Neutral Citation Number: [2024] EWHC 1638 (ChD)

Claim No. PT-2020-000449

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

7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

Date: 28 June 2024

Before:
Mr. Ian Karet sitting as a Deputy Judge of the Chancery Division

Between:

(1) SALIM MOOSA
(2) SHAUKAT MOOSA **Claimants**
(3) GOOLAM HOOSEN MOOSA

- and -

KARIM ISSA MAWJI

Defendant

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- -

MR. EDWARD BROWN KC and MR. ALEX RIDDIFORD (instructed by **Rahman Ravelli)** for the **Claimants**
MR. SIMON ATKINSON and MR. THEO DIXON (instructed by **Teacher Stern)** for the **Defendant**

Hearing dates: **8, 11-15, 19-20 March 2024**
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APPROVED JUDGMENT

This judgment was handed down remotely at 10.30 am on 28 June 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

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Mr Ian Karet:

Introduction

1. This is my judgment following the trial of an action brought by three brothers against their former real estate adviser in which they seek an account in common form and other relief. The events concerned go back over twenty years and cover property developments in the UK, Germany and South Africa.

2. The Claimants (the "Moosas") claim that in July 2000 they appointed the Defendant ("Mr Mawji") as their agent in respect of a portfolio of properties in England. By virtue of that appointment Mr Mawji owed them personally fiduciary, contractual and common law duties. Mr Mawji denies the claim.

3. The Moosas say that in breach of his appointment Mr Mawji has failed to account to them in respect of his dealings with their investments. They make particular claims in respect of six specific projects. Five of those are in England and one is in Germany (the "Schedule Projects"). The Moosas make a further claim in respect of a property in South Africa ("Mystic River"). The histories of these projects are complex and I will address each separately in due course.

4. Mr Edward Brown KC and Mr Alex Riddiford appeared for the Moosas. Mr Simon Atkinson and Mr Theo Dixon appeared for Mr Mawji.

5. The parties' relationship stretches back to 1998. I have taken various dates from the parties' agreed chronology. The parties referred to many entities that played some role in the extended history. I have considered carefully the chronology and dramatis personae and extracted the information that is necessary for me to dispose of the case. A complete history of the parties' relationship is beyond the scope of this judgment.

6. The Moosas are successful businessmen based in South Africa. I will with no disrespect refer to them by their first names.

7. It is common ground that the Moosas and their extended family had by 1998 a property portfolio in England. It had been overseen by their cousin Razak Moosa. The family held each property through a standalone offshore company. The shares were held by a Guernsey corporate services provider, Saffery Champness. Razak lived in London between 1986 and 1996. He then returned to South Africa and instructed an accountant to handle the UK business.

8. Mr Atkinson noted that it was Razak's companies that provided property management services up to 2000, and that it was not Razak himself who handled the business. I disagree and accept that Razak oversaw matters.

9. In 1997 the Moosas decided to separate their interests from the rest of the family group. Up to 2000 they used two entities to hold their investments. The first was a Panamanian entity Fenchurch Enterprises Inc ("Fenchurch"). The second was a BVI entity Mavedene Limited ("Mavedene").

10. The Moosas were thus looking for someone to handle their affairs in the UK. A family friend, Mr Abdul Sacoor, recommended Mr Mawji to them. At that time Mr Mawji ran a company called Montague Goldsmith Limited ("MGL").

11. At their first meeting in late 1998 or 1999 Shaukat explained to Mr Mawji that the Moosas were looking for an advisor to replace Razak, and that would have to be done in stages as the family situation was sensitive.

12. In November 1998 Graham Gower, a Director of MGL, faxed an initial report on the property portfolio to the Moosas. Later, on a date which was unclear from the evidence, a further report was created which listed eight property-owning companies holding 10 freehold properties producing a total annual rental income of about £1.39M. Some had more than one tenant. A manuscript column was added to the table, headed "horse or donkey?". Three of the 10 were marked "H", which meant they were to be kept. The remainder were marked "D" and one property "?".

13. From 1999 to mid-2000 MGL engaged in a partial management role alongside the existing Moosa family management.

14. Mr Mawji's evidence was that MGL (and later Montague Goldsmith AG a Swiss company incorporated in November 2003 ("MGAG")) offered an alternative approach to property investment. Their clients tended to own portfolios of properties; MGL focused on capital appreciation of assets under management. Some properties would be considered as assets to "hold and enhance" and there would also be new investments.

15. For new investments, the approach was by way of Mr Mawji's "private equity model". In this model MGL would set up a new entity to own an investment which would be owned and managed by MGL. A client would make an investment by way of a loan which would carry interest. The client would be entitled to 50% of any profit on the sale of the asset and MGL would retain 50% of the profit as its payment.

16. In July 2000 there was a meeting at which the Moosas say that Mr Mawji was appointed to manage the properties and that a fiduciary obligation was created such that from this time onwards Mr Mawji owed a duty to the Moosas. Mr Mawji says that the result of the meeting was instead that MGL was appointed to a full managing agent role, and that he did not agree any personal obligation.

17. While it occurred at an early stage in the parties' relationship, this meeting is important. It will be important to determine whether Mr Mawji was a fiduciary when later transactions which are in dispute were undertaken. Mr Atkinson submitted that if the Moosas did not succeed in showing that Mr Mawji owed the Moosas a personal obligation to account then the accounting claim would fail in its entirety.

18. I note at this point that the Moosas have claimed only against Mr Mawji and not against the companies in which he was involved. In March 2004 Mr Mawji resigned as a director of MGL, and it was dissolved in 2012. MGL's role was taken over by MGAG. In July 2009, MGAG entered into voluntary solvent liquidation.

19. Mr Brown made the point that in the light of these events the relationship must have been directly between the Moosas and Mr Mawji because there is no evidence that the Moosas were informed of the change of entities involved. I do not think that this is conclusive of what the parties agreed in 2000. It does appear, however, that there were a number of changes of

entity which were not notified to the Moosas. They appear to have accepted these changes without question.

The approach to evidence

20. The parties agreed that in a case such as this, contemporaneous documents are likely to be a more reliable guide than human memory: see *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2020] 1 CLC 428, *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] 4 WLR 112 at [48], *Kogan v Martin* [2019] EWCA Civ 1645 and *Phipson on Evidence* (20th Edition) at 45-10. Internal documents, where a party is less likely to be guarded in what they say, may be more telling than memory.

21. However, the documentary record provided on disclosure was on matters of significance to the trial very thin. The Moosas say that Mr Mawji should as an adviser have kept meticulous and compliant records. Mr Mawji notes that no claim has been brought against the companies which carried out the various property activities, and it was suggested that had such a claim been made that there would have been more disclosure.

22. Given the state of the documents that I did see, it appears that the relationship between the parties was not well documented on either side. While the Moosas were provided with many financial statements, neither side appeared to care much for formality about their relationship, and there were many fewer relationship documents than might have been expected in relation to a substantial investment portfolio. There was little on strategy, structure or performance of the investments. Notably, there were no client agreements or terms (which might have indicated the extent of the relationship) and no indication of "know your client" diligence on Mr Mawji's side.

23. The evidence of the witnesses is in this case therefore significant. I had the opportunity to see two of the Moosa brothers and Mr Mawji cross-examined extensively at a trial over eight days.

The witnesses

24. At trial there were three witnesses for the Moosas.

25. Salim Moosa is an experienced businessman with substantial interests both inside and outside South Africa. He provided an extensive witness statement covering the history of the relationship with Mr Mawji. He accepted that he did not have full recall of the matters in dispute, and in particular his memory of dates was not reliable. On a number of occasions he said that he did not understand documents that he had signed when he did so or that he had signed them in a hurry and so was not aware of their contents. On other occasions, he had clearly reviewed figures provided to him in some detail. It appears that his dealings with Mr Mawji were often informal. There were no client agreements. Many documents did not have letterheads; some documents from Mr Mawji were handwritten; and there appears not to have been regular reporting on the state of the whole portfolio. Salim appeared at times during his cross-examination enthusiastic to make up for a lack of detail or recollection by presenting the case as he would have liked it to be.

26. Mr Atkinson made an extensive attack on Salim's evidence. He described him as unreliable, and he urged me to approach Salim's evidence with extreme caution. I reject that. In my view

Salim was trying to assist the court, and I have taken care to evaluate his evidence in the light of the difficulties he faced in recalling particular details in the long history of this matter.

27. Shaukat Moosa is also an experienced businessman. He has worked closely with Salim over many years. He made a short witness statement that dealt with only three of the six Schedule Properties. Mr Atkinson was highly critical of this approach and described Shaukat as highly unsatisfactory and evasive. He submitted that I should reject Shaukat's evidence to the extent that it was not contained within his statement. Despite this, Mr Atkinson cross-examined Shaukat extensively on matters across the case and outside his statement, and he sought in closing to rely on Shaukat's responses to matters raised in cross-examination that had not formed part of Shaukat's written evidence.

28. While it would clearly have been preferable for Shaukat to address in his statement all the matters in issue, he said that he had been suffering from ill health. It would have been open to Mr Atkinson to limit the cross-examination to the matters covered in the statement and to invite me to address Shaukat's evidence only on the matters that he had raised. He did not do so, and I proceed on the basis that all his evidence may be considered.

29. It emerged during cross-examination that Shaukat had regular contact with Mr Mawji over a prolonged period, speaking to him monthly or quarterly, and he recalled documents and events that Salim did not.

30. Like Salim, Shaukat did not have a good recall of particular dates. He was occasionally keen to give his opinions on questions put to him rather than direct answers to them, and some of his answers were self-serving. However, in my view he, like Salim, recognised the importance of trying to assist the court, and on balance I found his evidence helpful. As with Salim, I have evaluated his evidence carefully, including the limited scope of his written statement and his difficulties in remembering particular dates.

31. Anil Narotam was employed by MGL and gave evidence about the business. He fell out with Mr Mawji in 2006 and left the business. Mr Atkinson submitted that I should put little weight on his evidence because he had scant knowledge of the relevant transactions and left the business many years ago in acrimonious circumstances. I do not accept that. Mr Narotam was a helpful and balanced witness who was clear about his dispute with Mr Mawji.

32. Goolam Moosa, the Third Claimant, did not give evidence. Although in his opening skeleton argument Mr Atkinson questioned Goolam's absence, it does not appear that Mr Atkinson sought to draw any adverse inference from that.

33. There were two witnesses at trial for the Defendant. They also submitted an expert report.

34. Mr Mawji made two witness statements and was fully cross-examined on his evidence. Like the Moosas he faced difficulties presented by the long period covered by the dispute. However, his approach was in marked contrast to theirs. He was unwilling to answer many of the questions put to him and on some points was clearly evasive. This was particularly notable in relation to two of the Schedule Properties, Forest Hill and Würzburg. A number of his answers made little sense, and they suggested that he either did not understand the nature of the transactions he had constructed for the Moosas or that he was unwilling to give a

response. For example, his position in respect of the Würzburg loan and the financial details of that project led me conclude that he was unwilling to answer the questions put to him.

35. His attitude was also striking when it came to matters such as the question of beneficial ownership of properties. As a qualified accountant and property adviser, he would have been able to answer clearly the questions put to him. They did not depend on particular dates or financial details but rather his relationship with the Moosas. His failure to do so was striking.

36. Mr Mawji was, further, unwilling to answer about sums in issue. He was, for example, questioned about a transfer of £1.5m said to have been made in 2008 from Flemingo to his personal bank account in Jersey. It was a significant sum, and his reluctance was noteworthy.

37. Mr Atkinson submitted that Mr Mawji did not have control over access to Integry, Taurin and Flemingo, three entities which I discuss below. Even if that were correct, it did not explain why Mr Mawji was unable to explain how the investments worked or key elements of his structures.

38. Having listened carefully to him and considered his evidence, I concluded that Mr Mawji was an unsatisfactory and unreliable witness and that I need to treat his evidence with significant caution.

39. Mr Michael Hagen is a professional trustee and fiduciary. Since 2005 he has been the Managing Director of Mutual Consulting Establishment a licensed trust company based in Liechtenstein ("MCE"). He was a helpful witness. He was notably uncomfortable in cross-examination about an indemnity that he sought from Mr Mawji in respect of the Würzburg project. I describe that further below. His evidence cast doubt on Mr Mawji's.

40. The Defendants submitted the report of Dr Walser, an expert witness on Liechtenstein law. He was not cross-examined and limited references were made to the report during the trial. I accept his evidence for the limited use made of it.

The appointment - July 2000 and after

41. The parties met on 24 July 2000 to discuss the management of the Moosas' properties. There is one contemporaneous note of the meeting. It is handwritten. It is headed "Moosa family" and sets out the percentages to be paid for management of the portfolio. They were 1.75% on purchases, 1.25% on sales, 1% for a "partial role" in management and 3% for "full management". It has a date and is marked and "KM + SM", which most likely refers to Mr Mawji and Mr Mahadeva, who worked with Mr Mawji and prepared the note.

42. The partial role was that which MGL had performed to date. The prospect of full management referred to the future.

43. The Moosas say that the note is consistent with an informal note of the high-level terms of business; it makes no reference to MGL or any corporate counterparty. Mr Mawji says that the note is consistent with the appointment of MGL to manage the various property companies.

44. Mr Mawji accepted that the Moosas made an agreement personally, rather than through their then existing property-owning companies. He maintained, however, that the agreement was

with MGL on his side and that he attended the meeting for MGL. He appeared unwilling to accept that the relationship covered investment as well as management, although that was a key part of his offer to the Moosas.

45. Salim accepted that he agreed that MGL would assume full management responsibility for the properties.

46. There are a number of events which took place following the meeting. In September 2000 management memoranda were sent to each of the property holding companies setting out the terms on which MGL was to be appointed as agent for the properties. MGL set up client accounts and the Moosas' accountants and MGL wrote to the Inland Revenue non-resident landlord scheme to notify them of the appointment of MGL. MGL invoiced the tenants for rent.

47. Mr Mawji corresponded personally and directly with the Moosas, rather than on MGL letterhead. The Moosas and Mr Mawji addressed each other in writing with the suffix "-bhai". They agreed that in Hindi that means "brother" and is used that way as a term of respect and affection.

The legal framework

48. The relevant law was not in dispute between the parties.

49. *Bowstead and Reynolds on Agency* (23rd Edition), 1-001(1) defines agency as follows:

> "Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation."

50. An agency relationship may be both fiduciary and contractual: *Bowstead* 1-015; 6-035. While the duties of an agent will depend on any contractual terms agreed and while some duties may not be fiduciary in nature, fiduciary duties are a typical feature of the paradigm agency relationship: *Bowstead*, 6-037.

51. In *Quantum Advisory Ltd v Quantum Actuarial LLP* [2024] EWCA Civ 247 the Court of Appeal has recently brought together a number of authorities in this area:

> "30. In *Bristol and West Building Society v Mothew* [1998] Ch 1 ("*Mothew*"), at 18, Millett LJ described a fiduciary as "someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence". Subsequently, in *Arklow Investments Ltd v Maclean* [2000] 1 WLR 594, Henry J, giving the judgment of the Privy Council, spoke at 598 of the concept of a duty of loyalty "encaptur[ing] a situation where one person is in a relationship with another which gives rise to a legitimate expectation, which equity will recognise, that the fiduciary will not utilise his or her position in such a way which is adverse to the interests of the principal". More recently, in *Children's Investment Fund (UK) v Attorney General* [2020] UKSC 33, [2022] AC 155, at paragraph 47, Lady Arden quoted with apparent approval (though adding in paragraph 48 that "[r]easonable expectation may not be appropriate in every case") the following passage from the judgment of Finn J, sitting

in the Federal Court of Australia, in *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296, at paragraph 177:

> "a person will be in a fiduciary relationship with another when and in so far as that person has undertaken to perform such a function for, or has assumed such a responsibility to, another as would thereby reasonably entitle that other to expect that he or she will act in that other's interest to the exclusion of his or her own or a third party's interest".

Some years earlier, writing extra-judicially, Finn J had drawn attention to the relevance of asking "for what purpose one party has acquired rights, powers and duties in the relationship: to promote his own interests, the joint interest, or the interests of the other party alone", noting that the latter two indicate a fiduciary relationship: see "The Fiduciary Principle", in *Equity, Fiduciaries and Trusts*, ed. TG Youdan, 1989. Others have favoured somewhat different definitions or tests. For example, Paul B Miller has suggested that a fiduciary relationship "is one in which one party (the fiduciary) exercises discretionary power over the significant practical interests of another (the beneficiary)": see *Philosophical Foundations of Fiduciary Law*, ed. Gold and Miller, 2014, at 69.

31. There are certain settled categories of fiduciary relationship. For example, trustees, partners, company directors and solicitors are all considered to have fiduciary obligations. So too, normally, do agents. The word "agent" is used to describe persons fulfilling a variety of roles. A franchisee might be termed an "agent", but have no power to affect the legal relations of the franchisor and have an arm's length relationship with it. At the other end of the spectrum is an "agent" in the strictest sense: a person who has power to contract on behalf of the principal. The extent, if any, to which fiduciary duties are owed will be affected by the type of "agent" in question. In *Eze v Conway* [2019] EWCA Civ 88, Asplin LJ observed at paragraph 39 that "[a]lthough the relationship of principal and agent is a fiduciary one, not every person described as an 'agent' is the subject of fiduciary duties and a person described as an agent may owe fiduciary duties in relation to some of his activities and not others"."

52. In *Al-Dowaisan v Al-Salam* [2019] EWHC 301 (Ch) HHJ Hodge QC said at [108]:

> "In my judgment, the touchstone for the imposition of fiduciary duties, on the particular facts and circumstances of any case, is to be found in Wilson J's formulation in *Frame v Smith*. As the Law Commission recognised, the key test is whether there is a legitimate expectation that one party will act in the interests of another, with discretion, power to act and vulnerability being indicators of such an expectation."

53. A commercial relationship in which one party trusts another is not necessarily a fiduciary relationship: *JP Morgan Chase Bank v Springwell Navigation Corporation* [2008] EWHC 1186 (Comm) at [573].

54. The Court should take care not to distort the bargain made by the parties when considering whether fiduciary obligations are owed: *F & C Alternative Investments (Holdings) Ltd v Barthelemy (No.2)* [2011] EWHC 1731 (Ch), [221] – [225].

55. If the relationship is regulated by contract, then the terms of that contract will be of primary importance and wider duties will not lightly be implied. This is the case particularly in

commercial contexts negotiated at arms' length with parties of equal bargaining power: Ross River Ltd v Cambridge City Football Club Ltd [2007] EWHC 2115 (Ch), [197].

56. In Paragon Finance plc v DB Thakerar & Co [1998] EWCA Civ 1249 (considering Nelson v Rye [1996] 1 WLR 1378) Millet LJ said:

> "… the defendant's liability to account for more than six years before the issue of the writ in Nelson v Rye depended on whether he was, not merely a fiduciary (for every agent owes fiduciary duties to his principal), but a trustee, that is to say, on whether he owed fiduciary duties *in relation to the money*…. The fact that the defendant was a fiduciary was irrelevant if he had no fiduciary or trust obligations in regard to the money. If this was the position, then the defendant was a fiduciary and subject to an equitable duty to account, but he was not a constructive trustee. His liability arose from his failure to account, not from his retention and use of the money for his own benefit, for this was something which he was entitled to do."

57. It was common ground that the court has a supervisory jurisdiction to order an account, see Ultraframe (UK) Ltd v Fielding [2005] EWHC1638 (Ch). It is a good defence to a claim to show that the principal has by express approval or conduct been provided with an account.

58. The substance of the account must enable the principal to understand the nature of the investments, the funds expended and recovered, the income earned, the expenses paid and how, and when, and on what basis investment decisions were made: *Snell's Equity* (34th Edition), 20-017.

59. I set out below some further principles on accounts as they arise in relation to the Schedule Projects.

The appointment – discussion

60. Based on the documents available and the evidence of the witnesses, I find that at the meeting on 24 July 2000 the Moosas agreed to appoint Mr Mawji personally as their property adviser and he became their agent in respect of their property portfolio. While the individual properties were to be managed by his company, the parties agreed that Mr Mawji had an overarching relationship directly with the Moosas.

61. That is for the following reasons. First, the context of the arrangement was that the Moosas were looking to replace their cousin Razak with an adviser to manage their English property interests. Mr Mawji was well suited to their needs. He offered them experience in property management and investment; he had worked along with the existing team for what was in effect a trial period; and he was personally recommended to them. The Moosas were comfortable with him culturally, and that was important to them.

62. Second, the appointment was not documented in a formal way, as one might have expected if the relationship was with MGL alone. No MGL terms of business were provided to the Moosas as would have been the case had MGL agreed matters with them. Salim and Shaukat's evidence on this was consistent and persuasive. In contrast, Mr Mawji's position, that the Moosas were simply engaging MGL, was not convincing. The personal nature of their relationship was a key element to the appointment.

63. Third, the note of the meeting is important as the only document from the time. It is consistent with a relationship between Mr Mawji and the "Moosa family". It does not mention the Moosas' property-owning companies. It reflects the overall nature of the relationship that the Moosas intended to establish. That was not simply an agreement to manage properties but also to make acquisitions and disposals, as would be consistent with an overarching relationship. The arrangement was consistent with MGL continuing to have a role managing individual properties.

64. Mr Mawji thus entered into a fiduciary relationship with the Moosas, and the events that followed need to be assessed in the light of that.

65. The Moosas' pleaded case was that the Moosas appointed Mr Mawji as their agent in July 2000 and the arrangement was defined as the "Agency Agreement". I did not understand that to limit the claim to a contractual appointment.

66. The parties' behaviour following the appointment was also in keeping with the personal appointment of Mr Mawji. There was a notable and easy informality in their dealings. That is consistent with the position as I have found it.

67. It follows from this that the Moosas are in principle entitled to an account by Mr Mawji. The nature and extent of that account will depend on the relevant activities and any limitations that should be imposed, including where Mr Mawji has already provided a satisfactory account. Consideration of each of the Schedule Projects and Mystic River starts from the position that I have found.

68. Mr Mawji did not by the arrangement agreed in July 2000 become a trustee of the Moosas' properties.

Further developments

69. Following the July 2000 meeting the properties were managed by MGL, as agreed, and rents were remitted to the Moosas' holding structures. A number of the UK properties were sold, and some new properties were acquired.

70. In 2004 Mr Mawji started to commute to Zurich, and Mr Narotam moved there.

71. In 2004 MGL ceased acting as the property agent and MGAG took over that role. It does not appear that the Moosas were told directly about that or that they asked questions about it.

72. On 9 or 10 September 2004 Salim and Shaukat met Mr Mawji at MGAG's offices in Zurich. The parties disagreed over the nature of the meeting. Salim described it as a courtesy visit. Shaukat suggested that the meeting had taken place in Zurich and London over two days. Mr Mawji said that it was to review the portfolio and that a file of around 270 pages of financial information was provided to the Moosas for review.

73. The file was not systematically arranged. It has no index or page numbers. It contains a range of documents including remittance summaries, bank statements for Fenchurch and Mavedene's accounts, completion statements and accounts, and a reconciliation of profits and losses on the disposal of properties since 2000. A handwritten note says that the file was faxed to Salim after the meeting.

74. In my view the file was created for the meeting in Zurich and the Moosas reviewed it there. Mr Mawji submits that the file is in effect an account of all matters that it covers up to its date, so that if an account were to be ordered, that information would already have been provided. I disagree. It does not follow from the selection and arrangement of the materials that the Moosas were provided with sufficient information in a comprehensible form about their portfolio as a whole and the investments in it individually. It would be necessary to consider information piece by piece, and that was not attempted at trial.

75. It is not possible to conclude that the 2004 Zurich file enabled the Moosas to understand their investments and draws a line under the position following that meeting.

76. Between 2004 and 2005 following the property sales the way that the Moosas portfolio was managed changed considerably. The corporate services providers that the Moosas had used were replaced by providers suggested by Mr Mawji, and new properties were acquired using what Mr Mawji described as the "private equity" model.

Integry and Taurin

77. Sometime in 2003 or 2004 Mr Mawji set up Integry Management, a Swiss entity that took over as the corporate services provider to the Moosas' property holding companies.

78. The parties disputed who took the decision to make the replacement. The Moosas said that it was Mr Mawji. Mr Mawji said that it was the Moosas' decision, not least because the replacement would have required their approval. The Moosas said that Mr Mawji recommended Integry to them. They already had one offshore structure that worked for them and did not need another one.

79. The Moosas made a foreign exchange amnesty application in South Africa in 2004, and Mr Mawji suggested that this drove the move to Taurin. The Moosas denied this.

80. The parties also disputed whether Mr Mawji exercised control over Integry and thus the service companies. Mr Mawji was a director for about Integry's first 6 months and he held an indirect beneficial ownership in the parent company of Integry. He said that he had not after his time as a director exercised control. Integry was regulated under Swiss law and was under the control of professional external directors.

81. Mr Narotam said that Integry operated in effect within the MG structure.

82. I find that as part of his investment advice Mr Mawji recommended to the Moosas that they use Integry to replace their then existing corporate service provider. That was consistent first with his role overseeing their investments and second with the Moosas' lack of expertise in the structures formed. I also find that in practice Mr Mawji exercised control over Integry. His denial of that in cross-examination was not credible.

83. In July 2004 the directors of Integry established Taurin Management, a corporate services provider based in Liechtenstein. Mr Mawji had an indirect beneficial interest in Taurin. Taurin was set up using Sedes Trehund Anstalt, a long-established trust corporation and service provider in Liechtenstein.

84. In December 2004 Taurin took over the role of Integry with respect to the Moosas investments. Taurin was wound up in 2007.

85. Mr Mawji's case was that he was not a director of Taurin or Sedes, and that he did not hold founder's rights in Taurin. Dr Walser's expert evidence was that the statutory directors were responsible for the formal operation of the business. The documents did not show that Mr Mawji exercised control over Taurin or its associated entities. While I accept that, Dr Walser did not address the question of whether the statutory directors in practice took instructions from anyone.

86. Mr Narotam's evidence was that Taurin also operated within the MG structure. By way of illustration, in January 2006 Mr Mawji wrote to Mr Narotam that there was a suggestion that two individuals working for Taurin should transfer to Sedes. He wanted to keep them in Taurin lest it be operated outside Sedes in the future (so that they would then no longer be with Taurin). Mr Mawji proposed that they should stay with Taurin but be available to do work for Sedes. Mr Mawji showed by this that he thought he controlled Taurin.

87. One of those individuals, Silvia Mathis had email addresses both at Taurin and MG.

88. Mr Hagen accepted in cross-examination that Mr Mawji was the owner of Taurin and that Mr Hagen, as a statutory director, acted in accordance with his instructions.

89. I find that Mr Mawji recommended Taurin to the Moosas and that in practice he exercised control over it. The 2006 correspondence is consistent with that (which is important), and I prefer Mr Narotam's evidence to Mr Mawji's.

The Foundations, Flemingo and the "private equity model"

90. Following Mr Mawji's appointment, the Moosas started to make investments using Mr Mawji's "private equity" model. The idea was that some properties would be sold, others moved to the MG group and the funding for acquisition and development would be provided by loans from the Moosas. The loans would be entitled to a "priority return".

91. In November 2004 three Liechtenstein foundations were established, one for each of the Moosa brothers. They were named, using the first letter of each brother's name, Southport, Gladiator and Samaritan. The legal founder was Sedes and the bye-laws set out the beneficiaries.

92. Shortly after, also in November 2004, Flemingo Holdings Anstalt was incorporated in Liechtenstein. This entity had four directors; three individuals and Taurin Consulting. It required two directors to approve its actions. Flemingo was the vehicle used for introducing funding into the structures that were set up. It duly replaced Fenchurch and Mavedene which were dissolved in July 2008 and October 2007 respectively.

93. There was a dispute as to whether the bye-laws for the foundations were provided to the Moosas in 2004 or in 2007. The earlier date seems more likely.

94. The "private equity model" is central to the dispute. In his first witness statement, Mr Mawji described the MGL business as including the following elements:

i) Reviewing properties a client held and advising on actions for each, and how MGL would be remunerated;

ii) For properties to be sold there would be a timeline for disposal. For each "hold and enhance" property there would be a strategy, and such properties would be retained in the client entity to save transaction costs, taxes and fees;

iii) MGL would be entitled to 50% in the increase in value of new acquisitions in excess of acquisition costs, an annual management fee of 3-5% of the rental income and an initial fee on up to 3% of the purchase price; and

iv) If the acquisition was into a new entity, MGL/MGAG would own the new entity. A client would introduce financial contributions by way of a loan in exchange for 50% of the profit generated by the venture and MGL/MGAG would be entitled to 50% of the profit as its remuneration. None of the financial contributors were entitled to any shareholding in the acquiring entity or any participation in the management and decision making of that entity.

95. As Mr Mawji put it:

> "MGL and MGAG's business model was to operate as a private equity specialist, whereby a Special Purpose Vehicle ('SPV') would own the asset being developed and managed, while unconnected third parties would participate as finance providers (as private equity providers). This funding would be by way of loans in return for a share of the profits resulting from the underlying transaction…."

96. The model is illustrated by a document signed by Shaukat in September 2004. That related to a project known as Hamworthy which was described in a document in disclosure. The structure was set out on plain paper (without any letterhead) and it was undated. There was a space for a date to be added on client approval. It was signed by Shaukat in September 2004 indicating the Moosas' agreement.

97. The structure was headed "Client Instruction Summary". The Foundations and Flemingo had yet to be created and were named by general description – I have inserted them to assist the description:

i) Jacklin Investment Limited ("Jacklin"), which was owned 100% by Montague Goldsmith Investco, would acquire shares in a company called Ivy. Ivy owned 50% of Fleetsbridge LLP, which in turn owned the Hamworthy Engineering site in Poole. Jacklin would pay US$5,000 for the shares.

ii) Fenchurch would "cede it's (sic) loan account in Ivy in the sum of £2.625M" to Flemingo, which was to be owned by the Foundations. £525,000 of that amount had been provided by another company RA Holdings Limited ("RA").

iii) Ivy's 50% share in Fleetsbridge would then be transferred to Jacklin under "Group relief". Flemingo would enter into a "structured loan agreement" with Jacklin for £2.1M "based on a 6% priority return and 40% of the profits earned by Jacklin". RA would enter into a "structured loan agreement" for £525,000 at 6% and for 10% of the profits.

iv) MGAG would act as "authorised agents and coordinate the transactions" and would be "entitled to draw reasonable monies on eventual account of its fees. Jacklin would be entitled to 50% of the profits less the "6% priority return… less any fees paid to [MGAG]".

v) Flemingo and RA were responsible for "the annual company administration cost of Jacklin in their respective proportions".

98. The effect of the transaction was that the Moosas would transfer their rights of property ownership (which in this case are unclear, as the status of Fleetsbridge LLP was not explained) in return for a "structured loan".

99. A feature of the case is the absence in disclosure of any explanation of the terms used in the proposals or loan documents setting out the loans or how the finances worked. At trial Mr Mawji could not explain clearly how the loans worked. He said that the reward was based on the outcome of the transaction. It was not clear that the Moosas fully understood the nature of the transactions that they were entering into. Their position was not helped by their informal relationship with Mr Mawji.

100. It appears that the "structure" in Mr Mawji's structured loan arrangement was an agreement to pay interest on the loan coupled with an agreement to pay a share of the profits on the sale of the asset. In a number of cases there was no third-party participation. (The term "structure" is usually used in connection with more complex arrangements, but there do not appear to have been any in this case.)

101. Mr Mawji's case in essence was that by entering into the new arrangements the Moosas became unsecured creditors with limited rights of recourse. The Moosas appeared to think, however, that in each case they were the beneficiaries of the schemes which had been set up. This arrangement put Mr Mawji into a position in which he could exercise significant power over the investments and could exercise that so as to affect the Moosas' interests. The Moosas were vulnerable to his exercise of that power. This confirms that Mr Mawji was a fiduciary in respect of the Schedule Projects.

102. There was a dispute between the parties over the reason for the restructuring of the Moosas' assets and who was responsible for that. The Moosas alleged that Mr Mawji directed the creation of the various structures and that they followed his advice. Mr Mawji contended that the Moosas decided to restructure their assets for reasons related to tax issues they faced in South Africa.

103. I find that Mr Mawji set in train the property transactions that followed his appointment and that the Moosas agreed the Liechtenstein structure involving the Foundations and Flemingo upon his recommendation.

104. That is for the following reasons. First, the strategy was complex and involved a number of steps beyond freehold investments in property with which the Moosas were familiar. The structures proposed fitted both with Mr Mawji's personal appointment as the Moosas' trusted adviser and the types of transaction in which he claims he specialised. The Moosas accepted a new and complex offshore structure in which they gave up clear property ownership for a "private equity" structure.

105. I reject Mr Mawji's argument that the scheme was driven by the Moosas' tax position in South Africa. While it appears that there was some South African tax investigation of the Moosas' affairs, it was not made clear to me how the transaction would have improved the Moosas' position.

106. In the months that followed, a number of transactions involving the Schedule Properties were entered into. I will return to them below.

Meeting in Zurich, September 2005

107. On 12 and 13 September 2005 Salim and Shaukat attended a meeting in Zurich at which the Moosas reviewed a file of materials relating to investments. The file has a handwritten index and contained around 175 pages relating to a number of properties. I find that the Moosas reviewed this file.

108. The file included at the beginning a diagram titled "M Portfolio Group". It presented on a single sheet an organisation chart of the investments shown in boxes linked in the conventional way. The diagram shows in the upper half a "Family Structure" and below a dotted line an "MGI structure". The bottom third of the page is titled "Property/Business" and at the bottom each "Investment" was described.

109. The upper third of the diagram shows the three Foundations holding Flemingo. There is then a vertical line down to an entity "Parry Assets Group Inc. (Interholdco BVI)". To the left of the line it says "MGI 100%" and to the right, in a box "STRUCTURED LOAN (separate for each investment)". A number of lines descend from Parry Assets to a series of boxes, including "Jacklin (Ivy)". Each line has a note beside it "LA" which I take to mean "Loan Agreement". Below Jacklin is "FLEETSBRIDGE LLP".

110. While the document appears intended to be an overview of the Moosas' portfolio, there are matters that are not clear. First, for Fleetsbridge, Parry Assets comes between Jacklin and Flemingo. However, the agreed instructions I have described above were for Flemingo to contract with Jacklin. The structured loan was meant to be between Flemingo and Jacklin and not Flemingo and Parry.

111. Second, MGI's role in the structure is unclear. Mr Mawji's evidence was that Parry was a BVI company owned by MGI Anstalt. The use of the descending line might be thought, however, to indicate ownership of the entity below, so that Flemingo (and not MGI) owned Parry.

112. In an internal email between Mr Narotam and Mr Mawji dated 4 October 2005, Mr Narotam described Parry Assets as the "interholdco within the Flemingo group". Mr Mawji did not comment on or respond to that at the time. Mr Narotam said in evidence that Parry was "specifically set up for the Flemingo Group". The Moosas submitted that they viewed Parry as a Flemingo subsidiary.

113. In a note made in November 2007 Mr Mawji described Flemingo as the "ultimate b/o" (i.e. beneficial owner) of the property holding assets. In cross examination Mr Mawji said that by this he meant that Flemingo was the ultimate beneficial owner of the loan under discussion. However, the correct description of Flemingo in those circumstances would have been creditor. While this document has a later date, the position in 2007 had not changed significantly in this regard.

114. These two documents are unguarded internal communications which provide a useful view of Mr Mawji's position and the relationship with the Moosas.

115. The portfolio diagram is not clear. It did not set out an accurate view of the investments, and it was not a proposal to bring the structure of the portfolio into that form.

116. The diagram was in my view an attempt by Mr Mawji to present the investments as he conceived them in his model. It was an idealised vision; the position was in fact more complex because relationships were not all as shown and the loans indicated were not all in place. He brought together elements of a traditional corporate ownership diagram without making clear that it was not one. The effect was at best uncertain and at worst misleading. The diagram was not effective as an account of the portfolio.

117. It is not possible to conclude from the diagram that the Moosas were the beneficial owners of the underlying properties. In some cases the instructions make clear that their investments were made by way of loans. However, because the loans were unsecured and could be transferred from one entity to another, without any security over them, it appears that Mr Mawji owed a fiduciary duty to the Moosas in respect of the sums advanced – see *Paragon Finance* above. That conclusion reconciles his statement that the Moosas were the "ultimate b/o" with the structures that he devised.

Further meetings

118. There was a meeting on 30-31 October 2007 at which Salim and Shaukat signed the bye-laws of the Liechtenstein Foundations. It appears likely that at the meeting the Moosas were shown an Excel balance sheet with certain financial details. However, the evidence did not show that there was a provision of sufficient clear information for the Moosas to understand the position of their portfolio.

119. Mr Atkinson submitted that it seemed, based on an email, that a meeting was held between the Moosas and employees of Taurin Management on 27 January 2009 which provided the Moosas a further opportunity to examine and approve or object to the investments made. I find that was not a valid account of the position.

120. In June 2012 Salim met Urs Steiger in London and signed the accounts presented to him "subject to adjustments". Mr Atkinson invited me to conclude that the Moosas never objected to the accounts and that they were well aware of the nature of their investments. I find that this meeting did not provide sufficient information for the Moosas to understand the full nature of their investments.

Sedes and MCE

121. In December 2010 Panaccount, an entity outside the MG group, acquired the founders' rights to all Taurin entities. Mr Mawji says that the Moosas decided to replace Sedes as the provider of Liechtenstein services to the Foundations and Flemingo with MCE. MCE was appointed in 2011. Mr Hagen said that the instructions to MCE came from the Moosas and that Taurin authorised Mr Mawji to liaise with MCE.

122. I find that all of these changes were put in train by Mr Mawji and that the Moosas acted on his advice. While Salim was not able to date correctly MCE's involvement in the portfolio,

that was a different matter from the structuring of the support for the investments and the selection of entities to perform that.

2016 and after

123. In August 2016 Salim told Mr Mawji that the Moosas were restructuring their assets. I deal below with the correspondence relating to that. To the extent that Mr Mawji relies on the information he then provided to the Moosas as an account, I reject that.

124. The relationship between the Moosas and Mr Mawji appears to have deteriorated further in 2019 and in particular concerned Mystic River. These proceedings were issued in June 2020.

Schedule Projects

Introduction

125. The Moosas make particular claims in relation to six different investments described as the Schedule Projects. In each case I will describe the relevant points of the investment and the claim that the Moosas make. Mr Mawji says in respect of each of them that an account has already been given.

126. In each case I proceed on the basis that Mr Mawji was the Moosas' agent from his appointment in July 2000. For each Schedule Project Mr Mawji proposed the investment and structure by which funds would be introduced. This was through complex offshore arrangements that Mr Mawji had also recommended to the Moosas.

127. As I have already said, an overall picture emerged of a relationship that was characterised by significant informality between the Moosas and Mr Mawji. At the same time, the deals were complex, involving numerous companies based in the BVI, Jersey and Liechtenstein. In some cases there are detailed financial records of the structures created, but the underlying loan agreements are not available and the instructions on which they were created were oral.

128. It follows that Mr Mawji was in a fiduciary role in relation to each of the Schedule Projects. The Moosas relied on his advice and in setting up the investments and his conduct in ensuring that they were handled appropriately. This is not a case like *Al-Dowaisan* in which an account was not ordered.

129. There are a number of key differences between the cases. In *Al-Dowaisan* there was no financial advisory relationship with personal contact; the claimant invested alongside other investors; and every single money transfer was authorised by signature. The judge concluded that the claimant in that case never subordinated his business judgment to the defendant.

Accounts

130. Mr Mawji's position is that settled accounts have been rendered for most of the Schedule Projects. I address those arguments in respect of each project below.

131. Mr Mawji further contends that even if he is in principle liable to account to the Moosas then he should not be ordered to do so for the following reasons.

132. First, there is a six-year limitation period on an account based on a contractual duty. Where a claim is made for breach of a fiduciary duty which is merely an equitable counterpart to a claim at common law, the limitation period also applies: see *Coulthard v Disco Mix Club Ltd* [2000] 1 WLR 707, at 730.

133. Second, while a claim in equity is not subject to a statutory limitation period, the Court retains a discretion as to whether to order an account, and laches is relevant to that: see *Henchley v Thompson* [2017] EWHC 225 (Ch).

134. The presence of certain factors is relevant to the question whether an that account should be ordered. Those include (i) whether a claim following the account may itself be time barred; (ii) where the account is disproportionate or unlikely to be fruitful; (iii) whether the passing of time makes it difficult to account; (iv) whether the correct accounting party is before the court; (v) where information has been provided and further information is unlikely to be useful; and (vi) where the motivation for seeking the account is improper: see *Al-Dowaisan* and *Snell*, 20-015.

135. I have found that Mr Mawji owed a fiduciary duty to the Moosas and that the common law limitation period applying to contracts does not apply. This is not a claim like that in *Coulthard*, which was a claim for payment under certain commercial licence agreements. This claim stems instead from Mr Mawji's personal appointment and his oversight of a series of transactions as part of his role as the Moosas' investment adviser.

136. Mr Mawji says that the claim for an account is parasitic upon the claim for breach of a contractual agency agreement. However, in my view the claim is not limited to a breach of a contract but is for breach of his fiduciary obligations.

137. While both Mr Mawji and the Moosas used various entities to give form to the projects, this was essentially a personal relationship. While a claim might have been made by and against other parties, it is possible to determine the claim as it currently stands and should be possible to take an account without them.

138. Mr Atkinson submitted that the proper parties were not before he court. MGL has been dissolved and MGAG is in liquidation it. None of Taurin, Integry, Flemingo, Fenchurch or Mavedene – parties on both sides of the dispute - was before the Court. While this absence may affect the documents that it is possible to collect for an account, the essence of the relationship in this dispute was a personal agreement between the Moosas and Mr Mawji. It is thus not a case where the proper parties are not before the court, and an account can go forward on the basis of those parties that are before the Court.

139. While a significant time has passed since the earlier projects, Mr Mawji was himself not forthcoming about the matters in respect of which an account is owed. Mr Mawji recognised in various internal communications that he owed a fiduciary duty to the Moosas, and his conduct was not in keeping with that.

140. For a considerable period of time the Moosas reposed substantial trust in Mr Mawji. They reviewed information provided to them on the basis that he was doing his duty. His evidence, in contrast, indicated his lack of care for them. Mr Mawji was not straightforward about the

projects, and the opportunities that the Moosas had to review information and agree the structures he proposed are not a bar to an account. There has been a delay in the Moosas seeking an account, but in the circumstances the passing of time does not in principle prevent them from doing so. I will consider in the case of each Schedule Project whether an account should be ordered.

141. The Moosas' motivation in seeking an account does not in the circumstances appear to be improper.

Forest Hill

142. Forest Hill was a site in Lewisham, London owned by the Moosas' company Violet Investments. Sainsbury's were the tenant with a 25-year lease granted in March 1996. The property was one of the few "Horses" which had been identified in the "horse or donkey" document. Sainsbury's were keen to develop the site, and Mr Mawji entered into preliminary negotiations with Sainsbury's from 1999.

143. Mr Mawji proposed a plan under which Violet would sell Forest Hill to Forest Hill Property Limited ("FHPL"). FHPL was 100% owned by Forest Hill Property Holdings Limited, a wholly owned subsidiary of MGI. Mr Mawji was the beneficial owner of FHPL.

144. In July 2003 DTZ valued the site at £3.75m as at August 2002 on the basis that the site was not developed and had an estimated rental value of £280,000 per annum. By an exchange of faxes with Mr Mawji in early July 2003, Shaukat agreed to use this figure for the purposes of calculating the profit/loss on the transaction. Mr Mawji included in his fax to Shaukat the cover sheet of his exchange with DTZ.

145. The fax included an unsigned Client Instruction Summary which set out a 50/50 profit split and fee agreement:

> "Montague Goldsmith ("MG") to act as authorised agents and to coordinate negotiations with Sainsbury's and their agents to try and develop the existing store with surrounding land into a much larger and modern store.
> MG entitled to draw reasonable monies during the project on account of its eventual share of fees.
> Hillworth Associates Limited ("HA") and/or Rattan Investments Limited ("RI") will be entitled to 50% of sale proceeds of 42-48 London Road in excess of £3.75m (the agreed valuation at the time MG/HA/RI became involved in the transaction.
> Any monies paid to Montague Goldsmith other than rent collection fees will be deducted from amounts due to Hillworth Associates Limited and/or Rattan Investments Limited."

146. In January 2005 Violet sold the site to FHPL for £8.1m. An account from Taurin dated 11 January 2005 shows the sale price together with a deduction "Re imburse external Fees" (sic) of £350,000. The resulting amount of £7.75m was divided between Flemingo and Montague Goldsmith, with the parties sharing the £4m uplift on the agreed site value of £3.75m. Salim signed a completion statement showing this in Zurich in 2005.

147. It does not appear that the further development potential of the site was discussed with the Moosas. FHPL agreed to enter into a development agreement with Sainsbury's. FHPL paid Sainsbury's a lump sum to carry out the development work and agreed with Tugela Properties

Limited, an MG Group company, to grant a lease of 11 apartments to be constructed as part of the project.

148. The Moosas provided loans through Fenchurch that facilitated the sale to FHPL and a deposit related to the purchase of the flats at the site. Mr Mawji's evidence was that the purchase and development costs for FHPL were £12.77m which included loans from unconnected MG clients and a £10m bank loan made by HSBC Private Bank (UK) Ltd.

149. FHPL sold the site in December 2006. The consideration was £21.595m.

150. The Moosas say that Mr Mawji concealed from them that he was self-dealing in breach of his fiduciary duty. They were not aware that he would purchase the site at the pre-development cost through FHPL and that he beneficially owned FHPL or that he would then develop the site and sell it at a profit. There was no informed consent on the basis of a full disclosure. They also say that there was no proper accounting for the £350,000 expenses, and that according to the client instruction summary fees were to be deducted from MG's profit share.

151. In cross-examination Salim accepted that he was aware that the £350,000 was being used for a deposit on the flats. It was not clear, however, that the Moosas were aware of the development scheme as a whole.

152. Mr Mawji denied making a secret profit. He refused to accept that the Moosas owned a development opportunity in the site and insisted that they only owned the freehold property. However, his first witness statement disclosed that there were negotiations between Violet and MGL in around 2003 for a "possible joint venture opportunity". He would not accept that this was a "commercial opportunity". He accepted that he was the beneficial owner of FHPL and that FHPL made "a good handsome profit" on the transaction as a whole. He said that he could not recall to whom the £350,000 fee was paid. His evidence on this was unsatisfactory.

153. Mr Mawji also relied on various documents in the 2005 Zurich meeting file as indicating the Moosas' knowledge of the arrangements. He also says that full and proper accounts were provided for the sale by Violet to FHPL in January 2005, the investment in Tugela and the two residential units.

154. As to the 2005 Zurich meeting, Tab 8 of the index is marked "Forest Hill", although it is not clear that the file was in fact tabbed. The "M Portfolio Group" diagram which I have described shows "FLATS FOREST HILL" as one "Property/Business" with Tugela as the entity below Parry. The investment recorded is a deposit of £350,000. There is later in the file a completion statement for "Exchange of Agreement for Lease of 11 Flats, Forest Hill, London" showing £350,000 received from Integy and paid to FHPL.

155. There follow the first four pages of an apparently much larger draft agreement between FHPL and Tugela Properties Limited. These contain part of the first clause "Definitions and Interpretation". This clause is not complete and does not include a definition of the Site. There is a recital of a development agreement between FHPL and Sainsbury's under which Sainsbury's would develop the Site.

156. Further details of payments were provided to the Moosas in Flemingo's balance sheet in 2007.

157. These documents did not, in my view, provide to the Moosas a clear picture of the development at Forest Hill. I find that Mr Mawji intended FHPL to take part in the development and did not disclose the full nature of the transaction to the Moosas to whom he owed a fiduciary duty.

158. During cross-examination Mr Mawji sought to limit the Moosas' involvement in the project to the sale by Violet to FHPL. He was unwilling to accept that the Moosas had, before the sale, any commercial opportunity which was greater than the value of the property itself. He accepted that there had been no account of the onward sale from FHPL in December 2006.

159. Mr Brown submits that Mr Mawji wrongly (i) took a £2M profit share from the Moosas; (ii) deducted the fee of £350,000 from the monies paid to Flemingo; and (iii) made a secret profit at the Moosas' expense of up to around £10m. In my view these matters should be addressed in an account. It appears that the DTZ valuation of the property was a low valuation for a commercial opportunity rather than a simple disposal. That resulted in an early profit of £2M which was artificially high. It is not possible at this stage to make findings about the size of the commercial opportunity.

160. Mr Atkinson submitted that, alongside the general reasons why no account should be ordered that I have addressed above, the events surrounding Forest Hill took place a long time ago and that the relevant corporate entities may no longer exist. However, he accepted that no account was rendered in relation to the sale in December 2006. While that was some time ago, the matter is significant and Mr Mawji may well hold documents relevant to an account. The Moosas have not had a satisfactory account of this project and I will order one.

Bruntcliffe

161. Bruntcliffe was a property on a trading estate in Morley, Leeds which the Moosas owned through Conifer Investments Limited. The "horse or donkey" document described it as a Horse.

162. Despite Mr Mawji's evidence that clients would, under his plans, retain properties that they owned, he proposed a transaction. It was set out in an unsigned client instruction summary, as follows:

> **"Fenchurch Enterprises Inc (Fenchurch)**
> Re - Sale of shares in Conifer Investments Limited ("Conifer")
>
> New company ("Newco") which will be 100% owned by Montague Goldsmith Investco, acquires shares in Conifer which owns Units 1-3, Bruntcliffe Trading Estate, Morley, Leeds, UK.
>
> Shares to be purchased at par for US$5,000.
>
> Fenchurch cedes it's loan account in Conifer in the sum of £2 525m to New Liechtenstein Holding company ("Holdco") which is owned by 3 M Foundations to be created.

The Leeds property to be transferred from Conifer to Newco under Group relief Holdco will enter into a structured loan agreement with Newco for £2.525m based on a 6% p.a. priority return and a percentage of the profits as follows:

-Investment 80% of profits earned by Newco in excess of £2.525m should the Leeds property be sold as an investment property with existing tenant.

— Redevelopment 50% of profits earned by newco in excess of £2.525m should the Leeds property be sold with enhance planning or redevelopment opportunity,

Montague Goldsmith AG ("MGAG") to act as authroised (sic) agents and co-ordinate the transactions.

MGAG entitled to draw reasonable monies during the project on account of it's (sic) eventual share of fees.

Any fees paid to MGAG will be deducted from profits retained by Newco under the redevelopment scenario. MGAG fees to be paid by Holdco under the investment scenario.

Holdco will be responsible for annual company administration cost of Newco."

163. On 20 January 2004 DTZ prepared a valuation of Bruntcliffe as at 28 February 2003 valuing the premises at £2.525m. In July 2005 Bruntcliffe was sold to Farmbrook Capital SA, an MG company for that sum. A completion statement was included in the 2005 Zurich meeting file.

164. MGAG was appointed Farmbrook's rent collection agent under a memorandum made in July 2005 and signed by Taurin.

165. The property appears on the M Portfolio Group diagram in the 2005 Zurich file. That indicates there would be a Structured Loan Agreement between Flemingo and Parry and a further loan agreement between Parry and Farmbrook. No agreements were produced at trial and it does not appear that any was entered into.

166. In July 2008 Bruntcliffe was transferred from Farmbrook to Beachfront Investments Limited, another company within the MG Group, for £3m.

167. In June 2012 the tenant, Securicor Omega, vacated the property. It was by then in a dilapidated state. The tenant agreed to pay £275,000 for dilapidations and the property was refurbished. Following that, three units were sold in December 2014 and the remaining 2 units were sold to the same buyer in June 2015.

168. In March 2015 Mr Mawji emailed to the Moosas a handwritten schedule setting out the estimated profits on the transaction. That contains a base cost for the property of £1,714,820, and sets out deductions for shortfalls in refurbishment costs that were owed by Flemingo.

169. Mr Mawji followed up with an email to Shaukat seeking to agree the schedule. In May 2015 Shaukat responded indicating that the valuation seemed low asking whether the dilapidation settlement had been taken into account. In June 2015 Mr Mawji obtained a valuation from chartered surveyors Carter Towler which valued the property as of June 2012 at around £1.7m. Mr Mawji says that this date was used as that was when the property was vacated.

170. Mr Mawji says that Bruntcliffe was sold following redevelopment so that the MG Group was entitled to 50% of the net profit (less fees). If it had been sold as a tenanted property then the MG Group would have been entitled only to 20%.

171. In February 2017, Salim requested by email details regarding the sale price of Bruntcliffe. Mr Mawji responded asking for the details required as Salim "had been provided with the full financial recon and breakdown".

172. In June 2017 Taurin sought to dissolve Beachfront and found that there was a surplus of £130,000 in Beachfront's bank account. That had not been accounted for.

173. There is no explanation where the 6% priority return set out in the client instruction summary was credited to the Moosas.

174. The Moosas accepted at trial that Shaukat had signed the client instruction summary and that the 2007 accounts made reference to a loan agreement.

175. Mr Mawji's evidence on Bruntcliffe was unsatisfactory. He said that he did not understand the difference between legal and beneficial ownership in general. This was not credible for a man of his experience and training. He could not say whether there was a loan in respect of the property. He accepted that the transfer to Beachfront was not part of the client instruction summary.

176. Further, Mr Mawji's evidence on the fees taken from Bruntcliffe changed over time. In his first witness statement Mr Mawji said that £425,000 was taken. In his second statement Mr Mawji said that £700,000 was taken. He accepted in cross-examination that the higher figure was correct. That meant that Mr Mawji had charged an additional fee on top of the profit share, contrary to the terms of the client instruction summary. Mr Mawji also accepted that the void costs in the schedule were provisional.

177. Mr Mawji accepted at trial that he should account to the Moosas for £130,000.

178. It does not appear that the Moosas are pursuing a claim that the disposal from Farmbrook to Beachfront was a transfer that entitled the Moosas to 80% of the profit. They also do not seek that percentage on the sales of the units.

179. Mr Atkinson submitted that an account had been given; the events concerned took place a long time ago and that an account had been provided in 2015 and queried in 2017. I disagree. In my view there should be an account covering the agreed priority return, the fees charged to the Moosas in respect of Bruntcliffe and the £130,000 found to be in Beachfront's account on its dissolution.

Roebuck House and Clarence Mill

Introduction

180. These two properties were taken together. The projects took place around the same time and Mr Mawji's case is that they were a single joint venture with shared profits and losses. Roebuck House was a residential property in Southampton. Clarence Mill was an industrial site in Hull.

181. Neither side produced any client instruction summary or loan document in respect of Roebuck House.

Roebuck House

182. In May 2006 Adriana Lecoultre of MG and Taurin emailed her colleague Petra Mayerhofer (copying Mr Mawji) to ask for a transfer of £1.25m from Flemingo to Roebuck Holdings Limited, a Jersey company. The funds were to be sent on behalf of Gligary Properties Inc, a BVI company to Roebuck "as a loan for working capital".

183. The transfer was recorded in Flemingo's balance sheet as a loan agreement between Flemingo and Radcliff (another MG company) for working capital on behalf of Gligary. There was a loan agreement between Gligary and Roebuck dated 20 June 2007 which provided for a loan of £1.29m (£1.25m including a further £40,000) at 4.5% annual interest.

184. On 1 August 2006 Roebuck entered into an agreement with Zazen Developments Limited, a UK company for the development and purchase of Roebuck House in Southampton. The purchase price was £8.25m, payable on practical completion of the development. A deposit of 10% was payable immediately.

185. The purchase fell through during the financial crisis of 2008. Mr Mawji's evidence was that it was not possible to raise the balance required for completion. Zazen rescinded the agreement and the deposit was lost. Roebuck was dissolved in December 2009.

186. It does not appear that an account was delivered for Roebuck House.

Clarence Mill

187. The parties disputed whether the investment in Clarence Mill was linked to Roebuck House. The Moosas say that this was a personal investment by Mr Mawji. He says that the two were linked.

188. Mr Mawji says that he discussed the project with Shaukat in around July 2007. Shaukat explained that Flemingo was not able to provide funding. The finance for the investment was provided by Clarence (Hull) Holdings Limited ("Clarence"). Taurin held the shares in Clarence as nominee for Rattan Holdings Anstalt. In November 2007 Rattan loaned £1m to Clarence, which in turn loaned the sum to Clarence Mill Investment Ltd ("CMIL"), a Jersey company. Mr Mawji says that the loans were unsecured.

189. In November 2007 CMIL made an agreement with Manor Mill Developments Limited. Manor Mill had an agreement made in March 2007 to purchase Clarence Flour Mills in Hull, subject to obtaining planning permission. CMIL and Manor Mill agreed that if satisfactory permission was obtained then the parties would set up an LLP to purchase the site.

190. Planning permission was not obtained at first. Manor Mill filed a second application and appealed the refusal of the first, and in December 2008 withdrew the appeal. CMIL explored bringing legal proceedings but was advised this would be difficult. CMIL's balance sheet of March 2015 shows a loss of just over £365,000.

191. The Moosas allege that Mr Mawji treated them as participating in the two transactions even though they did not agree to participate in Clarence Mill. Mr Mawji also appeared to accept

that MG had decided to carry on with Clarence Mill. He said that as the Moosas "weren't providing the liquidity, we will provide it and carry on with the transaction".

192. In April 2015 Mr Mawji emailed Shaukat a handwritten reconciliation which combined the losses for both Roebuck House and Clarence Mill. In May 2015 Shaukat responded asking "Also Karimbhai how come we have lost the total investment on both Hull and Southampton?" Mr Mawji responded shortly after with an explanation for each location.

Discussion

193. Shaukat's May 2015 email response shows that the Moosas were operating on the basis that they had some interest in Clarence Mill, and they were knowingly participating in the investment. If they had not been doing so, Shaukat would have raised some question about it. His question about the loss, rather than the basis for Mr Mawji's April 2015 email shows that. This is a case where the available documentation is most likely to show the correct position.

194. Mr Mawji accepts that Flemingo invested more than the MG group across the two projects and that MGI owes £77,187 to Flemingo. That does not require a separate account.

Pescod Square

195. Pescod Square was a property in Boston, Lancashire. The proposal was to acquire land and bring in a developer. In March 2002 Mr Mawji sent Shaukut a proposal, as follows:

> "Violet Investments Limited ("Violet) to pledge its Forest Hill property as security to facilitate a bank loan of £3m to fund the exchange of Boston.
>
> Interest on loan to be serviced by developer. Violet to commit a further sum up to £300,000 to cover acquisition and on going costs of the transaction. Montague Goldsmith ("MG") to act as authroised agents and co-ordinate the transaction.
>
> MG to be responsible for dealing with developer, bankers, lawyers, letting agents and all other relevant matters. MG Entitled to draw reasonable monies during the project on account of it's eventual share of fees.
>
> Violet entitled to 2% per annum above UK base rate on cash monies introduced. Thereafter Hillworth Associates Limited (HA") and/or Rattan Investments Limited ("RI") will be entitled to 50% of the profits. Any monies paid to MG will be deducted from HA and or RI's share of profits.
>
> Violet will not be entitled to a priority return on the on the £3m loan as the interest will be serviced by the developer."

196. The document is not headed and not signed. Shaukat accepted at trial that he probably signed it.

197. The Bank of Scotland provided finance for the project by a loan to Violet, and the Forest Hill property was used as security for the loan. The development took place and the site was sold to a third party in December 2004. No loan document was disclosed.

198. Taurin prepared a statement of account that showed the total profits for distribution as £7,280,900.64. The profits were split and Flemingo was paid interest on its share. Salim signed the statement at the meeting in Zurich subject to an adjustment of £4,934.14 in relation to interest that was noted on the account. That does not appear to be interest on the loan.

199. Mr Mawji says that an account has thus been given for this property. However, this account does not appear to address the question of the agreed interest on the loan, and the account from Taurin does not disclose that interest was paid at the agreed rate.

200. Mr Mawji's evidence on this was evasive and unsatisfactory. He suggested that unlike the other transactions where a loan was taken by a new company, Violet was an existing company within the group and was not entitled to interest. As he put it "…you cannot provide a loan to yourself" because the "transaction that has been carried out by Violet is within its own books." That does not explain why interest should not be paid.

201. Mr Atkinson submits that this is an old project for which the Moosas have had and signed statements of account, and that no material error has been identified in them. However, as their fiduciary, Mr Mawji was under a duty to ensure that the loan interest was addressed. Despite its age, I will order that Mr Mawji give an account of the interest on the transaction, as the position overall should be made clear. No satisfactory account has yet been given and the Moosas are entitled to understand the position.

Würzburg

202. This was an investment in a hotel and office development in Germany. There is no written proposal for this transaction. Starting in October 2006, Flemingo made loans to Radcliff to fund the development, following discussions between Shaukat and Mr Mawji. The funds were loaned to Würzburg Estates SA ("WESA") through two other companies, Tudor D10 Holding Anstalt (a Liechtenstein entity) and Würzburg Holdings Limited (a BVI entity).

203. A written loan agreement dated 31 December 2012 and governed by Liechtenstein law confirmed that as of that date Flemingo had loaned to Radcliff €8,000,000 and £500,000. Interest was payable at 2% p.a. over twelve months EUR LIBOR. The agreement was expressed to replace previous loan agreements between the parties whether oral or written. The relevant repayment terms were that repayment should be made 60 days after the full disposal of the property.

204. No other written loans between Flemingo and Radcliff were produced at trial.

205. During the course of 2015 and 2016, negotiations progressed for the sale of the hotel and the office building. An agreement to sell the hotel for €20.54m was notarised on 8 September 2015. That transaction completed in November 2016.

206. A sale of the office building was agreed in June 2016. The purchase price was €8.25m That sale completed on 30 December 2016.

207. There are a number of disagreements about the finances of this project.

Profit share

208. The first dispute concerns the treatment of profit shares on the deal. Mr Mawji's position at trial was that it was agreed that all profits from the sale of the project would be split equally between MGAG and Flemingo, because this was the same way that other projects had been managed.

209. Mr Mawji said in his first witness statement that after he purchased the Würzburg loan (discussed below) the Moosas had no further involvement in the project and so no entitlement to a profit share. In his second statement he said that there was an equal profit share in the usual way. In cross-examination Mr Mawji said that there was a profit share agreement and he accepted that he had not accounted to the Moosas for the profit on the project.

210. The total sale price appears to have been around €28m and there may be a significant profit. I find that this deal did include a profit share that was to apply after repayment of the loans with interest. A sale of the loan would not, in principle, affect the profit-sharing arrangement.

Loan Agreement

211. The second issue concerns Mr Mawji's purchase of the loan. On 18 August 2016 Salim emailed Mr Mawji under the heading "URGENT". He said that the Moosas were restructuring their assets and that he needed information about the status of the Würzburg investment. The request is extensive:

> "Hope you and your family are all well. Thank you for your email to Shaukat regarding Würzburg Estates and hope that you could finalise same soon. As you are aware, we last met around mid-June 2012 in London after visiting Germany the day before. Since then I only received one balance sheet from you for Würzburg dated 31/03/2014. As you are aware we 3 brothers are restructuring our assets and I have been under extreme pressure to account for our investments. I require some source documents from you to hand to Shaukat who will meet you in a few days. Kindly please do not feel that this information is being requested for any other reason, but only for my records for our relationship to be open and fair I require the following information & documentation

1) Audited annual financial statements prior to 2014 and to date.
2) Copies of bank statements for mortgage bond from inception to date.
3) Copy of tenant all Leases
4) Copies of the signed purchase agreement by our company.
5) Copy of signed sale agreement for the properties and documents proving the delay in the transfer.
6) Copies of the cash flow statement from inception.
7) Full details and proof of all shareholder loans. Also note that my records for our loan does not refer correctly in the 2014 balance sheet. As per my records it should read as 9,500,000 Euros and 600,056 Pounds Sterling.
8) Bank statements for the company since inception.

Please also provide me details for the last deposit of approx. 2,500,000 British Pounds made to our account with U B S. Kindly also confirm we are owed by Southampton & Hull 77,187.00 British Pounds and for South African debt of 53,440.00 British Pounds

Kindly let me also have a copy of your loan account with Southampton and Hull.

As far as the Cherry Tree is concerned, you were to check and revert.

My appologies for the inconvenience and hope this does not affect our relationship in any way and it needs to remain transparent and fair."

212. On 29 August 2016 Mr Mawji replied as follows:

> "Salaams Shaukatbhai and Salimbhai
> Thanks for the email.
> I can assure you that I have not received it previously.
> There is a lot of info that you want delivered and it will take some time.
> I appreciate you request and will comply to the best of my ability.
> I think your request of things like bank statements, leases, etc especially when there are audited accounts send a very poor message and we will leave it that.
> I think we should try and get all matters between us 'squared' and we should find settlement solutions to this transaction, January, SA land, monies owed to you, and any other historic issues that you want to discuss.
> My conscience is clear and I will deliver what I can.
> Unfortunately, your content has not helped but we will make sure that we deal with this respectfully.
> Thanks
> Regards
> Karim"

213. On 4 and 15 November 2016 Shaukat chased Mr Mawji for a response. Mr Mawji responded on 15 November declining to provide the information. The correspondence continued, with Shaukat becoming frustrated. On 29 November 2016 Mr Mawji emailed Shaukat:

> "Salaams Shaukatbhai and Salimbhai
> Hope all is well.
> Shaukatbhai and I have spoken last week and as I have informed him, I am going to get this transaction closed off over the next three weeks and also get the FSs for 2015 finalised.
> The priority is to get the deal closed and the debt paid off.
> This will bring this chapter to an end.

> I would also like to suggest that we agree a fee value for the work that I have done on the January settlement and also a value the land owned by Mystic to arrive at a profit share for that land and the Springfield Park industrial units sold off.
> Against that we can set off the payments that you have made on our behalf in SA. As regards any outstanding amounts for other matters is concerned eg. Cherry Tree, etc is concerned, I have to go into the archives in the store and there are approx. 200 boxed there for me to go through to locate the files. As far as I remember, we had 'squared' all our books and the only amounts I owed you were the SA payments but there is no issue at my end as I will take your word for it if I cannot locate the papers.
> The route I have suggested will enable for the transfer of Mystic over to you locally and bring everything to a close.
> I request that you consider my suggestion and look forward to reaching an agreement.
> Thanks
> Regards
> Karim"

214. I note here that this correspondence is direct and personal, and the tone is consistent with a personal relationship between the writers.

215. At trial Mr Mawji said that the reason he had not provided the information was that it was in German, which he does not speak. This was not credible.

216. On 30 January 2017 Shaukat chased again by email asking for confirmation of the amount Mr Mawji was holding against the sale. On 1 February 2017 Mr Mawji responded that he was waiting for some information and that the matter should be resolved by "email and telecoms" rather than a meeting. He noted that the surplus on the project should be around €11m.

217. The sale proceeds were in fact received on 19 January 2017. In cross-examination Mr Mawji at first denied this, but he was forced to accept that was the case.

218. On 7 February 2017 there was an exchange of emails in which Salim asked for details of the "German Investments" – "Our Investment – 9,500,000 + £600,056". Mr Mawji responded asking for details of all the amounts, purportedly so that he could check them.

219. Mr Mawji accepted that he did not tell the Moosas that the sale proceeds had been received. He advised Salim that the repayment amounts were as Salim had set them out. He made no reference to the interest owing.

220. In cross-examination he took the position that there was no interest on the loan: "…this project could not carry the interest cost. It was unviable from day one if we had to carry interest".

221. The Moosas submit, and it does not appear that Mr Mawji denies, that the interest at that point was over €6.5m.

222. The funds were received by MGAG on 8 March 2017. Mr Mawji said that this was paid into a client account. However, in cross-examination he said that MG did not run client accounts. This was another example of the unsatisfactory nature of his evidence.

223. There were further emails and a meeting in London. On 6 March 2017 Salim emailed Mr Mawji. As well as raising a number of questions he said that he had an urgent need of funds

to cover a separate purchase of equities. He asked Mr Mawji to transfer €7m. Mr Mawji's case is that the Moosas were in urgent need of funds and were thus prepared to accept the reduced amount of €6.5m instead of the full value of the loan. The Moosas denied that they were distressed and said that they were trying to get some response from Mr Mawji. However, on 15 March 2017 Salim again said in an email that he was "under extreme pressure to settle" another debt.

224. Mr Mawji said that between 15 and 29 March 2017 Salim told him that he wished to sell him the loan. However, an email exchange between Petra Mayerhofer and Mr Mawji dated 20 February 2017 shows that they were discussing the sale of the loan to Mr Mawji some weeks earlier. That also shows that Mr Mawji did not intend to pay interest to the Moosas and that if any interest was due then in his view it belonged to the buyer.

225. On 29 March 2017 Mr Mawji faxed a transfer instruction to Salim, who signed and returned it to Michael Hagen at Taurin. Mr Hagen executed it. The instruction was as follows:

> "Dear Sirs
> We hereby instruct you to transfer the total loan value du from Radcliff Capital Corporation to Flemingo Holdings Anstalt to Mr Karim Issa Mawji at the consideration of EUR 6.5m (Euros six millions five hundred thousand).
> Place/date:
> Signed by the Principals"

226. It can be seen that the instruction transfers the "total loan value", put at €6.5m. Mr Mawji says that this was a transfer of the loan itself and not a repayment of funds. Salim says that the Moosas were seeking a repayment of funds. The loan with interest would by then have been worth around €15m. It appears that the Moosas were not aware of that.

227. The sale agreement was signed by Flemingo and Taurin on 4 April 2017. It provides that the loan carried interest. It is governed by Liechtenstein law.

228. Mr Hagen, in his role for Flemingo, was clearly concerned about the propriety of the proposed transaction. On 8 March 2017 Mr Mawji and Flemingo signed a letter agreement by which Mr Mawji undertook to inform Flemingo should Radcliff receive interest or a profit share and to pay that to Flemingo. The document is marked in manuscript as "Cancelled". On 8 March 2017 also Mr Hagen obtained an indemnity from Mr Mawji that Mr Mawji would hold harmless Mr Hagen and Mr Willingsdorfer, the directors of Flemingo, from any damage or disadvantage resulting from the sale of the loan. At trial Mr Hagen was obviously uncomfortable about this series of events, and he accepted that he was concerned about the propriety of the transaction.

229. Mr Mawji was at trial unwilling to answer questions about his obligations as adviser to the Moosas in respect of the loan purchase. He refused to accept that this was a transaction that was not in their best interests or that he was the only person benefitting from the sale. He did accept that Mr Hagen was concerned about it.

230. I have found that Mr Mawji owed the Moosas a fiduciary duty from the time of his appointment in 2000. That applied to this transaction as much as to the others.

231. The Moosas argue that this was a project that Mr Mawji ran on his own. His evidence was that he had discussed the project with Shaukat personally, while in describing the other

projects he said that the investment was "through" an MG entity. The Moosas say that distinction was significant and that this signifies a personal role for Mr Mawji.

232. I do not need to decide this point, because Mr Mawji was in my view in a fiduciary position in this transaction. The informality between the parties means that they often communicated as individuals while using corporate entities as part of their structuring.

233. Würzburg was also relevant to the dispute between Mr Mawji and Mr Narotam. Mr Narotam was an early shareholder of WESA. On leaving MG he refused to return the shares. That dispute is relevant to the Moosas because on 4 October 2006 MGAG wrote to Mr Narotam demanding that he give up his interest in WESA. The letter, drafted by Mr Mawji, alleged that Mr Mawji, Mr D'Costa Correia and Mr Narotam had been issued shares in WESA upon its formation in each case "as a director and employee of MGAG… purely as nominees in a fiduciary capacity for the [Moosas]".

234. I find that Mr Mawji recognised in drafting the letter to Mr Narotam that he owed fiduciary duties to the Moosas in respect of this transaction, and he was quick to assert them in the context of his dispute with Mr Narotam. This is a confirmation of Mr Mawji's position as a fiduciary.

235. The parties dispute the effect under Liechtenstein law of the loan sale agreement; I do not have to decide here what the position is. Salim's evidence was that he did not intend to assign the loan but only to take an advance on the repayment due to the Moosas.

236. I find that the correspondence shows that the Moosas were in need of finance in March 2017. Mr Mawji exploited that. He knew that the Würzburg loan was interest bearing but, in breach of his fiduciary obligations to the Moosas he made no reference to the interest. His position at trial that the project could not bear interest so that there was none was not credible and untruthful. His evasions on questions about his conduct in respect of the loan show that he was aware of his duties to the Moosas.

237. Further, Mr Mawji knew that Mr Hagen was troubled by his conduct. He breached his duty to the Moosas and the project will be subject to an account.

Litigation fee

238. The third issue concerns a "Litigation case management fee" of CHF3.5m shown in the accounts of MGAG of 2018 as incurred in the previous year. The Moosas submit that this appears to have been taken from the proceeds of the Würzburg loan. Mr Mawji did not accept that. In view of the unsatisfactory nature of his evidence on this project, I will order that the account into Würzburg address this sum as well.

Account

239. Mr Atkinson accepted that no proper account had been rendered for Würzburg. I will order one.

Mystic River

The investment

240. Mystic River Investments 45 (Pty) Ltd is a South African company incorporated in 2003. Mystic River is the name given to an investment in land close to a town called Ballito, north of Durban, South Africa. The Moosas say that they identified the site.

241. The Moosas claim that they are the ultimate beneficial owners of the land and that they provided all the funds for its purchase. Mr Mawji argues that this was an investment on a similar model to those which I have already considered, comprising loans and a profit-sharing arrangement. The funding for the purchase was made by way of loans made by Mavedene and novated to Flemingo. The Moosas accordingly have no equity interest in the land.

242. The position is slightly complicated because there are currently proceedings in South Africa in which Mystic River Investments and Mr Mawji as claimants seek an account against the Moosas, Mr Gora Abdulla (a co-investor in the project) and Mr Zayeed Paruk (an attorney). Those proceedings are stayed pending the determination of this claim.

243. There is also a Consent Order in these proceedings made by Master Shuman on 20 July 2020 by which Mr Mawji has undertaken not to deal with the shares of Mystic River Investments or Abertay Investments Ltd (a company formed on 24 March 2004) or deal with the underlying property. The Moosas invite me to make a final order in terms similar to the undertaking.

244. In 2004 Mr Mawji met Alex Moodie of the accounting firm David, Strachen & Tayler ("DST"). He explained that in relation to loans being contemplated to fund the purchase declarations would have to be made to the Reserve Bank of South Africa that there was no direct or indirect South African interest in the foreign entity lending the funds.

245. On 17 May 2004 the shares in Mystic River Investments were transferred to Abertay. On 18 May 2004 the directors of Abertay, Messrs Mawji, Narotam and Mahadeva, resolved to purchase the land at Ballito for ZAR22m.

246. On 19 May 2004 Abertay lent £2.5m to Mystic River Investments.

247. On 20 May 2004 DST wrote to the Standard Bank of South Africa requesting that it obtain approval from the Reserve Bank of South Africa for Mystic River Investments to borrow ZAR 22m from Abertay, a foreign source. DST confirmed that the entire issued share capital in Mystic River Investments was held by Abertay. The letter confirmed that the balance sheet would comprise ZAR8m in share capital and a ZAR 22m unsecured loan.

248. On 26 May 2004 the Standard Bank confirmed that the Reserve Bank was agreeable to authorising the loan provided that there was "no direct or indirect South African interest in the foreign entity lending the funds" . On 7 July 2004 DST responded that the principals had advised that there was "no direct or indirect South African interest in [Abertay]".

249. Standard Bank later reported the loan to the Reserve Bank as ZAR21,859,000 as a loan draw down and ZAR8m as an investment of share capital.

250. In October 2004 the Ballito land was transferred to Mystic River Investments.

251. There is no express declaration of trust in respect of the land or the shares in the companies. The structure chart which was produced for the 2005 Zurich meeting, to which I have already referred, shows Mystic River Investments sitting below Abertay, which in turn sat below

Parry. The property was described as "Ballito + Ind. Property" and the investment was "GBP 2.5M".

252. The draft accounts of Mystic River Investments up to 28 February 2005 show that the loan to Abertay was unsecured, bore rates of interest linked to prime and had no date for repayment.

253. It is common ground that there was a meeting at DST some six months after the purchase. Mr Mawji denies that at that meeting he agreed a 90:10 profit share with the Moosas (with the Moosas taking 90). However, in an email from Shaukat to Mr Mawji dated 7 February 2017 Shaukat referred to Mr Mawji having a 10% share of the profit on a sale of land in South Africa. Mr Mawji did not comment on or disagree with that figure.

254. On 10 March 2005 Seabreaze Property Investments Limited was incorporated in the BVI. Taurin was the shareholder and the ultimate beneficial owner was The Pranmo Foundation. This is a Liechtenstein trust set up for the benefit of Mr Mawji and his family.

255. On 8 November 2017 Mr Mawji emailed Mr Ahmed Paruk at the successor firm to DST asking him to transfer the shares in Mystic to Radcliff in order to "streamline the various holdings and to consolidate them to avoid wasted costs." The email was forwarded to Salim, who took no action.

256. On 17 April 2019 Mr Mawji emailed Mr Willingsdorfer at Panaccount, to suggest transferring Abertay to Radcliff.

257. In late October 2019 Florian Heinzel of MCE, wrote to Salim asking for his confirmation to liquidate Seabreaze and Abertay. Salim was concerned given the ownership of Mystic River. It appears that this was Mr Heinzel's mistake.

258. In the related South African proceedings the Supreme Court of South Africa gave a judgment on 19 April 2023 in *Mystic River Investment 45 (Pty) v Zayeed Paruk* [2023] ZASCA 54 (Case 432/2022) on an issue concerning security for costs. The Supreme Court noted in this context that while the Moosas claim to be the ultimate shareholders or beneficial owners of Mystic River, Mr Mawji had not disputed that under oath.

Discussion

259. I have already found that Mr Mawji was the Moosas' agent in respect of their property investments. The question here is whether the Moosas are the beneficial owners of the Ballito land. I am mindful of the position on evidence discussed in *Gestmin* and *Simetra*. There are few documents that have a direct bearing on this transaction.

260. I take it as neutral that there was no client instruction summary for this transaction. Mr Mawji did use one for Bruntcliffe in 2005, which was reasonably close in time, but that is not decisive.

261. Certain matters point away from the Moosas having beneficial ownership. The flow of funds is similar to those made in relation to the Schedule Projects. The diagram presented at the 2005 Zurich meeting showed the investment in a similar context to the others. However, as I have found, the diagram was not reliable.

262. I have concluded that the Moosas were intended to be and are the beneficial owners of the Ballito land. That is for the following reasons.

263. First, the investment was identified by the Moosas; unlike the other projects which he identified, the Moosas brought Mr Mawji into this one. Unlike the other investments which I have considered, this was also on the Moosas' home territory in South Africa. At the time the project started, the rest of the properties were in the UK. (The Würzburg project was in Germany, but started years later.)

264. Second, the structure of the investment was devised and intended to disguise the Moosas' South African involvement in a South African investment. DST's advice on the loans was taken before the structure was put in place. When the investment was realised, the loans were approved on the basis that there was no direct or indirect South African interest in the foreign entity lending the funds. The Moosas always intended to be involved but through a structure that would disguise their involvement. Mr Mawji was part of that project.

265. In cross-examination Salim accepted that he had stated in arbitration proceedings in 2013 that the Moosas did not want it known that the Moosas had invested in the property from offshore. While the funds were advanced by Mavedene, the Moosas intended to be the owners. This, in my view, was the truth of the matter; and it was known to Mr Mawji.

266. Third, the parties agreed a very different profit share to the usual split 50:50 split which Mr Mawji sought. This investment was not like the others. The profit share for Mr Mawji was small when compared to the other projects. Mr Mawji was in general quick to state his rights, and if he did not agree with Shaukat's description of the position in Shaukat's 7 February 2017 email then he would have said so.

267. Fourth, the correspondence cited above in respect of Würzburg shows that Mr Mawji wanted to discuss transferring the "SA property". If Mystic River had been a private equity transaction then it would have been set to be sold to generate a profit share; it would not have been transferred to the Moosas. That indicates that it was a different type of arrangement.

268. At the trial I suggested that if I were to order an injunction, then a suitable form might be to preserve the position pending the directions for the account. I will hear further submissions on an injunction.

Summary of conclusions

269. My conclusions following the trial are as follows:

i) In July 2000 the Moosas appointed Mr Mawji as their agent to oversee their property investments.

ii) From then on Mr Mawji owed them a fiduciary duty and held that role in respect of each of the Schedule Projects.

iii) Mr Mawji has in a number of cases not rendered satisfactory accounts of the Schedule Projects. Mr Mawji provided a range of financial details to the Moosas, including at meetings in 2004 and 2005. The information provided was not in a form that made the investments comprehensible overall. Later meetings did not provide information that allowed the Moosas to understand the position.

iv) I will order an account in common form for each of Forest Hill, Bruntcliffe, Pescod Square and Würzburg as described above.

v) Mr Mawji accepts that no account has been given for Würzburg and that he should account for the outstanding £130,000 in respect of Bruntcliffe.

vi) I will not order an account in common form in respect of Roebuck House and Clarence Mill. It is agreed that MGI owes £77,187 to Flemingo in respect of that project.

vii) The Moosas are beneficial owners of the Ballito land. The investment was different from the Schedule Projects and was intended to disguise the Moosas' interests in the property.

270. I will hear counsel on the form of the accounts to be given, an injunction in respect of Mystic River and further matters.

271. I am grateful to counsel for their detailed and careful submissions.