grant a without notice injunction and directs service by email for a hearing the following day.
- 17.11.2020 Roth J grants injunction on undertakings. Tipu does not attend the hearing. He says he did not receive notice.
- 2.12.2020 Particulars of Claim allege that the Defendant has stolen £943,980.05 which comprises cash withdrawals and monies paid to individuals who were not employed by the Company.

14. I turn to the pleaded case.

The Pledged caseThe pleaded case in general

15. It is pleaded that, as manager of the Company, Tipu owed the Company a fiduciary duty to act in good faith and honestly. This extended to acting with integrity in respect

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of the Company's "money and/or financial transactions with employees, suppliers, bank and with the clients of the [Company]".

16. Tipu was given access to the Company's bank account and was authorised to view, deposit, transfer and make payments from the account for the benefit of the Company. When reviewing the bank account statements in November 2020 Syed discovered suspicious withdrawals of Company money. This led to the injunction hearing.
17. It is pleaded that the order made by Roth J on 17 November 2020 "established that [Tipu] in the financial years ending 31 January 2017, 31 January 2018, 31 January 2019 and 31 January 2020 failed to account to the [Company]...a total sum of £407,065.36."
18. It is claimed that the rents received from the sublets of the Premises were taken and used by Tipu unlawfully. The relief sought is "repayment and/or restitution" as it is said that Tipu "has dishonestly and without permission misappropriated" £352,804.86 in rent money received for the sublets.
19. It is claimed that Tipu has failed to account for £54,260.50 in the year to 31 January 2021. A further sum of £1,119.96 was paid out to personal expenditure between June 2019 to September 2020, £13,550 to online gambling sites; £4,593.47 to an investment property company; payments to the wife of Tipu (Sherria Begum); payments to a pornographic website; and payments to "ghost employees" in the sum of £112,309.31.
20. The prayer seeks an account and enquiry.
21. The Defence and Counterclaim asserts that Tipu is a member of the Company. Syed holds half of the issued and allocated shares of the Company on trust for Tipu "absolutely and/or is contractually obliged to give effect to this trust or transfer the shares to the Defendant for no further consideration."
22. The terms of the 2015 Agreement contended for by Tipu are set out in paragraph 10 of the Defence. They are mostly denied by Syed in his Reply [5]. Tipu asserts that it was agreed that he and Syed were entitled to draw funds for personal expenditure provided that the funds were properly recorded as "director loans" in the accounts and the Company had sufficient funds.
23. The Defence asserts that although Tipu had full access to the Company's banking facilities, he was not the only employee who had authorised access. It is said that Syed knew or should be taken to have known of the cash payments as he was the sole director (and himself received some cash from the Company). Syed says he knew little or nothing about the finances, that he did not receive any cash from the Company and denies that any cash received by the Company was used for legitimate Company expenses. At one point in cross-examination, he refused to accept an item of expenditure marked "milk" was legitimate as there was no receipt.
24. Tipu denies that he withdrew monies from the Company without accounting for them. Payments made from the Company to online gambling and pornographic websites are denied by Tipu. Other claims for misapplication of Company monies are also denied.

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25. In the prayer to the Counterclaim Tipu seeks a declaration that he is an equal member of the Company and damages for unlawful dismissal.

The Particulars of Claim and strike out

26. It is the Company's pleaded case [14] that Syed reviewed the bank account of the Company on 9 November 2020 and discovered, for the first time, that Tipu:
- “...has been dishonestly (for his own benefit) withdrawing and/or making payments and/or transferring monies from the bank account of the [Company] and paying for [Tipu's] said addictions as well as diverting the Company's money to the [his] personal account and that of his wife Sherria Begum. [Tipu] has also been diverting the [Company's] monies to others who are not known to the [Company] nor have any business connection with the [Company].”
27. The schedule attached to the Particulars of Claim is said [15] to represent “dishonest transactions” and relies on the schedule “as the particularisation of the fraudulent and/or dishonest and/or unauthorised acts” of Tipu.
28. It is well-known that a barrister is under a duty to refrain from drafting any statement of case or other document containing any allegation of fraud unless the barrister has clear instructions to allege fraud and has reasonably credible material which establishes an arguable case of fraud. This injunction is repeated in the Chancery Guide 2022 which itself repeats CPR PD 16, paragraph 8.2. Allegations of dishonesty require facts to be pleaded that a reasonable person would consider as amounting to dishonesty: *Ivey v Genting* [2017] UKSC 67 where a two-stage analysis is identified, first, the actual state of the defendant's knowledge or belief as to the facts and, second, the defendant's conduct applying the standards of ordinary decent people.
29. In closing it was submitted that the Particulars of Claim fail to comply with the basic requirements of the serious allegations made. In my judgment, the attachment of schedules is insufficient to meet the pleading requirements. Repetition of the words “dishonestly” and “fraudulent” [11], [15], [16], [18], [19], [20], [22], [25], [35], [39], [40], [43], [44], [46] does not improve the allegation.
30. It is of course possible to infer the subjective state of Tipu's knowledge or belief of the facts. In this case the Court was not invited to make such an inference (it was not pleaded and not covered in the skeleton argument or during closing). It is, however, pleaded that Tipu had control of the finances and Company money has not been accounted for. One question that arises is whether an account is consistent with dishonesty. The Court has faced this eventuality on many occasions. In this case the defence pleads that all takings were recorded, and all withdrawals are transparent. It is true that the Reply denies that the “unauthorised payments” or “cash payments” were “ever recorded by the Defendant as drawings” but this does not completely cover-off the point since the Company was in possession of records that showed the withdrawals. It had a detailed “creditors' account” that explained withdrawals and the Company accepts [19] that a bookkeeper kept a contemporaneous log of cash payments received and paid out on an excel spreadsheet. At first blush it is surprising that an allegation of fraud is made against this background. It is well established that

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fraud or dishonesty must be distinctly alleged and distinctly proved; that it must be sufficiently particularised; and that it is not sufficiently particularised if the facts pleaded are consistent with innocence.

31. In my view, the Particulars of Claim would be vulnerable on a strike out application: *Young v Chief Constable of Warwickshire* [2020] EWHC 308 (QB), *Three Rivers District Council v Bank of England* [2003] 2 AC 1, at [55], [56], [184] and *JSC Bank of Moscow v- Kekhman* [2015] EWHC 3073 [15-20]. Dishonesty is not the only basis to explain the payments made. Documents in the possession of the Company at the time the Particulars of Claim were pleaded provide evidence honest dealings (even if those dealings were mistaken).
32. The Claim and Counterclaim have reached the point of trial and it is better at this stage to decide the factual issues before the Court. In my judgment this is a fair and proportionate response since the Company and Syed were not on notice and did not respond to the issue raised in closing.

The witnessesSyed Ahmed

33. Syed was the first to give evidence. He was cross-examined about his role in the Company and his initial investment that began as a loan and has since been repaid in part. In February 2019 £100,000 of the £200,000 initially lent was converted into equity increasing the share capital. Syed accepted that he had made mistakes in connection with the Company and with candour acknowledged that he had failed to fulfil his duties as a director. His evidence was that he had not looked at the trial balance provided each year, nor read over the accounts before signing, knowing they would be submitted to Companies House and Her Majesty's Revenue and Customs. It was a surprising admission given the allegations made against Tipu.
34. He was asked if he was not engaged in the corporate decision-making who was? He responded that Tipu was in control of the Company, although he had not been completely absent. He provided the personal guarantees and finance.
35. His failures as director, he said, was due to his other business commitments. He gave evidence of running a factory in Bangladesh that employed 1,000 people. He said in cross-examination that he was motivated to start the Company by a desire to benefit not just himself but Tipu. This evidence is supported in part by a recording of a conversation he had with Tipu in September 2020. However, in that discussion he eschewed the notion of starting a business to benefit himself:

“I didn't want to get involved in this business...he needed to get something started for him and for the future of his kids. That's why I said ok and then I agreed with him...I am not doing business here, I'm helping him, it has remained as if I am helping him.”
36. At the time the Company started trading Tipu had been employed by Syed in one of his businesses that paid a salary of £850 per month. Syed continued to pay Tipu this sum when the Company was a fledgling.

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37. In a case where there is little documentary evidence that relates to important issues to be decided, and anxious contemplation needs to be given as to the reliability of key witnesses, I find that the evidence given by Syed was given truthfully. Although I find him a truthful person, I also find that his evidence clashes (in parts) with the conversations recorded three years nearer the events in question, that his interpretation of the conversations in 2020 is coloured by his existing state of mind which is focused on litigation and is inconsistent with some of the contemporaneous documentation. The inconsistencies casts doubt on the reliability of his recall. I have therefore not accepted all he has said but checked his evidence against the documents and evidence given by other witnesses.
38. As his evidence progressed it was notable that Syed would not always recognise the Company as a separate legal entity and confused knowledge of the Company with his own knowledge. Overall, I approach his evidence with caution.

Mr Daniel Heynes

39. Mr Heynes says had the idea for the Company's business (not Tipu). I do not think Tipu disagreed when asked about this. Mr Heynes produced a business plan and Tipu agrees. Tipu says the business plan required some work as it was not the finished product. Mr Heynes explained in cross-examination that he had given the plan to several prospective investors but had been rejected before first Tipu, and then Syed saw the opportunity. He considered himself as an equal to Tipu. He had no knowledge of any discussion between Syed and Tipu about the ownership of the Company. As the business was his idea and he produced the raw business plan he expected to have a stake in the business at some point. He provided an emotional response to the idea that Tipu would have an equity stake in the Company if he did not. His evidence does not assist with the determination of this case.

Syed Ahab Hussain

40. Syed had wanted to have in place a bookkeeper to keep track of the Company finances and make the year end accounting job easier. Syed turned to AF Accountants. He wanted Mr Hussain to have this role, but Mr Hussain explained to Syed that it would be expensive for the Company to use him, and recommended a lower ranking employee at his accountancy firm. He recommended Shiju Matthews.
41. Mr Matthews was subsequently employed by the Company and worked at the Premises one day a week (when he was not working for AF Accountants). Mr Matthews would produce trial balances and pass them to Mr Hussain so that he could use them when working on the year end accounts.
42. Other than acting as the Company accountant, Mr Hussain features in two other ways. First, he received a text message on 8 September 2020 from Syed asking him to transfer 50% of the shares in the Company to Tipu for no consideration. Secondly, he was present at a meeting on 3 November 2020 where he acted as an independent arbiter between Syed and Tipu at a time when Syed was seeking to exit the Company. I accept Mr Hussain's oral statement given in cross-examination that he did not want to take sides at the meeting: "I did not act for any party I was acting independently". He explained that if Tipu made a statement or Syed made a statement, he would take what had been said at face value and try to find a solution.

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43. His evidence was given truthfully but it was not always reliable. An example of where the evidence was not reliable concerns the trial balances. He had seen the trial balances, but he had not made an audit or otherwise ensured the accuracy of the ledger before completing the accounts of the Company. He did not inform Syed that he had not made any checks on the accuracy of the ledger. Mr Hussain said in evidence that Syed asked about the entries when they met at face-to-face meetings. He said that in response questions from Syed, he would say that Shiju Matthews had produced the ledger which will be accurate and based on the information provided to him by the bank and Mr Uddin who kept the cash ledger. However, the evidence that he was asked questions by Syed is inconsistent with Syed's own evidence. His evidence is that he never asked about any of the figures in the accounts and did not know the ledgers existed. It is also inconsistent with his own written evidence of 23 March 2021 where he implied that he was not asked about the ledgers: "I was not aware of [the Company's] internal records" because that "was a matter between them."
44. It is not an uncommon feature of this case that Syed and Tipu are quick to use blaming and inflammatory language. It is also true of Mr Hussain. In his written evidence he states:
- "Tipu is clearly a dishonest person and a bully he makes serious threats against people such as shooting people and bombing Syed's house or shutting them up forever. People are intimidated by him, he himself has admitted him not a clean person that is why he wanted to have shares in his wife's name".
45. No other witness, including Syed, considered Tipu a bully. I am told that the translation of the meeting does not bear out the threats mentioned. It is the opinion of Mr Hussain that Tipu is dishonest. A more balanced statement would include the reason why he considered him "clearly dishonest". In his oral evidence he tempered his criticism of Tipu saying that he left the meeting in November 2020 as a friend of both he and Syed.
46. Although I have no reason to think Mr Hussain gave his evidence dishonestly, some of the evidence he gave I treat with caution. For example, he said that it was only after Syed had obtained the Company's bank statements that he and Syed discovered "to my surprise...that huge amount of money was withdrawn by Tipu" from the Company's accounts. He made this statement knowing that he would give evidence that he had not read or considered the accounting information produced by Mr Matthews. That is, at least, careless.
47. Overall, his evidence is reliable albeit that at times it was inconsistent with contemporaneous documents or evidence given by other witnesses. Where there are such inconsistencies, I have taken a cautious approach to reliability.

Sayad Miah

48. Mr Miah gave evidence that he had no contact or communication with Syed since his employment in March 2019. The interview panel comprised Tipu and Mr Fokrul Uddin. He accepted in evidence that he had access to the Company's bank account to

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make purchases, pay suppliers and pay for liabilities such as parking fines to Transport for London. These payments were made by using the Company's debit card. He had no access to online banking. His evidence was that all payments were recorded and passed to Tipu and Shiju Matthews who produced the ledgers. In cross-examination he said he was paid partly in cash and partly by bank transfer. He explained the layout of the Premises and in particular the separation between the operations personnel and non-operational personnel. His evidence was given truthfully, and his evidence is consistent with evidence provided by other witnesses.

Foisal Choudray

49. Mr Choudray gave similar evidence to Mr Miah. He agreed that some employees were paid in cash. His evidence does not assist the Court.

Fakru Jaman Uddin

50. Mr Fakru Uddin (also known as Fokrul) is the Company's fleet manager. He works in the operations sector of the Company and downstairs at the Premises. His written evidence is that he had not been introduced to Bazlul Karim, Rayhan Razzique, Mauz Uddin and Abdur Rakib working at the premises (the so-called "Ghost Employees"). However, he had seen the Ghost Employees from time to time. They were sat upstairs where other non-operational personnel worked. He provides details about how cash payments received from drivers had been accounted for by recording the information in an invoice book with carbon copy and a serial number on each page. Each cash book is numbered sequentially. He explained that Tipu would sign a received receipt for any cash he handled and would text him if he had not signed so that a record was kept.
51. In cross-examination, he confirmed that some employees were paid by cash when Tipu was working at the Company. His evidence about the cash is:
- "All the money going out was recorded on an excel spreadsheet. Proper Company expenses were paid in cash. I updated the spreadsheet on a weekly basis. It is accurate. All cash coming in is recorded and where there is a surplus over £500 I handed it to Tipu and recorded the amount handed to him. Every penny was accounted for. It is not correct that Tipu took any money. All money is recorded on the spreadsheets."
52. He was asked about a WhatsApp message dated 18 December 2018. In the message Syed asks Tipu to provide him with the cash takings:
- "When Fokrul gives the cash takings, can you drop it off to me at the factory".
53. Mr Uddin thought the message related to clothing stored at the Premises and paid for in cash by customers. The clothing would have been made by Bow Outerwear, one of Syed's enterprises: "people sometimes leave cash in envelopes to pass on to Syed" he said.

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54. Mr Uddin's evidence was impressive as he recalled his dealings in some detail but in respect of this last matter his truthful evidence is more likely than not to have been mistaken due to the passage of time. There is no evidence that Syed kept clothing at the Premises in 2018 and the evidence is inconsistent with Mr Uddin dealing with cash takings. He only dealt with cash takings received by the Company from drivers. Any envelopes left in respect of a business operated by Syed did not have to pass through his hands. Mr Uddin did not suggest otherwise.

Omar Mohammed

55. Mr Mohammed's evidence was consistent with the evidence called by the Company. He had access to the online bank account of the Company, had not been introduced to the Ghost Employees, but had seen them, and was paid cash for his employment when he worked part-time. He did not know or see Shiju Matthews.

Tipu Amed

56. Early in his evidence Tipu wanted to explain that although he had been convicted of exaggerating his income on a mortgage application he had become "clean" as a believer: "I came out of prison and took a spiritual path". His keenness to express this element of his personality translated to enthusiastic explanations given for his actions in the Company.
57. In respect of reparation in respect of the conviction Tipu explains in his evidence that:
- "I did have a confiscation order that was issued in October 2010 which I paid and satisfied in full in the same year based on the realisable assets I had at the time. In October 2018 CPS re-opened the file and obtained a new confiscation order based on my realisable asset at the time. In 2019 after going to court, I paid CPS £44,000 in settlement of this new confiscation order, from the proceeds of sale of my property."
58. I mention this here since it was said in closing that Tipu would have tried to hide his financial dealings due to the presence of the unsatisfied confiscation order which was unsatisfied.
59. Not all explanations given by Tipu were easy to follow. He accepted unequivocally that he would become angry when he felt he was not being listened to. He felt frustration. The transcripts of recorded meetings in the Autumn of 2020 support the submission that Tipu is at times intemperate to a high degree although not as intemperate as Syed made out in submissions.
60. Tipu was tested in cross-examination about transactions paid by a PayPal account where the username is Tipu followed by the Company's e-mail address. Time was taken in cross-examination tracing the PayPal payment made for online pornographic services and on-line gambling. Tipu explained these payments on the basis that he could not be sure that the transactions were carried out by him (others in the office had access to the Company's bank account), and the Merchant ID matched a company he once worked for and not the Company. He denied the payments were made by him and informed the Court that there had been a fraud.

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61. Tipu explained that he had reported the fraud to his bank. The bank, he said, had reimbursed the payments. I find his explanation incredible. The fact that the PayPal account had a Merchant ID does not answer the issue of whether he used the account for these payments. Tipu was unable to provide any evidence that he had reported the purported fraud or that there had been a refund from the bank. Mr Lamar, a financial investigator with the Asset Confiscation Enforcement Team at the National Crime Agency, provided evidence (hearsay evidence) of similar online usages by Tipu.
62. Although Tipu's evidence was undermined by the issue of online payments for the services mentioned, it does not follow that all his evidence was incredible. Nor does it follow that he has a gambling addiction or an addiction to pornographic websites as pleaded [13] in the Particulars of Claim. No evidence was adduced to support addiction which is more likely than not to be a matter for expert evidence. Furthermore, he was not tested on his denial to the claims in cross-examination. He may have had personal reasons for not accepting that he was responsible for paying for online pornographic services or online gambling but he was not asked. His oral evidence was generally consistent with his written statements, the recorded meetings in the Autumn of 2020, and important evidence concerning his dealings with the Company's finances was supported by the evidence given by Mr Uddin which is itself consistent with the Company's documentary evidence produced by Mr Matthews. Overall, I find his evidence reliable.

Diversion of Company monies

63. The Particulars of Claim [18] aver that an injunction obtained on 17 November 2020 established a failure by Tipu to account for £407,065.36 in the years 2016 to 2020 (see paragraph 17 above). The averment is a little shy of extraordinary. I have been provided with no note of the judgment. It would be surprising if Roth J were to have found, on an interim application, that the diversions of money had been proved. It would be surprising because the Judge was not being asked to make a final decision and if he had been asked would almost certainly have declined the invitation. The aim of an interim injunction is to keep the status quo pending the outcome of a final determination.
64. No notice was received by Tipu of the interim injunction. Its purpose was to exclude him from the Company's business and premises. The order of Roth J records that he read three witness statements. Mr Hussain's statement informed the Court that Tipu's behaviour was "aggressive, abusive and intolerable" and he had threatened to "destroy Panache leasing and bomb both the business premises and Syed's main residential home...". The first statement of Syed, recorded in the order made by Roth J, is not in the trial bundle but the second statement produced on 17 November 2020 stated that Tipu "presents a clear danger" to the Company. Having regard to the evidence produced to the Court the terms of the injunction and purpose of an injunction the Company cannot sustain the pleaded case, that it has been "established that the Defendant...failed to account...".

Diversion and cash

65. The pleaded case of the Claimant is that cash was received by the Company from drivers. This is accepted. The cash was given by the operations team to Mr Uddin. Mr Uddin, having recorded the cash receipt gave the cash to Tipu. Tipu failed to put the

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cash in the Company's bank account [19]. There is some confusion in the Particulars of Claim since the allegation contained in [19] refers to an earlier paragraph [17] which concerns the receipt of rent of £95,281 from "sub tenants" at the Premises whereas the allegation in [19] concerns the receipt of £352,804.86 and a different sum is referred to in paragraph [18]. A further sum is claimed in paragraph [20] but it is not said from whom the cash was purportedly received.

66. It is common ground that the chain of bookkeeping accountability began with Mr Uddin who recorded cash receipts in an excel spreadsheet. There is no allegation that Tipu intercepted the cash coming from the drivers before it reached Mr Uddin. I start, therefore, from the premise that Mr Uddin received all the cash coming into the Company.
67. In his oral evidence Mr Uddin said: "every penny is accounted for". The cash was used for a variety of Company outgoings. Although Mr Uddin was challenged on the payment of cash to employees, I did not understand his evidence to be that no employee was paid in cash. His evidence was that some employees were paid in cash, some were paid by bank transfer, and some were paid by cash and bank transfer. Mr Uddin's unchallenged evidence (Mr Uddin was called as a witness for the Claimants) is that genuine expenses were paid using the cash received by the Company and was correctly recorded. He said in cross-examination:

"It is not correct that Tipu had taken the money- all money is recorded on the sheet."

68. Syed did not seek to undermine Mr Uddin's statement in closing.
69. Mr Uddin would record all the cash entries and post the withdrawals. The spread sheet produced by Mr Uddin was provided to the Company bookkeeper: Mr Matthews.
70. Mr Matthews used the excel spreadsheets produced by Mr Uddin and, with information from the Prohire software and the Company's bank account, produced a trial balance ledger. Tipu explains:

"...he would take a report from Prohire to see the number of vehicles on hire with customers, he converted this report into Excel and named it as "Weekly Payment Report". He would then record all customer payments received by bacs, card, and cash in the "Weekly Payment Report" against individual customers by amount and mode of payment. To do this, he would take the bacs payment information from the online HSBC banking using his own device, card payment information was taken from the card payment receipt generated by the card processing merchant Global Payments, and cash payment information were taken from the "Cash Invoice Book" (not from Fokrul's weekly "Petty Cash" Excel spreadsheet so that we had a two-tier checking system)."

71. At trial Syed was asked why he had not called Mr Matthews as a witness. The reason given was that he had fallen out with him. This may explain why there was no

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challenge to Tipu's written evidence about how the cash was accounted for, or the statement made by Tipu that Mr Matthews kept a separate account to record the rental income and adjustments for expenses such as the business rates of the Premises, utilities, insurance, and maintenance. The separate accounting record was in the name of Tipu. I accept the unchallenged evidence as true.

72. The trial balance ledger would be provided to Mr Hussain who would use it to produce the year end accounts. Mr Hussain provided Syed with the year-end accounts at a face-to-face meeting and Syed would agree them before signing. The accounts for the year ending 31 January 2018 provide a good illustration of the Company's knowledge. These show that the Company held £76,198 in its bank account. The ledger balance records the same figure. The same ledger records accounts run as director accounts. The first account is for Syed and named "Directors' account". It shows he was owed £74,462. The second is named "Tipu Ahmed" and shows he was owed £95,116.50.
73. The excel spreadsheet produced by Mr Uddin is referred to in the Particulars of Claim [19]. In his witness statement Syed states [20]:
- "...there is no loan accounts for the Defendant nor were copies of the "loan account" provided to the company accountant by the Defendant. The spreadsheet which the Defendant has exhibited was never sent to the company accountant nor have I ever seen until this was exhibited to his statement. The spreadsheet is self-serving and is not accepted as being evidence of any loan account."
74. The spreadsheet that Syed denies any knowledge of is the same spreadsheet relied on by him in the Particulars of Claim. This was confirmed in evidence by Mr Uddin and unchallenged in re-examination.
75. This unusual situation is not untypical in this case. Syed's evidence in cross-examination is that he agreed that the "Directors Loan" account ledger was maintained by the Company accountants and that the accountants would have "seen the amount of cash coming in" to the Company. His position during cross-examination tended to change, saying first, Tipu was responsible for engaging Mr Uddin (implying Mr Uddin had failings), and second, there was a problem with the accounts:
- "My case is that my brother stole all the cash but I accept that there were all these records of the money coming in and going out. However, none of this money was declared in the accounts."
76. As demonstrated through the lens of the year ending 2018 accounts, cash is documented. The spreadsheets record Tipu as the recipient of £23,456 of cash and not the £407,065.36 alleged.
77. The records kept and provided to the Company accountants are Company property. I find that cash was used to pay employees and legitimate Company expenses. I shall go on to find [para 88(iv)] that Syed received cash from the Company.

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78. I find that the Company knew of the cash position and knew of the loan accounts. If Syed did not have actual knowledge of the Company's financial position at any given time that was a failure of his and a failure to comply with his own duties owed to the Company.
79. In closing submissions Tipu claimed that the Company should be deemed to have approved the takings and loan account. I accept that Syed approved the year end accounts. The bear his signature. In any event the following written evidence of Tipu was not challenged in cross-examination:
- “According to Syed I had stolen 45% of the total turnover of the business by 2020 and according to the Company's official records it still had net assets of £772,801, with retained profit of £475,617. Syed initially claimed I had stolen £92,991 from the bank account from 3rd July 2019 to 2nd October 2020. By the time he submitted the particulars of claim his allegations of theft increased to £943,980.05 and more including money from subtenants. For any size of company to lose 45% of its turnover would render it bankrupt immediately and the business will not function at all. In any case, it is incorrect.”
80. Syed's position is that he trusted Tipu and delegated all responsibility. Tipu's position is that any payments that were made to him, were agreed, authorised, and recorded in the Company's records.
81. Syed did in fact have a residual role to play in the Company as he had dealings with the HP lenders, providing security to them for new cars, signing the lease of the Premises, and was involved in the hiring of Mr Hussain, Mr Uddin and Mr Matthews.
82. By delegating all other responsibilities and providing Tipu with “exclusive possession of the “bank account” debit card” [22], Syed gave Tipu real influence over the Company's affairs. The delegation is an important factor to have regard to when considering the allegations made by Syed.
83. The Particulars of Claim state that Tipu opened a PayPal account in the name of the Company without authorisation [35]. The requirement to obtain authorisation to deal with the Company's finances is at odds with the delegation. Given the recorded statement made at the meeting held in September 2020, where Syed said he did not want to be involved in business, any want of authority claim is unsustainable.
84. In any event the Particulars of Claim fail to particularise the delegated responsibilities and fail to particularise any limitations on the delegated responsibilities. There is no evidence that limitations were ever discussed let alone imposed.
85. It is sufficient for the purposes of this judgment to note that it is not the pleaded case that the delegation of responsibilities prevented the use of a) a director's loan account or other loan account, b) the use of cash for disbursements or c) any other restriction such as the opening of a PayPal account.
86. The Company records include payments made for the online gambling and access to the online pornography sites. The Particulars of Claim [23] state that by “linking the

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[Company's] bank account debit card to a PayPal account" Tipu was able to make payments and give the impression the payments were "legitimate business transaction(s)". The allegation is one of concealment as well as loss. It ignores other facts such as the use of the PayPal account for other legitimate business expenses.

87. If there had been a desire to cover up expenditure or payments Tipu may have chosen other more obvious methods. He was not cross-examined on the pleaded concealment but that may have been because Tipu simply accepted that he was responsible to make good the impugned online payments for services (on the basis that they were made while he was in control of the Company). The PayPal account was paid with easily traceable references. There was no concealment. The fact that he did not cover up the payments is an evidential marker toward honest dealings, but in any event the debt to the Company is recognised.
88. In cross-examination Syed made some inconsistent or otherwise unfounded statements that when looked at against the totality of the admissible evidence, I find incredible. These are:
- i) Mr Matthews provided false information to AF Accountants. The statement is based on no documentary evidence against the background that Mr Matthews was not called as a witness and the acceptance by Mr Hussain that Mr Matthews remains (and has been promoted) a good employee of AF Accountants.
 - ii) Mr Matthews had nothing to do with the business. This statement given in cross-examination is inconsistent with the Company records and his position that Mr Matthews produced false statements to the accountants. It is inconsistent with his own evidence that Mr Matthews was recommended by Mr Hussain and with Mr Hussain's evidence.
 - iii) He did not know that some employees were paid in cash or that the cash takings from drivers using vehicles was at times substantial. Although he may not have known of the detail the Company records provide transparency.
 - iv) That he did not receive cash from the Company. There was considerable argument about this. Mr Uddin thought that a text message (paragraph [42] above) referred to cash in an envelope left for Syed upon the sale of some clothing. Mr Uddin's evidence is that he produced a cash reconciliation every week. He did it on a Friday. The 2018 message refers to the cash takings, not an envelope left for Syed following a single transaction. The message from Syed asks Tipu to take the cash to him once received from Mr Uddin. It is more likely than not that the cash Mr Uddin was dealing with was the Company's cash. This is because he was carrying out a weekly reconciliation for the Company. There is no evidence that Mr Uddin undertook cash reconciliations for Syed's other businesses. This analysis is consistent with the message sent by Syed on Friday 15 March 2019 asking for the cash. I find Syed received cash from the Company as shown in the Company records.
 - v) Syed's pleaded case [27] is that Strawberry Star is a property investment company. Syed maintained this position in the witness box. I find it incredible Syed signed a statement of truth asserting this belief. He signed a tenancy

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agreement with the agents and developer Strawberry Star, was copied into e-mails from Strawberry Star and there is evidence that he opened (from which I infer he read) the e-mails. Syed would have known that Strawberry Star is a property agent and that the payments were for accommodation for Tipu once he had left his home following his time in prison. He was at the least careless when asserting his case.

vi) In his witness statement dated November 2020 Syed states that it was in September 2020 that Mr Hussain raised with him the desire of Tipu to buy his interest in the Company and was asserting a 50% interest [15]. This statement is inconsistent with his statement at the November 2020 meeting when he explained that he wanted to leave the business because it was it was “causing unnecessary mental stress” and he didn’t want to have “the same problems with him that I had with my other brothers”.

89. Although schedules were relied on in the Particulars of Claim (see paragraph [29] above) I was not taken to any schedule during trial and Tipu was not cross-examined on any schedule.
90. The Company records remain the best evidence before the Court and demonstrate transparency. Given the background, the employment of Mr Uddin and Mr Matthews, the role of Tipu and Syed in the Company’s affairs and the role played by Mr Hussain, I conclude that there was no intention to permanently deprive the Company of any monies. There was no fraud and Tipu did not act dishonestly or misappropriate Company funds.

Ghost Employees

91. The allegation about Ghost Employees [40] is not included in the Claim Form.
92. The case for the Claimants may be broken down into several parts. First, Tipu caused the Company to employ four employees: Mr Rakib, Mr Razzique, Mr Mauz Uddin and MD Bazlul Karim. There is no claim that he did not have authority to do so. Secondly, the employees were paid by the Company. This is accepted and p60s produced by the accountants provide documentary evidence. Thirdly the Ghost Employees “never turned up for work”. The evidence of this is patchy. Mr Uddin had seen the Ghost Employees but gave evidence that he had not been introduced to them. The witness statements of Foisal Choudhury, Omar Mohammed and Sayed Miah are identical. They were given the opportunity to expand on their evidence in cross-examination. They explained that they were presented with a statement and if they agreed they should sign. No interview took place to elicit information in the words of the witness.
93. Tipu’s evidence is that The Ghost Employees were employed to carry out soft skills such as marketing that did not concern the operations team.
94. Syed points to the lack of Company e-mail address or their non-existence in a WhatsApp group.
95. It is alleged that the Ghost Employees paid part of their income received from the Company to Tipu or his wife (Sherria Begum) [41]. There is no documentary

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evidence to support the claim. None of the employees called to support the Company's claim gave evidence that the earnings of the Ghost Employees had been paid to Tipu or his wife. Syed has no personal knowledge. I am informed that witness statements were taken from the Ghost Employees. The response from Syed was to terminate their employment. As a result this court does not have the benefit of their evidence.

96. The documentary evidence comprises a reasonable large sample of emails from some of the Ghost Employees using 'gmail' e-mail addresses. The content of the e-mails is consistent with providing services to the Company.
97. Foisal Choudhury, Omar Mohammed, Fakru Jaman Uddin and Sayed Miah all agreed in cross-examination that the Ghost Employees had been seen on a different floor to them, and each agreed that they would not have seen much of them during: (i) the lock-down in March 2020; (ii) when employees were on furlough and (iii) when one employee (Omar Mohammed) had left the country to return to Africa.
98. In cross-examination Tipu stated that none of the money paid to the Ghost Employees came back to him. This is consistent with his defence and witness evidence. In my judgment, given the contemporaneous documents, the production of the p60s, the payment by the Company of tax/NI/pension contributions (making the purported scam somewhat elaborate) the different desk location to the other employees, the lock-down and furlough periods, and the speculative nature of the claim, it is more likely than not that the Ghost Employees were employed by the Company.

Rents received from the Premises

99. The Company's pleaded case [17] against Tipu is that income from subtenants at the Premises belongs to the Company or a different company known as Bow Outerwear Limited (a company controlled by Syed). Bow Outerwear Limited is not a party to these proceedings and is dissolved. It has no claim. Although it is claimed that Syed "has a lease for the" Premises [16], he does not. He has no claim.
100. Tipu accepts that he kept the rents received from the subtenants. There has been no concealment. Tipu argues that the rents had been discussed with Syed from the moment he had the idea to sublet. The issue arose because Syed expressed doubt as to the legality of the sublets and anxiety about liabilities that may arise. It was agreed, according to Tipu that Tipu would be responsible for the liabilities and to take the profits. The agreement was between him and Syed acting as director of the Company.
101. The liabilities and outgoings were considerable when compared with the rent for the Premises. At the meeting on 24 September 2020 Tipu said to Syed that he thought it was his (Syed's) position that he did not want to take the risk of the liabilities for the Premises. The meeting in September 2020 records Tipu as stating that he paid the deposit for the lease (£20,000) once he received money from Uptown Car (as a loan). That is consistent with the bank account statements and consistent with his case at trial. Money is paid in by Uptown Car and almost immediately paid out. The dates are consistent.
102. The general topic discussed at the September 2020 meeting was Syed's desire to exit the Company, his concern about being exposed to risk when he wanted to retire from

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all business and Tipu's wish that his shares in the Company be transferred to his wife who would relieve Syed of the need to provide any personal guarantees for the Company's business. Tipu dominated the conversation and demonstrated himself to be a forceful character. That does not mean that Syed is not his match.

103. At the meeting the issue of the rents received by the Company from the subtenants, who occupied part of the Premises, appears to have been conceded. In closing Tipu firmly put his case on the basis that Syed had conceded the issue in the Autumn 2020. Syed did not respond to the submission. At the September 2020 meeting Tipu recounts earlier conversations had with Syed about his adoption of the liabilities for the Premises on the basis that he would be able to retain any profits made. Syed is recorded as making the following response: "I will not quarrel with anyone over this money." As Tipu submitted, Syed can only have been acting in his capacity as the Company's director when making the concession and he has not sought to retract or otherwise explain his response if it was intended to mean anything other than he did not disagree with Tipu's version of events. As there was no litigation at the time, and none was contemplated, I lend weight to Syed's position taken at the meeting in September 2020.
104. Cross-examination of Tipu focused on the lease itself. Tipu was asked, by reference to the lease, who was responsible to pay the rent. This focus may have been strategic, as Tipu was not challenged on the oral agreement with Syed. At the end of the cross-examination on the issue Tipu stated:

"Syed didn't want to take a risk on the property, building insurance and maintenance."

105. The weight of evidence supports Tipu's position that there was a conditional agreement in respect of the rents.

The 2015 Agreement

106. The Defence pleads [11]:

"Pursuant to the aforesaid terms ("the Oral Agreement") Panache commenced trading in January of 2016 and started leasing/hiring vehicles in March of 2016 with a fleet of just 16 cars."

107. The oral agreement [10] is pleaded to comprise:

(i) Syed would take the whole of the share capital of the corporate vehicle that became Panache but would hold one half of these shares on trust for Tipu.

(ii) Syed would invest £200,000 in this company which would be repaid out of the company's subsequent profits within 3 to 4 years of his investment.

(iii) Tipu would be solely responsible for the day-to-day operation of the company's business and would work fulltime for the company at a reduced salary of £850 per month.

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(iv) They would both be entitled to draw funds out of the Company for personal expenditure provided that the same were properly recorded as “directors’ loans” in the Company’s accounts and the Company had sufficient funds.

(v) After the company had repaid the Syed’s loan Tipu would receive an enhanced salary commensurate with his role as Managing Director which would be backdated to the start of the business and his employment.

108. The counterclaim seeks a declaration that Syed holds 50% of the share capital of the Company on trust for him and a transfer of the share capital.

109. The Reply of Syed is equivocal in that it accepts there was an agreement but denies the terms of the 2015 Agreement [7]:

“Paragraph 11 of the Defence is denied by the First Claimant to the extent that there was an oral agreement in the terms set out by the Defendant in his defence.”

110. By Syed’s Reply [5] he asserts a conditional agreement for the share capital:

“The agreement with the Defendant was that if the Defendant wanted a 50% share in the business then he will need to pay £200,000 and this must be within 3 years from 2015. The agreement to offer 50% share in Panache at a later date to the Defendant was made on the Defendant’s representation that he had money owed to him and on release of these he will pay £200,000 and take a 50% stake...the said agreement was contingent on the payment of £200,000 and to be paid within 3 years from 2015...”

111. The elements of the Reply to be: 1) Syed would transfer the share capital on the condition that Tipu would pay £200,000 (the “Transaction Cost”); 2) the Transaction Cost was required to be paid in the three-year period 2015 to 2018 (the “Transaction Period”); 3) the Transaction Cost was likely to be met from a debt owed to Tipu.

112. The common ground is that there was a conversation and the conversation ended in an agreement. The conversation that resulted with the 2015 Agreement was witnessed by no other person and was never reduced to writing.

Evidence of the 2015 Agreement

113. In cross-examination Syed gave no evidence as to what would happen if the Transaction Cost was not paid within the Transaction Period only that an extension would be provided upon request. This is not pleaded and not evidenced within any of the 11 witness statements made by Syed. If it was part of the 2015 Agreement it is likely it was never communicated to anyone, including Tipu.

114. There are some curiosities about the contingent terms of the 2015 Agreement. First, Syed was unable to explain the rationale behind the Transaction Period. Secondly, he acknowledged in cross-examination that if he had returned to him more than half of his initial loan to help start the Company it would be difficult to justify why Tipu should have to pay the Transaction Cost. There would be a lack of parity if that was

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the aim. Syed explained that he had provided the personal guarantees for to the HP lenders. Yet on his version of the 2015 Agreement the personal guarantees (none of which had been called-in) did not feature.

115. It is known that Tipu did not pay Syed £200,000 in the Transaction Period. It is curious therefore that there is no correspondence (I include WhatsApp messages, texts and e-mails) or other contemporaneous documentation that makes a reference to the Transaction Period and no document (among the circa 10,000 before the Court) that refers to the closure of the Transaction Period and its consequences.
116. Although there are curiosities, it is not inherently implausible that there were conditions to acquire an equal shareholding if it is the case that it had not been agreed at the time of incorporation that Syed and Tipu would be equal members. The court must therefore search further for evidence supporting or negating the rival versions of the 2015 Agreement. The search may include subsequent conduct when an agreement is not reduced to writing: *Maggs v Marsh* [2006] EWCA Civ 1058 at [24], and “the question is not what the parties thought or intended but what they agreed” *Whitworth Street Estates Ltd v Miller* [1970] AC 583 at 603 (*Maggs v Marsh* [13]).
117. The transcripts of the September and November meetings are helpful in deciding the terms. In addition to having been taken to selective parts of the transcripts during opening and closing I have re-read all passages relied on at trial, by both parties, before writing this judgment. Early in the November transcript Syed acknowledges that Tipu is the owner of 50% of the share capital:

“Finally, he convinced me because he needed to get something started for him and for the future of his kids. That’s why I said ok, and then I agreed with him. After agreeing, he said “OK let’s keep it fifty/fifty”. I didn’t argue with him regarding this as I didn’t enter into a partnership with him...I an not doing business here. I’m helping him, it has remained as if I am helping him. Fifty percent is his and fifty percent is mine.”

118. The reference to a partnership rather than an incorporated company does not appear to be relevant save that Syed was making a point about other partnerships where there may have been greater exposure to risk. There is no suggestion that Syed (an experienced businessman) did not know the difference between a partnership and a company.
119. The September transcript records Syed as stating:

“It is true that I helped him, but I have a share in this company, fifty percent.”

120. This is consistent with Tipu’s version of events. That the shares were to be held 50:50 from incorporation. Tipu explained (without apparent contradiction from Syed at the time) that the initial investment would be paid off by revenue generated by the Company as evidenced by the forecasts:

“I showed you the business plan, the forecast and told you about the arrangement that you will help me with 200 thousand

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pounds. And as it is shown on forecast, after three years I can pay you off. And then we got a company with fifty-fifty shares. So, we had such discussion...I had a 50% share there.”

121. It is argued that this passage, from the September 2020 meeting, contradicts Tipu’s case. The contradiction is said to be that Tipu advanced his position on the basis that if Syed invested in the Company, Syed would be rewarded with 50% of the equity. There is something in the submission, but when read in context it does not say what Syed hopes it says. Tipu states that Syed would be entitled to 50% of the share capital if he invested in the Company. He did invest and therefore he was was a 50% share.
122. There are five core parts to Tipu’s positive case. First, he approached Syed with a business idea (witness statement, paragraph [5], [6]). Secondly, he persuaded Syed to advance money to get the business off the ground (statement, paragraph [6]). Thirdly, there was an agreement that they would both be equal members of the Company (statement, paragraphs [4], [6] [14], [15], [32], [70]-[72], [75]). Fourthly, Syed would not be involved in the day-to-day business (statement, [8], [28]). Lastly, Syed would be repaid when the Company could afford it (statement, [9], [10], [12]).
123. Given the five core parts of the positive case for Tipu, as reflected in the Defence and Counterclaim, and given the analysis at paragraph 122 above, I do not find there is substance in the inconsistency submission claimed by Syed (paragraph 121 above).
124. Reliance is also made on a passage in the transcript that refers to a payment of £100,000:
- “Moni bhai what’s supposed to be paid £100,000 quite a long time ago, obviously, everything got messed up due to Brexit and Covid....”
125. It is, in my view, clear from the context when one reads the passages before and after this, that Syed and Tipu were discussing Syed’s exit route. Just prior to the passage cited in argument (above) Syed states:
- I want to get out at this point. My route ends here, beyond that, you need to think.”
126. Syed reasonably asked how a sale could be achieved and was interrupted by Tipu who started to weigh the advantages and disadvantages of a valuation based on assets less liabilities. In this context the payment of £100,000 was for Syed’s equity not Tipu’s equity which is consistent with the fifth core part of Tipu’s positive case. It is true that Tipu anticipated (in 2016) that he would be able to add more capital to the Company if he was able to obtain the repayment of a loan, but this is not what this recorded passage of the September 2020 meeting is about.
127. In cross-examination Mr Hussain referred to the text message dated 8 September 2020. Mr Hussain fortunately retained it on his phone. It was shown to counsel who took a note. It is agreed that the message read:

“Please allocate new shares and transfer it in Tipu’s name (50% of the Company). He has agreed to complete the accounts by

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the end September. I told him that I have made my final decision to pull out from this partnership. I told him to contact you regarding the share transfers.”

128. I infer from the message that Tipu had not completed the management accounts (or the year end accounts although these were not due until 31 January) and he wanted them complete so he could exit the Company on terms that Tipu would buy him out following a valuation of the Company. The Transaction Cost is not mentioned. It is more likely than not that the Transaction Cost would be mentioned in this message as: 1) the Transaction Period had expired and 2) Syed appears to have won a concession from Tipu that he would produce accounts by the end of September.
129. Syed informed Tipu by message on the same day that:
- “I have instructed [Mr Hussain] to allocate new shares and transfer 50% of company in your name”.
130. It is of note that there wasn't complete capitulation as Syed was not asking that the shares should be transferred to Sherria Begum.
131. Syed appears to have changed his mind when it came to selling his shares in the Company. He wanted a professional valuer to value the Company. Tipu was not resistant and completed a valuer questionnaire stating that he and Syed each owed 50% of the Company's share capital. This was circulated to all and never disputed. Although a valuer did not value the shares Syed appears to have wanted more money and this led to the 3 November 2020 meeting. At that meeting Mr Hussain began by asking Tipu if he could pay more for Syed's shares.
132. On 25 September (the day following the September meeting) Tipu wrote to Syed and Mr Hussain setting out what he believed were the agreed terms for Syed's exit from the Company. Referring to Syed as Moni Bhai, Tipu concluded the e-mail:
- “I believe, I have covered all the points that were agreed in the meeting. Can I take this opportunity to thank Moni Bhai for his kind support to establish this business. Without your support I would not have been able to come this far. You supported me when I was at the lowest point of my life and for this I am forever grateful indebted to you. You have not only supported me in this business but you've helped and supported me for as long as I can remember, stretching back to my childhood-because of you I feel I had a good life considering our humble beginning from Welstead House. As mentioned I am forever grateful to you. It is somewhat sad you decided to end your journey with me but I understand and respect your decision.”
133. He covered three main points in the e-mail. First, the appointment of Sherria Begum as co-director and the resignation of Syed a few months later. Secondly, personal guarantees given by Syed were to be replaced by personal guarantees offered by Sherria Begum (so as to release Syed from any risk), if the HP lenders agreed. And thirdly, a payment to Syed comprising an immediate lump sum followed by smaller payments over a three-year period. The e-mail is consistent with there being no

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Transaction Cost and no Transaction Period. The payments to Syed were to be in respect of his share of the Company. All payments were to be made by the Company which is consistent with the core parts of the positive case made by Tipu. The e-mail was never challenged.

Assessment

134. There is no documentary evidence to support the Transaction Period or Transaction Cost. Syed was unable to explain why Tipu would be required to pay the Transaction Cost at all given his expressed desire to help his brother and his desire to have his initial investment returned. Neither could he explain the rationale for the Transaction Period.
135. In cross-examination Syed responded to a question about the Transaction Cost by saying that Tipu: “took no risk what do you expect?” This answer may have made some sense if Syed had not had an indemnity from the Company to cover his guarantees or agreed to “help” Tipu and assist him to provide for his family. Syed repeatedly stated in the transcripts of the Autumn meetings that the 2015 Agreement was not commercial and that he wanted nothing to do with the Company. Syed, on his own evidence, lent money to the Company and has received a sizeable sum in return.
136. Overall, the evidence taken the meetings in September and November 2020 and other documentation referred to supports Tipu’s positive case. In my judgment it is more likely than not that the terms of the 2015 Agreement are as contended for by Tipu, namely that Syed agreed at the outset to hold 50% of the Company’s shares on trust for him.

Breach of Employment Contract

137. Tipu’s counterclaim seeks damages for breach of employment contract:

“60. By an order dated 17 November 2020 the Defendant was excluded from the business and the business affairs of Panache but has not been dismissed from his employment with the company.

61. Following the order, the Defendant has not received his salary and in the premises is now owed £10,134 to which further sums will accrue at a daily rate of £111.05 until the contract is lawfully terminated.

62. Further and for the avoidance of doubt the Defendant avers that his contract of employment cannot be summarily terminated by Panache and that, as Managing Director, he is entitled to 6 months’ notice.”

138. The Defence is that Tipu was lawfully dismissed for gross misconduct. The gross misconduct is: “breach of fiduciary duty, theft and dishonesty”.
139. I have found against Syed in respect of the matters he complains of. Accordingly, Tipu was summarily dismissed without good reason. There being no other defence to the counterclaim he is entitled to the loss of earnings claimed. The claim is for 6

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months of salary owing to Tipu's position in the Company. Syed has not argued that the notice period should be less than 6 months. It does not appear to me to be an excessive amount of time for notice given Tipu's position in the Company. I shall award 6 months of salary.

Counterclaim for rents received

140. Tipu counterclaims for the sum of £16,910 in respect of the rents received from the sub-tenants of the Premises. The Company occupied only part of the Premises and an agreement was reached between the Company and Tipu that any rents received from licences or sub-lettings were to be treated as being due to Tipu on the basis that he assumed responsibility and paid for the liabilities of the Premises.
141. Pursuant to that agreement the rents received from sub-lettings had been paid to Tipu until November 2020. After November 2020, when Tipu was ejected from the Premises, the payments for rent were no longer paid to Tipu. At the time of writing this judgment, I do not know if Tipu continued to pay the insurance, business rates and other outgoings.
142. As the agreement was conditional on paying the liabilities, I shall deal with paragraphs 64-66 of the Counterclaim as a consequential matter.

Injunction

143. It follows from the findings of fact made that the injunction granted by Mr Justice Roth on 17 November 2020 and varied by Mr Justice Mann on 8 December 2020 is discharged.

Other matters

144. I shall deal with any other matters arising from this judgment at a consequential hearing.

Conclusion

145. The Claim stands dismissed. The declaration in respect of ownership of the Company sought in the Counterclaim is granted, and damages are awarded for unlawful dismissal.