Neutral Citation Number: [2024] EWHC 1919 (Ch)

Company – Alleged labour supply fraud – Failure to account for VAT, PAYE and NICs – Directors' breach of duty – Knowing receipt – Claim by company in liquidation against directors and their companies– Application for summary judgment

Case No: BL-2023-001416

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

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

Date: Friday 26 July 2024

Before :

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

- -

Between :

L & S Accounting Firm Umbrella Limited
(In liquidation)

Claimant

- and -

(1) Idusogie Laurel Oronsaye
(also known as **Laurel Stephen** and **Laurel Oronsaye)**
(2) Stephen Taiwo Oronsaye
(3) L & S Financials Limited
(4) L & S Accounting Firm Limited
(5) Mimshach Management Services Limited

Defendants

- -
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Mr Christopher Brockman and **Ms Anna Lintner** (instructed by **Wedlake Bell LLP**) for the **Claimant**

Mr Richard Clayton KC and **Mr Kartik Sharma** (instructed by **KC Law Chambers Solicitors Limited**) for the **Defendants** on 2 July 2024
The First and Second Defendants in person on 3 and 4 July 2024

Hearing dates: 2, 3 and 4 July 2024
- -

Approved Judgment

The court handed down this judgment at an attended hearing on Friday 26 July 2024, by uploading it to CE-File, and by release to The National Archives. The time and date for hand-down is deemed to be 10.30 am on Friday 26 July 2024.

HIS HONOUR JUDGE HODGE KC
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The following cases are referred to in the judgment:

Bank of Credit and Commerce International (Overseas) Ltd v Akindele [2001] Ch 437
Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch)
ED & F Man Liquid Products v Patel [2003] EWCA Civ 472
Re HLC Environmental Projects Limited [2013] EWHC 2876 (Ch)
Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67, [2018] AC 391
King v Stiefel [2021] EWHC 1045 (Comm), [2022] 1 All ER (Comm) 990
Re MSD Cash & Carry Plc (In Liquidation), Ingram v Singh [2018] EWHC 1325 (Ch)
Okpabi v Royal Dutch Shell plc [2021] UKSC 3, [2021] 1 WLR 1294
Regentcrest plc (in liquidation) v Cohen [2001] 2 BCLC 80

Judge Hodge KC:

I: *Introduction*

1. This is my considered judgment on an application that I heard over three court days between Tuesday 2 and Thursday 4 July 2024, preceded by one day's judicial pre-reading. By an application notice, issued on 9 April 2024, the claimant, L & S Accounting Firm Umbrella Limited (in liquidation), applies for an order for summary judgment against all five defendants pursuant to Part 24 of the Civil Procedure Rules and an order that they pay the costs of the application. The claimant also seeks an order for post-judgment freezing and proprietary injunctions against the defendants (who are already bound by the terms of such injunctions). The claimants contend that none of the defendants has any real prospect of successfully defending the claims against them and that there is no other reason why the claims should be disposed of at trial. The application had been listed for hearing in a three-day window floating from Monday 1 July 2024. Case management directions leading up to that hearing had been given by Master McQuail on 25 April 2024.

2. The first and second defendants, Mr and Mrs Oronsaye, are husband and wife. Together they own and control the three corporate defendants. I shall refer to the third defendant, L & S Financials Limited, as '**Financials**'; to the fourth defendant, L & S Accounting Firm Limited, as '**Accounting**'; and to the fifth defendant, Mimshach Management Services Limited, as '**Mimshach**'.

3. The evidence in support of the application is contained in the first witness statement, dated 5 April 2024, of Mr Andrew McTear, together with two lengthy exhibits (AIM 4 and 5). Mr McTear is a chartered accountant, a licensed insolvency practitioner, and (with his colleague, Ms Joanna Watts) one of the joint liquidators of the claimant company. The claimant also relies upon evidence provided by Ms Claire Mann, an officer in the economic crime unit of HMRC's fraud investigation service, in two affirmations, made on 24 and 31 October 2022, in support of an application for freeing injunctions first obtained against the claimant by HMRC from Joanna Smith J on 26 October 2022 (and later continued). Evidence in answer is contained in separate witness statements, in virtually identical terms, from each of Mrs and Mr Oronsaye, respectively dated 31 May and 2 June 2024. Paragraph 3 of each witness statement records that it was prepared for Mr and Mrs Oronsaye by their then solicitors, KC Law Chambers Solicitors, *"based on instructions provided by me by way of email, telephone and in person meetings. This witness statement has been carefully checked and amended by me before finalising it."* The defendants' witness statements were accompanied by an indexed bundle of documents, extending to some 644 pages, *"to be relied on against the application for summary judgment"*. This includes a document, dated 31 May 2024, described as a *'Forensic Independent Accountant Examination Report'*, from Mr Samie Agiri, principal consultant/director of an accountancy and tax, payroll and management consultancy, APM Consultants. The author states that he is a member of the Association of Chartered Certified Accountants. The introduction to this document states:

> *This report presents the findings of the forensic independent accountant examination conducted on [the claimant], which is currently in liquidation. The examination was initiated to understand the circumstances leading to the liquidation of a seemingly viable and solvent company. The directors have indicated that HMRC's decision was based*

on the company's perceived inability to pay its VAT liabilities, including interest and penalties, without agreeing to a settlement plan.

4. Mr McTear replied to this evidence by way of his second witness statement, dated 24 June 2024, together with exhibit AIM 6, extending to some 22 pages. Originally Mr McTear took issue with Mr Agiri's qualifications, stating that he had carried out searches on the ACCA and ICAEW membership websites but had found no record of him. However, following the hearing but before the formal handing down of this judgment, the claimant confirmed that it had ascertained that Mr Agiri is indeed a qualified accountant. Mr McTear further states that the series of VAT returns for the claimant, for the years 2018 through to 2022, which Mr Agiri exhibits have never been filed with HMRC, and there is no explanation for, or documentation to support, any of his figures. By contrast, Mr McTear's own analysis is based on the available books and records for the claimant. There is said to be no explanation as to why the defendants consider Mr McTear's figures and calculations to be incorrect. Altogether, the principal hearing bundle, contained within four densely packed, lever-arch files, extends to over 3,600 pages. There is a supplemental bundle of some 89 pages. A second supplemental bundle, of some 533 pages, was prepared for the purposes of the defendants' adjournment application. During the hearing, the defendants produced a detailed tabular response to the claimant's skeleton argument, extending to some 44 pages; and this was verified by witness statements from Mr and Mrs Oronsaye dated 1 July 2024.

5. The claimants are represented by Mr Christopher Brockman and Ms Anna Lintner (both of counsel), instructed by Wedlake Bell LLP. On the first day of the hearing, the defendants were represented by Mr Richard Clayton KC leading Mr Kartik Sharma (of counsel), instructed by KC Law Chambers Solicitors Ltd. Mr Clayton applied for an adjournment of the summary judgment application, and for the release of funds which are frozen by a freezing and proprietary injunction originally granted by Ms Penelope Reed KC and continued and extended by later orders. That application was opposed by Mr Brockman, and lasted the whole of the first day. For the reasons I gave in an extended extemporary judgment (to which reference should be made for my full reasons), I dismissed the defendants' application. I refused an application for permission to appeal, for the reasons stated in a Form N460 which I have uploaded to the CE-File for this case at case event 105. Before the court rose, shortly after 4.00 pm on the first day, Mr Clayton indicated, in response to a question from the court, that he would be appearing (with his junior) to represent the defendants the following day. That did not happen because, overnight, the defendants dispensed with the services of their solicitors and leading and junior counsel.

6. On Wednesday 3 July the hearing resumed, with the individual defendants appearing as litigants in person. Although Mr and Mrs Oronsaye had belatedly filed acknowledgements of service, none of the defendants had filed any defence to the claim. The Claimant therefore required permission to bring this application for summary judgment pursuant to CPR 24.4(1)(a). Mr Brockman began the morning by applying for such permission. This was opposed by the defendants. For the reasons I gave in a short extemporary judgment (to which reference should be made for my full reasons), I granted the claimant the required permission. Mr Brockman then addressed me in support of the application for the remainder of the second day. On the third day, I was addressed first by Mrs Oronsaye (for the whole of the morning and for about an hour in the afternoon), and then by Mr Oronsaye, followed briefly by his wife (for about

40 minutes in total). During the course of her oral submissions, Mrs Oronsaye sought to refer me to additional documentation not included within the papers that were before the court for the purposes of the present application. I refused to allow her to do so because the defendants had had ample opportunity to put in evidence the documents on which they wished to rely; and, with the benefit of solicitors' advice, they had produced an indexed bundle comprising 644 pages *"to be relied on against the application for summary judgment"*. It would have been unfair to the claimant to have allowed the defendants to adduce any further documents without proper notice to the claimant, and after Mr Brockman had already opened the claimant's application. Finally, Mr Brockman addressed me in reply for about 30 minutes. I adjourned at about 4.05 pm on day 3 to consider my judgment.

7. For structural reasons only, this judgment is divided into the following sections (although these are not self-contained, and the contents of each section have informed the others):

I: Introduction

II: Summary judgment

III: Parties

IV: Overview of the principal claims

V: The alleged VAT fraud

VI: The alleged PAYE/NICs fraud

VII: The claims

VIII: Conclusion

8. In preparing this extemporary judgment, I have borne in mind the recent guidance issued by the Senior President of Tribunals on the giving of written reasons for decisions in the First-tier Tribunal. The underlying principles would seem to me to apply to the courts as well as to the tribunals. I do not propose to identify all of the evidence relied upon in reaching my decision, nor to elaborate at undue length upon my conclusions on any issues of law, or to express every step of my reasoning. Rather I shall refer only to the main issues and evidence in dispute, and explain how those issues essential to the court's conclusion have been resolved. However, that does not mean that I have ignored the totality of the evidence in this case.

9. This judgment establishes no new principles of law. It merely involves the application of established legal principles to the particular facts of this case, and in the context of a summary judgment application.

II: *Summary judgment*

10. By CPR 24.3, the court may give summary judgment against a defendant on the whole of a claim, or on a particular issue, if -

(1) it considers that the defendant has no real prospect of successfully defending the claim or issue; and

(2) there is no other compelling reason why the case or issue should be disposed of at a trial.

11. Mr Brockman identifies the first question for determination on this application as whether the defendants (or any of them) have any real prospect of successfully defending the claims for the relief the claimant seeks (or any of that relief). If they do not, then the further question arises as to whether there is any other compelling reason why the relevant claims should be disposed of at a trial, rather than at this hearing.

12. Lewison J identified the principles which govern applications for summary judgment in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] (in terms which have since received the approval of the Court of Appeal). These are set out at paragraph 24.3.2 of the current (2024) edition of Volume 1 of *Civil Procedure*. As applied to an application by a claimant, they may be summarised as follows (omitting citation of authorities)

(1) The court must consider whether the defendant has a *'realistic'* as opposed to a *'fanciful'* prospect of success.

(2) A *'realistic'* defence is one that carries some degree of conviction. This means a defence that is more than merely arguable.

(3) In reaching its conclusion, the court must not conduct a *'mini-trial'*.

(4) This does not mean that the court must take at face value, and without analysis, everything that a defendant says in their statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.

(5) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.

(6) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on an application for summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to, or alter, the evidence available to the trial judge, and so affect the outcome of the case.

(7) On the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction; and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question, and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, they will in truth have no real prospect of succeeding on their claim, or successfully defending the claim against them (as the case may be). Similarly, if the applicant's case

is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that, although material in the form of documents, or oral evidence that would put the documents in another light, is not currently before the court, such material is likely to exist, and can be expected to be available at trial, it would be wrong to give summary judgment, because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because, *'Micawber-like'*, something may turn up which would have a bearing on the question of construction.

13. The commentary at para 24.3.3 of Volume 1 of *Civil Procedure* emphasises that if an applicant for summary judgment adduces credible evidence in support of the application, the respondent then comes under an evidential burden to establish some real prospect of success, or some other reason for having a trial. A respondent to a summary judgment application who claims that further evidence will be available at trial must serve evidence substantiating that claim.

14. It is important for the court to bear in mind the dangers highlighted by the Supreme Court in *Okpabi v Royal Dutch Shell plc* [2021] UKSC 3, [2021] 1 WLR 1294 at [120] of being drawn into conducting a mini-trial which leads to the court making determinations in relation to contested factual evidence that are not appropriate on an interlocutory application. The proper approach (identified at [127]) is to ask whether there are *"reasonable grounds for believing that disclosure may materially add to or alter the evidence relevant to whether the claim has a real prospect of success"*.

15. Mr Brockman identifies two other relevant points which emerge from the authorities on the exercise of the summary judgment jurisdiction.

16. First, whilst the court should avoid conducting a mini-trial on the hearing of a summary judgment application, the court is not barred from some evaluation of the evidence. As Cockerill J explained in *King v Stiefel* [2021] EWHC 1045 (Comm), [2022] 1 All ER (Comm) 990, at [21] and part of [22]:

> *21 The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that - even bearing well in mind all of those points - it would be contrary to principle for a case to proceed to trial.*
>
> *22 So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up ...*

17. In *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472, when rejecting an argument that the judge below had effectively conducted a mini−trial of the issues in a manner impermissible on an application to set aside judgment, Potter LJ (with the agreement of Peter Gibson LJ) said this (at [53]):

> *53 I would accept … in a case where, with knowledge of the material facts, clear admissions in writing are unambiguously made by a sophisticated businessman who has ample opportunity to advance his defence prior to judgment signed, a judge is in my view entitled to look at a case 'in the round', in the sense that, if satisfied of the genuineness of the admissions, issues of fact which might otherwise require to be resolved at trial may fall away. … I consider that the judge was entitled to reject as devoid of substance or conviction such explanation as was advanced for the making of those admissions and in my view he was entitled to conclude that the first defendant lacked any real prospect of successfully defending the claim.*

18. Second, where the court is dealing with claims in fraud or dishonesty, the court should be very cautious in granting summary judgment. As Cockerill J. explained in *King v Stiefel* at [23] and [24], albeit in the context of an application to strike out a claim in conspiracy:

> *23 I should deal specifically with the law on summary judgment and claims in fraud, not least because it was at least implicit in the submissions for the Kings that such serious allegations were not suitable for summary determination.*
>
> *24 The reality is that while the court will be very cautious about granting summary judgment in fraud cases, it will do so in suitable circumstances, and there are numerous cases of the court doing so. This is particularly the case where there is a point of law; but summary judgment may be granted in a fraud case even on the facts. I have done so in a case heard very close in time to this application: Foglia v The Family Officer and others [2021] EWHC 650 (Comm), where at [14] I gave some examples of other cases in which this course was also followed. In other cases, such as AAI Consulting Ltd v FCA [2016] EWHC 2812 (Comm) and Cunningham v Ellis [2018] EWHC 3188 (Comm) fraud claims were struck out on the basis that the particulars of claim were inadequate in themselves to support the claims being made.*

19. I bear firmly in mind that, on this summary judgment application, I must not fall into the trap of conducting a mini-trial. I also acknowledge that I must have regard to the potential for further evidence to be available at trial which may bear upon the issues arising on this application. However, I am entitled to evaluate the evidence that has actually been placed before the court. And, in considering the potential for further evidence to be adduced at trial, I must bear in mind: (1) the disclosure obligations to which the defendants have been subjected by the various freezing and proprietary injunctions granted both to HMRC and to the claimant; and (2) the comprehensive order made by Chief ICC Judge Briggs on 7 December 2023, on the application of the joint liquidators of the claimant company (in Case No CR-2023-005952), which required Mrs Oronsaye to deliver up to the joint liquidators all of the claimant's property, books, papers, and records. Absent good reason to the contrary, it is reasonable to assume that no additional, relevant documentary evidence will be available at trial.

20. Mr McTear summarises the pleaded claims in respect of which summary judgment is sought (with references to the relevant paragraphs of the Particulars of Claim) at paragraphs 12 through to 29 of his first witness statement. In short, these are as follows:

(1) As against **Mr and Mrs Oronsaye**, jointly and severally, a personal claim for breach of fiduciary and statutory duties in the sum of £19,487,016.67 (quantified by reference to the total tax loss to HMRC plus the interest it claims) or, in the alternative, £17,480,462.67 (quantified with reference only to the total amount of tax not paid over to HMRC and thereby misapplied or misappropriated). Whilst this claim is pleaded as one for fraudulent breaches of duty, for the purposes of the present application the claimant is content for the court to give summary judgment on the breach of duty claims without determining whether they were fraudulent.

(2) As against **Mrs Oronsaye**, a personal and proprietary claim in knowing receipt in respect of the total sum of £1,230,262 of company monies she received from the claimant, plus declarations that properties registered in her name (in the case of the first two, jointly with Mr Oronsaye) at 1 Tyne Crescent, 1 Hazelwood Road and 1 Brereton Road, Bedford, which were purchased using the claimant's monies, are held on trust for the claimant.

(3) As against **Mr Oronsaye**, a personal and proprietary claim in knowing receipt in respect of the total sum of £2,566,572 of company monies he received from the claimant, plus declarations that the properties registered in his name (jointly with Mrs Oronsaye) at 1 Tyne Crescent and 1 Hazelwood Road, Bedford, which were purchased using the claimant's monies, are held on trust for the claimant.

(4) As against **Financials**, personal and proprietary claims in knowing receipt and dishonest assistance in relation to sums totalling £1,000,147 of the claimant company's monies that were received by Financials (from recruitment agencies and from Accounting), plus a declaration that the sums held in Financials' Barclays Account are held on trust for the claimant.

(5) As against **Accounting**, personal and proprietary claims in knowing receipt and dishonest assistance in relation to the sum of £4,395,694 of the claimant company's monies that were received by Accounting from recruitment agencies, plus a declaration that the sums held in Accounting's Santander Account are held on trust for the claimant.

(6) As against **Mimshach**, personal and proprietary claims in knowing receipt and dishonest assistance in relation to the sum of £115,822 of the claimant company's monies that were received by Mimshach, plus a declaration that the property known as Salamander House, which was purchased by Mimshach using the claimant's monies, is held on trust for the claimant.

21. In addition, the claimant seeks interest and costs. At paragraph 40 of his first witness statement, Mr McTear accepts that the total financial recovery from all five defendants is limited to £19,487,016.67, plus interest and costs.

22. During the course of the hearing, the court pointed out that there was no evidence that claimant company funds had been used to finance the initial purchase of 1 Hazelwood Road (in 2014) for £163,000 with the assistance of a mortgage of £130,000 from the Halifax. Claimant company funds (of £110,149.44) had only been used to redeem that

mortgage on 1 May 2018. Mr Brockman accepted that, in relation to that property, it would be necessary to direct an account or inquiry as to the extent of the respective beneficial interests of Mr and Mrs Oronsaye and the claimant in that property.

23. In a note on the relief sought which they handed in to the court on the third (and final) day of the hearing, Mr Brockman and Ms Lintner acknowledge that:

(1) The payments made to Mr and Mrs Oronsaye by the claimant (in respect of which the claimant has claims in knowing receipt) are included within the £19,487,016.67 claim because they were derived from moneys that should have been paid to HMRC. Although the claimant has sought relief in relation to the four properties in addition, the claimant would give credit against the sum claimed for any net sale proceeds it might receive because the monies used to pay for the properties had been derived from monies that should have been paid to HMRC. However that credit should be limited to the claimant company's monies used in the purchase of the properties, with the claimant benefitting from any increase in their value.

(2) Although the claimant seeks financial orders against the corporate defendants, it will give credit against the £19,487,016.67 for any sums recovered from them (including from their bank accounts).

(3) The claimant seeks declarations in respect of sums standing to the credit of the Santander and Barclays accounts since these are proprietary funds paid in by recruitment agency customers of the claimant and (in the case of the Barclays account) by Accounting derived from such payments. However, the claims against the Barclays and Santander accounts are limited to £1,000,147 and £4,395,694 of the claimant company's monies respectively.

(4) The claim against Mimshach is for £115,822 of the claimant company's funds received by it, plus declaratory relief in relation to Salamander House.

(5) In summary, total recoveries against all five defendants must be limited to:

(a) £19,487,016.67;

(b) interest on the sums that each defendant is ordered to pay;

(c) any increase in the value of the properties purchased using the claimant's funds (or, in the case of 1 Hazelwood, a percentage of such increase); and

(d) costs.

III *Parties*

24. **The claimant** was incorporated on 11 October 2011. It entered into creditors' voluntary liquidation on 2 October 2023. Mr McTear and Ms Watts were appointed as joint liquidators of the claimant at a physical meeting of the company's creditors held on 13 October 2023, on the nomination of the company's principal creditor, His Majesty's Revenue and Customs (**HMRC**).

25. The claimant operated as an *'umbrella'* company, principally in the field of health and social care. Its clients were primarily recruitment and staffing agencies. The claimant

would act as the employer of agency staff placed by those agencies, and it would supply their services to the agencies, which were chargeable to VAT. The claimant administered the payroll functions for the employees and paid them their wages, from which the claimant should have deducted PAYE and national insurance contributions (**NICs**), and accounted for these to HMRC.

26. **Mrs Oronsaye** has been a statutory director of the claimant since the date of its incorporation. She has been a shareholder of the claimant company throughout; and she is currently its sole shareholder. **Mr Oronsaye** was a statutory director of the claimant from 1 August 2013 until at least 31 January 2020, which is the date recorded in a notice (in Form PSC07) of him ceasing to be a person with significant control of the claimant. However, that form was not filed with Companies House until 3 August 2021. Further, the claimant's unaudited accounts for the year ended 31 January 2022, which were electronically signed by Mrs Oronsaye on 23 August 2023, and filed with Companies House on 31 August 2023, record that Mr Oronsaye was then still a director of the claimant. At material times, Mr Oronsaye has been a shareholder of the claimant, he has worked for it at a senior level, and he has been closely involved in its affairs.

27. At paragraph 22 of their principal witness statements, both Mr and Mrs Oronsaye accept that Mr Oronsaye received sums totalling £2,566,572 from the claimant over the period between 2017 and 2023. Of this, £2 million was received on 24 May 2019, when Mr Oronsaye was still a statutory director of the claimant. Mr and Mrs Oronsaye assert that these moneys were paid to Mr Oronsaye in his capacity as a consultant to *'the Firm'* (rather than the claimant), and that they covered salaries and personal expenses for office running and other costs. They say that Mr Oronsaye would often pay the claimant's taxes from his own funds, and was subsequently repaid. The defendants have produced a series of self-billing invoices from Mr Oronsaye, addressed to the claimant, covering a period up to 23 December 2022 (although one is mis-dated 23 September 2024), which classify payments to him as director's drawings and office running costs. The claimant disputes these invoices, and points out that there is no evidence that Mr Oronsaye ever actually paid any of the claimant's taxes or office running costs; and that, since he was not himself registered for VAT, he was not entitled to submit self-billing invoices. Indeed, from 2017/18 onwards, Mr Oronsaye has not declared, nor has he paid, any income tax, either through PAYE or by completing any self-assessment tax return. However, the very fact that Mr and Mrs Oronsaye have claimed that Mr Oronsaye paid these expenses as a justification for diverting funds belonging to the claimant to him suggests that the individual defendants both considered that Mr Oronsaye continued to play a central role in the claimant's operations and business. With his wife, Mr Oronsaye attended the statutory meeting of the claimant's creditors on 13 October 2023. In their reply document, Mr and Mrs Oronsaye assert that "*all companies traded within a group"*, with the *"same management, staff, premises, etc"*. As Mr Brockman observes, Mr and Mrs Oronsaye together regarded themselves as operating as a single unit, regardless of who was registered as a director of each company. As a matter of law, however, as Mr Brockman emphasised in his oral submissions, there was no formal company group structure or accounts, nor any group registration for VAT purposes. Indeed, the claimant and Accounting had separate VAT registrations and VAT numbers.

28. I am satisfied that the claimant has made out its case that at all material times, Mr Oronsaye has acted as a de facto director of the claimant. There appears to have been

no difference in his central role before, and after, his purported resignation as a director of the claimant. As I recognised in *Re MSD Cash & Carry Plc (In Liquidation), Ingram v Singh* [2018] EWHC 1325 (Ch), at [104] and [105], where a company's affairs have been conducted on an informal basis, without any observed formal corporate governing structure, a focus on corporate governance is of less assistance on the question whether a person has been a de facto director of a company. Mrs Oronsaye clearly was a nerve centre of the claimant company; and from my observations of her when her husband was addressing the court, I have little doubt that she played a dominant role in the conduct of the claimant's management and affairs. But I am satisfied that Mr Oronsaye was also one of the nerve centres from which the activities of the claimant radiated.

29. I am also satisfied that, as statutory and de facto directors, the knowledge and acts of both Mr and Mrs Oronsaye are to be attributed to the claimant company. This was a self-contained, tightly knit group of closely connected companies. Clearly Mr and Mrs Oronsaye, and no-one else, knew what was going on within the group. They are the natural persons who managed and controlled the actions of the claimant.

30. Unusually, the claimant did not have its own bank account. Instead, it used an account with Lloyds Bank (**the Lloyds account**) which Mrs Oronsaye had first opened when she was a sole trader. This account was the sole bank account used by the claimant until 26 October 2022, when HMRC first obtained a freezing order against Mrs Oronsaye, which expressly included the Lloyds account. Mrs Oronsaye asserts that she, and other *'group'* companies also used the Lloyds account; and the defendants rely upon this as a justification for receiving payments out of the Lloyds account. I am satisfied that the claimant has established that there is no real prospect of the defendants successfully maintaining at any trial that moneys standing to the credit of the Lloyds account were not the claimant's property.

31. In an affidavit sworn by Mrs Oronsaye on 31 October 2022, in proceedings brought against her (and the claimant) by HMRC (in Case No BL-2022-001816), Mrs Oronsaye expressly confirmed "*that any credit balance to* [the Lloyds account] *is held on trust for the benefit of* [the claimant]". There is no mention of any other defendant. Mrs Oronsaye explained that this affidavit had been made after HMRC had *"kindly allowed my solicitors a short extension of time to complete this"*. Consistently with this confirmation, Mrs Oronsaye consented to an order made by Roth J on 27 November 2023 whereby all moneys held in the Lloyds account were to be transferred to the joint liquidators (on the footing that they were funds belonging to the claimant). Mrs Oronsaye subsequently refused to authorise this transfer; and by separate orders made by Meade and Richards JJ in January 2024, sums held in the Lloyds account (totalling over £7.5 million) were transferred to the joint liquidators. Credit for this sum has been given when calculating the amount for which summary judgment is sought on the present application. I agree with the claimant that it is not open to the defendants to seek to revisit the claimant's entitlement to these funds. I reject, as incredible, and as inconsistent with her acknowledgment that she had been given an extension of time for her affidavit, Mrs Oronsaye's assertion that she had made the admission in her affidavit under pressure, as a result of the tension of the case, and because she was wrongly advised. I was told by Mr Brockman, in the course of his reply, that faced with an attempt by Mrs Oronsaye to retract her earlier admission, at a hearing on 15 January 2024 Meade J had given her an adjournment to produce evidence of any duress. No such evidence had been produced by the time the matter came back before Richards J

on 26 January 2024. He had therefore ordered that the remainder of the funds standing to the credit of the Lloyds account should be transferred to the joint liquidators of the claimant.

32. In any event, it is clear from reliable contemporaneous documents, in the form of written terms of engagement and self-billing agreements entered into by the claimant with its agency clients, and VAT invoices rendered (pursuant to self-billing agreements) by those clients to themselves on behalf of the claimant for its services, that the income generated by these arrangements belonged to the claimant, rather than to any of the other defendants. This is exemplified by the case of ID Medical, which is cited at paragraph 35 of the claimant's counsels' skeleton argument. From an analysis of the relevant bank statements, Mr McTear has established that the claimant's agency customers paid over £60.3 million (inclusive of VAT) into the Lloyds account, representing some 97.25% of total receipts into that account.

33. In the individual defendants' response to the claimant's skeleton argument, Mrs Oronsaye has sought to assert that she had been unable to open a bank account in the claimant's name because she had traded using her married name (of Laurel Stephen) and that was not the name on her passport. *"So, after several efforts, the company resolved to use the bank of the firm for a fee."* Mrs Oronsaye reiterated this explanation in the course of her oral submissions. I find this explanation wholly incredible in light of Mrs Oronsaye's ability to open bank accounts with Barclays and Santander for Financials and Accounting.

34. Mrs Oronsaye qualified as a chartered accountant in Nigeria. She claims to have operated the Lloyds account whilst practising as an accountant using the name L & S Accounting Firm (**the Firm**), However, an analysis of her tax records for the years 2015/16 to 2020/21 indicates a total income from accountancy of only £82,510, with tax paid of only £761.25. Although initially registered for VAT in 2012, Mrs Oronsaye was de-registered by HMRC in 2015 on the grounds that she had ceased to trade. Mrs Oronsaye has not been registered for VAT after this time. The turnover threshold for registration is £85,000. Since the Lloyds account is not designated as a client account, receipts into that account cannot be explained on the basis that they represent Mrs Oronsaye's personal earnings as an accountant.

35. It is also instructive to note what happened to the claimant's income from agency clients after HMRC first obtained a freezing injunction against it on 26 October 2022. Mrs Oronsaye maintained a bank account with Santander (**the Santander account**) in her own name, trading as the Firm. This was used as the bank account for Accounting. Mr McTear has undertaken an analysis of the bank statements for this account. After deducting payments received from Better Healthcare, which would now appear to represent rental, rather than agency, payments (see paragraph 41 of Mr McTear's 2nd witness statement), total receipts into the Santander account from agency clients were £4,330,239, of which £4,262,667 was received after the date of the freezing injunction. I am satisfied that the claimant has established that the explanation for the sudden, massive increase in agency payments into the Santander account is that following the first HMRC freezing injunction, agency clients of the claimant were instructed to re-route the payment of sums due to the claimant into the Santander account. There is documentation evidencing instructions from Mr and Mrs Oronsaye to effect this change. I am satisfied that they were responsible for diverting payments of moneys due to the claimant into the Santander account. Invoices were being rendered in the

claimant's name, and bearing its VAT number, but with payments being directed to the Santander and Barclays accounts.

36. A similar picture appears from an analysis of the bank statements covering the period from 9 April 2019 to 30 October 2023 for the account maintained by Financials with Barclays Bank (**the Barclays account**). Receipts into this account from agency clients of the claimant total £810,648, of which £777,387 was received after the date of the first HMRC freezing injunction. Once again, I am satisfied that the claimant has established that the explanation for this considerable increase in agency payments into the Barclays account is that following the first freezing injunction, Mr and Mrs Oronsaye were responsible for instructing certain agency clients of the claimant to re-direct the payment of sums due to the claimant into the Barclays account.

37. **Financials** was incorporated on 11 March 2019. It maintains the Barclays account. Mr Oronsaye has been the sole statutory director since incorporation. He is also the sole shareholder of the company. Clearly, the knowledge and acts of Mr Oronsaye are to be attributed to Financials. In contrast to Mr Oronsaye's former role as a statutory director of the claimant, Mrs Oronsaye has at no time served as a statutory director of Financials. However, the claimant asserts that she has acted as a de facto director of Financials. That is consistent with the assertion in Mr and Mrs Oronsaye's reply document that "*all companies traded within a group"*, with the *"same management, staff, premises, etc"*. It is also consistent with the fact that ever since the claimant first secured its freezing and proprietary injunctions, it has been Mrs Oronsaye, rather than her husband, who has conducted all the correspondence with the claimant's solicitors concerning Financials' assets and business dealings. I recognise, however, that this may also be explicable by reference to Mrs Oronsaye's role as the lead, and the principal, defendant/respondent, and to her domineering personality (which was evident during the course of the individual defendants' oral submissions to the court). On this present summary judgment application, I do not consider that it is appropriate for me to make any finding that Mrs Oronsaye has acted as a de facto director of that company. That is a matter for any trial of this claim. However, I am entirely satisfied that no movement of funds between Financials and any other company trading within the *'group'* would have taken place without the knowledge of Mrs Oronsaye. Whether or not, she should properly be treated as a de facto director of Financials, I am satisfied that her knowledge concerning all financial matters should be attributed to Financials as *"all companies traded within a group"*. Given the state of Mr Oronsaye's own knowledge, however, I do not consider that affects the outcome of the present application.

38. **Accounting** was incorporated on 17 December 2014. It offers accountancy services although, according to its website, it also offers umbrella payroll services. At all material times, Accounting's sole director and shareholder has been Mrs Oronsaye. Her knowledge and acts are clearly to be attributed to Accounting. I am not invited to make any finding that Mr Oronsaye has acted as a de facto director of Accounting. Accounting has operated the Santander account.

39. **Mimshach** was incorporated on 5 June 2019 for the purpose of renting and operating housing association real estate (although it appears never to have rented or operated any housing association property properly so described). Its shareholders are Mr and Mrs Oronsaye's four children, all of whom are under the age of 18. The original directors were Mr and Mrs Oronsaye. Mr Oronsaye remains as a director, but Mrs Oronsaye is said to have resigned on the day of incorporation. However, the form recording her

resignation was not filed at Companies House until 22 September 2023. Further, Mrs Oronsaye is shown as a director of Mimshach in its unaudited accounts for the years ended 30 June 2021 and 2022 (which also show the Firm as the company's accountants). I am satisfied that Mrs Oronsaye acted as a de facto director of Mimshach until at least 22 September 2023. The knowledge and acts of both Mr and Mrs Oronsaye are to be attributed to Mimshach.

40. As I have already related, Mimshach has received sums totalling £115,821 from the claimant, with £12,114 being paid into an account held in its own name and £103,707 into the Santander account (but with references indicating that this is for the benefit of Mimshach). The defendants have sought to explain these payments on the footing that they were payments in respect of rent and utilities for a commercial property in Bedford known as **Salamander House**. However, the evidence discloses that the entire purchase price for this property was funded from moneys in the Lloyds account which I find were the property of the claimant. Since I find that the company was the beneficial owner of Salamander House, these payments properly represent funds belonging to the claimant.

IV: *Overview of the principal claims*

41. HMRC's investigations established that the claimant appeared to have been involved in a large scale '*labour supply fraud'*. It is the joint liquidators' case that this has been confirmed by their own investigations following their appointment. Although the sums involved are large, the fraud itself is said to be relatively straightforward. The areas of alleged default fall into two categories:

(1) As the claimant was the employer of the agency workers, it was liable to deduct PAYE and NICs from the employees' wages. The agencies would pay the claimant the gross amount payable to the workers, from which the claimant was required to deduct PAYE and NICs. However, the claimant advertised and operated an unlawful scheme (described as '*POS*') under which it would deduct an agreed percentage of workers' salaries from the payments made to agency workers. This resulted in those agency workers receiving about 80% of gross salary. The claimant then filed PAYE and NICs returns which grossly understated the amounts properly payable, resulting in the claimant only paying some £2,936,511 as opposed to the correct amount of £14,164,107. The claimant was lawfully required to deduct, and to account for, PAYE and NICs in full; and it remains liable for the full amount. As a result of operating this illegal scheme, and overpaying its agency workers, whilst under-accounting for PAYE and NICs, the company's turnover increased exponentially; and, since the perceived benefits of its POS scheme (in terms of lower PAYE and NIC deductions) proved attractive to agency workers, the claimant secured an unfair market advantage over those other umbrella companies which operated lawfully.

(2) In addition, the claimant charged VAT to its customers for the services it provided, but it failed to account to HMRC for the VAT it received. Again it disguised the position by failing to file, or by filing false, VAT returns.

42. The claimant alleges that over £25 million of VAT, PAYE and NICs has not been declared to HMRC, and has been misapplied or extracted from the claimant by Mr and Mrs Oronsaye, in breach of the duties they owed to the claimant as its directors. The joint liquidators also claim that the three corporate defendants, as companies owned and/or controlled by Mr and/or Mrs Oronsaye, have knowingly received funds properly

belonging to the claimant when they were fully aware of these breaches of duty. Additionally, the claimant brings claims for dishonest assistance against the corporate defendants.

43. It appears that there is no dispute as to the fact that the company fell behind with its VAT returns. At paragraph 12 of their respective witness statements, both Mr and Mrs Oronsaye say:

> *Processing of returns like VAT, PAYE etc. were delegated tasks to staff. Although we were managing, we were overworked and indeed took our eyes off the ball for a second, an action which we regret. At no point was our intent fraudulent. The claimant has refused to consider the alternative argument that this was an omission and innocently so.*

The claimant says that that explanation does not even begin to address the true factual background to this case. This was a long-standing, deliberate, and sustained course of misconduct. It was no momentary taking of the eyes off the ball. Nor can it explain the significant under declarations of output tax during the ten VAT quarters from 04/17 to 07/19.

44. As explained at paragraphs 175-6 of Mr McTear's first witness statement, after giving credit for sums she has paid into the Barclays and Santander accounts, between October 2013 and October 2022 Mrs Oronsaye has received net sums totalling £1,230,262 from the Lloyds account without any apparent justification by way of salary or dividends. At paragraph 18 of her witness statement, Mrs Oronsaye asserts that she *"directly paid £1,050,000 to HMRC for the claimant's PAYE taxes, £424,000 was expenses incurred for building and running the company e.g. street campaign, marketing to raise capital, £6,000 was spent on company assets (such as computers), £44,850 transport and subsistence and the company owes me £290,271.21"*. She attaches *"proof of payment to HMRC"*; and she asserts that the *"firm's invoices also attached are proof of inter-company transactions because the Firm pays for I and the second defendant's services"*.

45. The claimant submits that even the most superficial analysis shows this so-called defence to be incorrect, having been concocted for the purpose of this application, and devoid of any real prospect of succeeding. First, Mrs Oronsaye has been inconsistent about the sums she claims the claimant owes her: £390,457.14 (at paragraph 21 of her disclosure affidavit), £997,973 (in the statement of affairs), and now £290,271.21. Second, at paragraph 21 of her disclosure affidavit, Mrs Oronsaye states that she has paid £1,378,135.93 to HMRC from the sums received from the claimant (rather than the £1,050,000 now claimed). The joint liquidator's review of the claimant's HMRC records shows that HMRC received a total of £2,936,511.84, of which £1,522,265.36 was received from the Lloyds account and £935,820.22 from the Santander account. That leaves a balance of £478,426.26 paid to the credit of the claimant with HMRC from another source or sources. Mrs Oronsaye has served no evidence that she paid that sum (or indeed any other sums) to HMRC; she could have exhibited her bank statements to evidence such payments, but she has chosen not to do so. The claimant invites the court to infer that this is because they do not assist her. Third, at paragraph 21 of her disclosure affidavit, Mrs Oronsaye also states that she has paid £243,900 of *"Expenses"* from the sums paid to her by the claimant (rather than the £424,000 now claimed). Although Mrs Oronsaye has provided invoices purporting to have been raised by her to

the claimant, she has provided no evidence (such as receipts or bank statements) that she has paid any of the alleged expenses.

46. I have already referred to the unexplained payments made by the claimant to Mr Oronsaye, including the round-sum payment of £2 million from the Lloyds account on 24 May 2019, which are addressed at paragraphs 177-9 of Mr McTear's first witness statement.

V: *The alleged VAT fraud*

47. The alleged VAT fraud is straightforward and is set out in detail in Ms Mann's first affirmation. It is summarised at paragraphs 115-123 of Mr McTear's first witness statement. The claimant registered for VAT in February 2013. Thereafter, it was obliged to charge VAT on the gross salaries it charged each agency at the standard rate. The claimant charged, and was paid, VAT by the agencies; but it failed to account for this to HMRC.

48. HMRC's investigations into the claimant's VAT position involved HMRC in contacting various of the claimant's agency customers in order to confirm the payments subject to VAT that they had made to the claimant. The joint liquidators also carried out an additional analysis of certain of the self-billing invoices that Mrs Oronsaye had provided to them in order to match them to receipts from the five largest agencies paying sums into the Lloyds account. The details of these investigations are summarised at paragraphs 85 and 86 of Mr McTear's first witness statement. They show that the claimant's agency customers have made significant payments subject to VAT, well in excess of those declared in the claimant's (limited) VAT returns.

49. The investigations undertaken by HMRC and the joint liquidators have also shown that since registering for VAT, the claimant has either filed misleading VAT returns that do not reflect the claimant's true level of trading or has consistently failed to file VAT returns at all. The joint liquidators estimate that the total output tax (i.e. VAT charged and received) that should have been declared and accounted for by the claimant since 1 February 2017 is £10,898.087, based on relevant agency receipts totalling £60,346,123. In addition, HMRC has issued a demand for statutory interest due on the principal VAT amount in the sum of £2,006,554; and the claimant is liable to pay that further sum to HMRC. HMRC have filed a proof of debt in the liquidation in a sum of over £11 million.

50. The evidence shows that for the VAT periods 04/17 to 07/19 the claimant submitted nil VAT returns or returns showing minimal amounts of VAT payable. By way of example, the filed VAT return for 07/19 declared VAT of only £403. During this period HMRC have identified turnover in excess of £4 million, and they have assessed VAT in excess of £670,000.

51. For the VAT periods 10/19 to 10/20 the claimant failed to file any VAT returns at all, resulting in central assessments being issued for negligible sums. For example, for the VAT period 10/20 a central assessment of £31 was raised: however, following investigation, HMRC have now raised an assessment for the same period of over £466,000, based on turnover of £2,796,928. From the VAT period 10/20 onwards, the claimant again failed to submit any VAT returns, leading HMRC to treat it as a missing trader.

52. In response to the allegation of VAT fraud, at paragraph 12 of their respective witness statements Mr and Mr Oronsaye assert that they "*have acted in good faith, even though we omitted and did not unintentionally pay the VAT at the relevant period, all the money for the VAT remained in the accounts, the total sum of £5.8 Million. If truly our intent was to defraud, then why would we have had that sum in the company account, this sum would not have been left in the company account.* " They later refer to, and rely upon, *"… the forensic account done by **our** independent accountant."* I have already adverted to this report, which is addressed in Mr McTear's second witness statement, when addressing the witness evidence in the introduction to this judgment. Emphasising the use of the phrase *"**our** independent accountant"*, the claimant stigmatises this report as a worthless, and self-serving, document, comprising nothing more than a series of bald assertions which should be completely disregarded.

53. Mr Brockman submits that the provenance of the purported VAT Returns relied upon in the accountant's report is uncertain, as is the underlying data on which the basis of these purported VAT returns were prepared. In addition, as explained by Mr McTear:

(1) The purported VAT returns bear no resemblance to the returns that were filed with HMRC for the periods when returns were actually filed. The filed returns are contemporaneous documents supplied by HMRC. Whilst the figures therein are manifestly wrong, the fact that the returns were filed cannot be disputed. Again it is not possible to rewrite history.

(2) The purported VAT returns do not match the VAT claimed in the purported invoices produced by Mr and Mrs Oronsaye, or the transactions recorded in the bank accounts.

(3) No underlying workings are exhibited so it is impossible to analyse or verify the figures.

54. Mr Brockman also relies upon the fact that Mrs Oronsaye has apparently fabricated a whole series of false invoices in support of her defence to this claim. The invoices purport to have been issued by Accounting to the claimant over a period from 3 April 2017 to 1 December 2022. They contain the manifest error of the inclusion of a VAT registration number purporting to justify a charge to VAT throughout this period, notwithstanding the fact that Accounting only applied to be registered for VAT on 11 August 2021, and was only registered for VAT (and allocated a VAT registration number) with effect from 1 September 2021. There are invoices totalling some £9.7 million bearing a VAT number which pre-dates the date of registration for VAT. The court queried this with Mrs Oronsaye during the course of her oral submissions. Having taken the unusual step, during a closing speech, of warning her about the privilege against self-incrimination, the court invited Mrs Oronsaye to comment, if she so wished, about Accounting's prescience in including a VAT registration number in invoices purporting to date from April 2017 that had only been allocated to it more than four years later. Mrs Oronsaye's response was that these invoices had been created as a pro-active approach to the correction of past errors in order to ensure compliance with VAT regulations after it was belatedly discovered that Accounting had been trading with a turnover in excess of the VAT threshold. Mrs Oronsaye also claimed that the claimant had already accounted for this VAT in its VAT returns. When, in his reply, I asked Mr Brockman whether he wished to comment on this explanation, he said that he had not understood it. I share Mr Brockman's incomprehension. There is no real

prospect of any court reaching any conclusion other than that Mr and Mrs Oronsaye have fabricated these invoices. The inescapable inference is that they have done so for the purposes of seeking to mislead the claimant, and the court, by passing them off as genuine invoices, and in the hope of asserting some defence to the present summary judgment application and the underlying claim.

55. There is a further document that, if not a complete fabrication, has clearly been altered after the date it purports to have been created. This is a written document described as an *'Inter-company Service Agreement'*, purporting to have been *"made and entered into as of 05/06/2019, by and between"* (1) Accounting, (2) the claimant, (3) Financials, and (4) Mimshach. The agreement is executed by Mrs Oronsaye (for Accounting and the claimant) and Mr Oronsaye (for Financials and Mimshach). It relates to Salamander House, Bedford, which Mimshach was to purchase on 16 August 2019 for £1.5 million (inclusive of VAT), financed entirely out of moneys provided by the claimant. It includes a recital that Mimshach owns the premises from which the other three companies operate *"and is the landlord to* [Accounting] *from 20/09/2019 who sublets space to* [the claimant and Financials] *from 01/10/2019"*. The document is therefore internally inconsistent, or prescient, as to key dates. During her oral submissions, just before the luncheon adjournment on day 3, I asked Mrs Oronsaye, should she wish to do so, to explain how a document which purports to have been made and entered into as of 5 June 2019 (which, incidentally, was the date that Mimshach was incorporated) could have accurately anticipated future dealings, on the following 20 September and 1 October, with a property which Mimshach would only purchase on the following 16 August. Mrs Oronsaye's initial answer was that when they joined in, different dates were written in. As comprehension seemed to dawn upon her, she then added: *"I really don't know what to say about this one."*

56. For the claimant, Mr Brockman submits that it is inconceivable that the persistent under declaration of VAT on this massive scale can be anything other than deliberate and dishonest. He also submits that there can be no possible defence to this aspect of the claim. The analysis relied upon by HMRC and the joint liquidators is derived from the claimant's own records and bank statements. In addition, HMRC's own records show the true position in relation to the filing and payment of VAT. The defendants' response seeks to re-write history.

57. I accept the claimant's submissions. I am satisfied that there is no reasonable prospect of mounting any defence to the claim that the defendants have caused the claimant to perpetrate a massive VAT fraud against HMRC. There is no reasonable prospect of any further genuine documents coming to light at trial that might realistically point to any other conclusion. However, this is not a claim by HMRC against the claimant for VAT fraud, but a claim by the claimant company (in liquidation) against Mr and Mrs Oronsaye as its statutory and de facto and directors and against associated companies. I will need to consider later in this judgment to what extent this gives right to a claim by the company against the defendants.

VI: *The alleged PAYE/NICs fraud*

58. Mr McTear addresses the claim for undeclared and underpaid PAYE/NICs at paragraphs 124-167 of his first witness statement. Mr McTear gives some examples of how the scheme operated in practice. He also explains how he has calculated the amount of the underdeclared and unpaid PAYE/NICs, arriving at a total underpayment of

£14,164,107.63, after deducting the payments actually made of £2,960,194.53 against declared liabilities of only £2,967,493.79.

59. Under its terms of engagement with the agencies, the claimant was contractually obliged to act as the workers' employer. As such, it was legally obliged to pay employer's NICs, to deduct PAYE and employee's NICs, and to account to HMRC for the correct sums. In order to gain worker clients, the claimant operated an unlawful scheme (described as *'POS'*) which resulted in the workers being paid 80% of their gross income, whilst the claimant filed false RTI (real time information) returns. This is despite the claimant's website claiming that *"everything is declared as PAYE".* The effect was that part, but not all, of a worker's pay was deducted for PAYE purposes. I am satisfied that there is no real prospect of arguing that this scheme was lawful. Mr Brockman points out that a further effect of this unlawful scheme was that agency workers flocked to the claimant because it was operating a scheme which resulted in lower deductions from their wages. Apart from the unfair competitive advantage that this created for the claimant, it also increased the *'pot'* of money available for Mr and Mrs Oronsaye to extract from the claimant company.

60. Further, an analysis of the claimant's payroll software (where used) shows that the claimant routinely under declared the amount of PAYE and NICs in its returns to HMRC, even on the basis of the *'POS'* scheme unlawfully operated by Mr and Mrs Oronsaye. Mr Brockman refers, by way of example, to page 1238 of the hearing bundle, which shows that the claimant declared only about 1/3rd of the gross amount paid to it by the agencies, leading to apparent deductions of only about 7-8%. The joint liquidators have calculated that (after VAT) a gross payment received from an agency client was applied approximately as follows:

    (1) 80% to the worker;

    (2) 7% to 8% to HMRC; and

    (3) 12% to 13% was retained by the claimant.

    Mr and Mrs Oronsaye were thereby leaving the claimant exposed to claims by HMRC for under declared, and consequently underpaid, PAYE/NICs.

61. The defendants object that the amount of this element of the claim has been *"plucked out of thin air"* and is *"grossly wrong"* because the figures have just been taken from the defendants' bank statements. The calculations all use standard personal allowances for each year. The defendants object that payroll calculations can never be done on blanket, or group, calculations, ignoring the specific personal circumstances, and expenses, of individual workers, *"as every worker does not work the same"*. PAYE is affected by several factors, which are identified at paragraph 72 of the Mr and Mrs Oronsaye's witness statements. The only way in which the claimant's tax liability can be calculated is for the joint liquidators to consider the individual circumstances of each worker for each week: they suggest that this would involve considering the personal circumstances of over 1,000 workers for over 5 years. Mr McTear expressly acknowledges (at paragraph 125.7 of his first witness statement) that: *"The actual personal allowances for each individual worker which would be taken from the tax codes is not at this time ascertainable from the books and records available."*

62. Mr McTear has responded to this criticism at paragraphs 36-7 of his second witness statement, where he addresses Mr and Mrs Oronsaye's list of factors affecting the calculation of the claimant's PAYE liability. He acknowledges that some of her points may be relevant; but he continues:

> *However, none of these details are contained in the books and records of the Company and it is her position that I have all of the records (although that is incorrect). She also ignores the detailed analysis that I have set out in my first witness statement of how the liabilities have been calculated and provides no answer anywhere to it. I have used all of the records available which is in reality a series of backups of a payroll software which was used by the Company to declare only a portion of the workers' pay as well as the bank statements to calculate the payments made as explained in my first witness statement.*

63. On the basis of that evidence, I accept that the analysis and calculations that Mr McTear has undertaken are the best evidence of the amount of the underdeclared, and underpaid, PAYE/NICs. They are consistent with the results of the exercise undertaken by HMRC. On a claim by the latter, the claimant would have no real prospect of challenging this calculation. If more accurate and reliable calculations and results might have been achieved, it was the duty of Mrs Oronsaye, as the claimant's director and accountant, to maintain and preserve, and later produce to the joint liquidators, the relevant records. She cannot now complain that had she done so, more accurate figures and calculations might have been available.

64. As explained by Mr McTear, at paragraphs 88 to 93 of his first witness statement, the claimant filed a series of year-end accounts that were false, and did not show a true and fair view of its financial position. It is the claimant's case that Mr and Mrs Oronsaye caused the claimant to do so in order to conceal from HMRC the true level of the claimant's turnover and/or the true level of its liability to pay PAYE/NICs. At paragraphs 88 and 89 of their respective witness statements, Mr and Mrs Oronsaye dispute that they have hidden the true level of the claimant's turnover and the level of the liability to pay PAYE and NICs from HMRC. They do not take issue will the details of Mr McTear's evidence, merely stating that all calculations were done by software, and that the liquidators have *"painted all the work with the same brush"*; and asserting that they sacrificed their family life for the claimant. They also seem to assert that the reason for filing incorrect accounts was because *"the defendant was overwhelmed with the work of the claimant"*. As Mr Brockman points out, that may be an explanation (although a poor one) for filing no accounts but it is not an explanation for the filing of incorrect accounts. Mr Brockman emphasises that all accounting documentation for the defendants has been produced by Mrs Oronsaye, with no external accounting input.

65. I am satisfied that there is no reasonable prospect of mounting any defence to the claim that the defendants have caused the claimant to perpetrate a massive PAYE/NICs fraud against HMRC. Again, I am satisfied that there is no reasonable prospect of any further genuine documents coming to light at trial that might realistically point to any other conclusion. I remind myself again that this is not a claim by HMRC against the claimant for a fraud on the revenue, but a claim by the claimant company (in liquidation) against Mr and Mrs Oronsaye, as its statutory and de facto directors, and against associated companies. I will need to consider later in this judgment to what extent this gives right to a claim by the company against the defendants.

VII: *The claims*

66. Since the test for dishonesty applies across several of the heads of claim, Mr Brockman dealt with it separately in his submissions. It is now set out in *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords)* [2017] UKSC 67, [2018] AC 391 in the judgment of Lord Hughes JSC (with whom Lord Neuberger, Lady Hale, Lord Kerr and Lord Thomas all agreed) at [74]:

> *When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.*

67. However, the standards in question are those of the ordinary, honest person in the circumstances of the particular defendant. Thus, in applying the test of dishonesty, the court must have regard to all the circumstances known to the defendant at the time; and it must have regard to the defendant's personal attributes, such as their experience and the reason why they acted as they did.

68. Mr Brockman accepts that it is unusual for the court to be able to make a finding of dishonesty on a summary judgment application; but he submits that in this case the conduct of Mr and Mrs Oronsaye, both before and after the proceedings (brought first by HMRC and then by the joint liquidators), is more than enough to justify findings of dishonesty on their part.

69. I am satisfied that the claimant's entire business model was underpinned by, and dependent upon, defrauding HMRC. The claimant was operated dishonestly from about the beginning of 2017; and Mr and Mrs Oronsaye clearly appreciated this, which is why they retrospectively fabricated the series of VAT invoices purportedly rendered to the claimant by Accounting, beginning in April 2017, which bear a VAT registration number which was only allocated to Accounting in August 2021. It is clearly dishonest to charge VAT to agency customers and then to fail to account for this to HMRC. It is clearly dishonest to file VAT returns which grossly under declare the amount of VAT properly due. It is clearly dishonest to cease filing VAT returns when significant amounts of VAT continued to be charged to agency customers.

70. As Mr McTear explains, at paragraphs 128 to 137 of Mr McTear's first witness statement, a working schedule was recovered from the claimant's offices relating to workers supplied by a recruitment agency called Eden Brown. This appears to make a distinction between one worker who is recorded as *'PAYE'* (and who received what would appear to be the correct payment, after deductions for PAYE and employee's NICs) and all the others who are categorised as *'POS'* and who (with one exception, attributable to student loan deductions) received roughly 80% of their wages (net of VAT). This demonstrates that Mr and Mrs Oronsaye appreciated the distinction

between the proper operation of the PAYE system and their unlawful *'POS'* scheme. It was clearly dishonest to operate the *'POS'* scheme for the deduction of fixed percentages from workers' wages in the order of 20%. It was even more dishonest of Mr and Mrs Oronsaye not even to account fully to HMRC for the limited deductions that they made applying the *'POS'* scheme, but to declare and account to HMRC for lesser sums, paying the balance away from the claimant. It was clearly dishonest of them to file false accounts at Companies House. In oral submissions, Mr Brockman suggested that it would be difficult to think of a more dishonest scheme, developed, from top to bottom, to defraud. It was a scheme in which all of the defendants (with the possible exception of Mimshach) actively participated.

71. As regards Mr and Mrs Oronsaye, the claimant relies upon the duties of directors which have been given statutory codification in ss 171-175 of the Companies Act 2006. In the interpretation and application of these statutory duties, it remains necessary to have regard to the common law rules and equitable principles on which the statutory codification is based: see s. 170 (4).

72. The primary fiduciary duty of a company director is the duty to promote the success of the company. This duty is now contained in s. 172 of the 2006 Act, which is in the following terms:

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to –

(a) the likely consequences of any decision in the long term,

(b) the interests of the company's employees,

(c) the need to foster the company's business relationships with suppliers, customers and others,

(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

73. The duties to which Mr and Mrs Oronsaye were subject are pleaded in full at paragraph 26 of the Particulars of Claim. In particular, these duties required them to:

(1) Ensure that the claimant properly accounted to HMRC for its tax (which would include the filing of proper and accurate returns);

(2) Ensure that the claimant's accounts were properly prepared, and showed a true and fair view of the claimant's financial position; and

(3) Take steps to investigate any fraud perpetrated on or by the claimant where this was suspected.

74. The duty imposed by s. 172 (and its common law predecessor) is ordinarily regarded as a subjective one. The position was explained by Jonathan Parker J in *Regentcrest plc (in liquidation) v Cohen* [2001] 2 BCLC 80 at [120] as follows:

> *The duty imposed on directors to act bona fide in the interests of the company is a subjective one … The question is not whether, viewed objectively by the court, the particular act or omission which is challenged was in fact in the interests of the company; still less is the question whether the court, had it been in the position of the director at the relevant time, might have acted differently. Rather, the question is whether the director honestly believed that his act or omission was in the interests of the company. The issue is as to the director's state of mind. No doubt, where it is clear that the act or omission under challenge resulted in substantial detriment to the company, the director will have a harder task persuading the court that he honestly believed it to be in the company's interest; but that does not detract from the subjective nature of the test.*

75. There are however qualifications to the general principle that the duty under s. 172 is a subjective one. These qualifications were explained by Mr John Randall QC (sitting as a Deputy Judge of the High Court) in *Re HLC Environmental Projects Limited* [2013] EWHC 2876 (Ch) at [92]. First, where (as in cases of insolvency or doubtful solvency) the duty extends to consideration of the interests of creditors, their interests must be considered as *"paramount"*. Secondly, the subjective test only applies where there is evidence of actual consideration of the best interests of the company. Where there is no such evidence, the proper test is objective, namely, whether an intelligent and honest man in the position of a director of the company could, in the circumstances, have reasonably believed that the transaction was for the benefit of the company. Thirdly, where there is a very material interest, such as that of a large creditor (in a company which is insolvent or of doubtful solvency) which is without objective justification overlooked and not taken into account, the objective test must equally be applied. Failing to take into account a material factor is something which goes to the validity of the directors' decision-making process. This is not the court substituting its own judgment on the relevant facts (with the inevitable element of hindsight) for that of the directors made at the time; rather it is the court making an (objective) judgment taking into account all the relevant facts known or which ought to have been known at the time, the directors not having made such a judgment in the first place.

76. Mrs Oronsaye was a registered director of the claimant and clearly owed it duties as such at all times. Mr Brockman submits that it goes without saying that to cause the claimant to enter into an unlawful scheme to defraud HMRC of VAT, PAYE and NICs, and to extract the moneys that flowed into the company in consequence, is a blatant

breach of her duties as a director. This also applies to Mr Oronsaye as a de facto director of the claimant.

77. There being no evidence that either Mr or Mrs Oronsaye ever actually considered the best interests of the claimant, Mr Brockman further submits that in this case, it is the objective test of best interests that applies to both of them. Even if the court were to apply the subjective test to them, however, it is clear that they cannot have believed that this overall scheme was for the benefit of the claimant.

78. I accept these submissions. I find that there is no real prospect of either Mr or Mrs Oronsaye successfully defending the claims of breach of director's duties.

79. In the context of the breach of duty claims, Mr Brockman also invites the court to bear in mind that both Mr and Mrs Oronsaye have received substantial sums of money from the claimant for which there was no contemporaneous, objective justification:

(1) As explained by Mr McTear, at paragraphs 175 and 176 of his first witness statement, Mrs Oronsaye has received the net sum of £1,230,262 (taking into account all the sums she has repaid to the claimant). This should be contrasted with the income that Mrs Oronsaye declared to HMRC, ranging between £16,500 in 2017/18 and £18,000 in 2020/21. As explained above, Mrs Oronsaye's assertion that the payments made to her were by way of reimbursement for payments made by her to HMRC, and for expenses, is not supported by any credible evidence.

(2) Mr Oronsaye does not dispute that he received sums totalling £2,566,572 from the claimant over the period 2017-2023, including a round sum of £2 million on 24 May 2019. He has failed to disclose where that money has gone. He has not declared any income for tax purposes since 2017/2018.

80. The claimant seeks summary judgment on its claims against each of the five defendants in knowing receipt, as pleaded at paragraphs 89 to 96 of the Particulars of Claim (which also cross-reference further paragraphs). It was not in dispute that in order to demonstrate knowing receipt, it is necessary to show:

(1) That there has been a disposal of the claimant's assets in breach of fiduciary duty; and

(2) The beneficial receipt by the defendant of assets which are traceable as representing the assets of the claimant; and

(3) Knowledge on the part of the defendant that the assets they received are traceable to a breach of fiduciary duty such as to make it unconscionable for them to retain the benefit of the receipt

Whilst a knowing recipient will often be found to have acted dishonestly, it has never been a prerequisite of liability for knowing receipt that he should have done so. The recipient's state of knowledge must be such as to render it unconscionable for him to retain the benefit of the receipt: see *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437 at 455 E-G per Nourse LJ (with the agreement of Ward and Sedley LJ).

81. In my judgment, on the evidence presently before the court (and realistically likely to be available at any trial of this claim) there is no real prospect of any of these five defendants successfully disputing that all three of these requirements are satisfied in relation to the sums claimed against them (subject to the minor adjustments I identify below).

82. The claimant submits that the sums paid to the various defendants were all derived from the tax fraud. It relies on the knowledge of Mr and Mrs Oronsaye as establishing the requisite knowledge on the part of all of five defendants that the assets they received were traceable to their breaches of fiduciary duty so as to make it unconscionable for any of them to retain the benefits of the receipt. In this case, the recipients of the claimant's monies actually participated in concealing the proceeds of the fraud that had been perpetrated upon it. Mr Brockman submits that that not only goes to knowledge, but also shows that it would be unconscionable for the holders of the claimant's moneys, or the assets into which they have been traced, to retain them. I accept these submissions.

83. As referenced above, Mrs Oronsaye has received net payments from the claimant totalling £1,230,262. These are traceable as representing the assets of the claimant. I am satisfied that Mrs Oronsaye has provided no credible justification for these receipts which has any real prospect of succeeding at any trial of this claim. Absent such justification, this was a clear misappropriation of the claimant company's moneys, in breach of the duties that Mrs (and Mr) Oronsaye owed to the company as its statutory director. With the knowledge that she possessed, it would be unconscionable for Mrs Oronsaye to retain the benefit of those moneys. The claim in knowing receipt is made out against her.

84. Mr Oronsaye does not dispute that he received sums totalling £2,566,572 from the claimant over the period 2017-2023, including a round sum of £2 million on 24 May 2019. These are traceable as representing the assets of the claimant. I am satisfied that Mr Oronsaye has provided no credible justification for these receipts which has any real prospect of succeeding at any trial of this claim. Absent such justification, this was a clear misappropriation of the claimant company's moneys, in breach of the duties that Mr (and Mrs) Oronsaye owed to the company as its statutory directors, and that Mr Oronsaye later owed (as I find) as its de facto director. With the knowledge that Mr Oronsaye possessed, it would be unconscionable for him to retain the benefit of those moneys. The claim in knowing receipt is made out against him.

85. The evidence demonstrates that Financials received £810,648 of monies due from recruitment agencies to the claimant. These monies are traceable as representing the assets of the claimant. Of this, £777,387 was received after HMRC had obtained a freezing order against the claimant and the Lloyds Account had been frozen. Thereupon, Mr and Mrs Oronsaye proceeded to direct certain of the claimant's agency customers to pay these sums to the Barclays account instead. In addition, in February and March 2022, Financials received two further sums, totalling £189,500, from Accounting which were derived from, and traceable, to the claimant (as itemised in Schedule 4 (d) to the Particulars of Claim). I am satisfied that the defendants have provided no credible justification for these receipts which has any real prospect of succeeding at any trial of this claim. Absent such justification, this was a clear misappropriation of the claimant company's moneys, in breach of the duties that both Mr and Mrs Oronsaye owed to the claimant as its statutory directors, and that Mr

Oronsaye later owed (as I find) as its de facto director. With the knowledge that Mr (and Mrs) Oronsaye possessed, it would be unconscionable for Financials to retain the benefit of those moneys. The claim in knowing receipt is made out against Financials. However, I note from the analysis of the Barclays account that appears at page 89 of the smaller supplementary bundle, that there are some debits from this account attributable to the payment of items such as legal and professional fees, PAYE and wages. These would appear to be legitimate items of expenditure which are referable to the credits from agency clients. If so, they should be deducted from the amount of any money judgment. This point should be sufficiently addressed if there is simply a declaration that the monies presently held in the Barclays account are held on trust for the claimant. If there is to be any money judgment against Financials, however, credit will need to be given for these legitimate deductions.

86. A similar picture emerges in relation to Accounting, which is controlled by Mrs Oronsaye, although the sums received into the Santander account are far greater. The evidence demonstrates that, after deducting payments received from Better Healthcare, which would appear to represent rental (rather than agency) payments, total receipts into the Santander account from agency clients were £4,330,239, of which £4,262,667 was received after the date of the freezing injunction. These monies are traceable as representing the assets of the claimant. I do not believe that I have any documentation indicating whether there are any legitimate deductions to be made from the former sum, and I will therefore need to receive submissions from the claimant as to the precise form of relief to be granted in relation to this head of claim. I am satisfied, however, that the defendants have provided no credible justification for the receipt of these sums into Accounting's Santander account which has any real prospect of succeeding at any trial of this claim. Absent such justification, this was a clear misappropriation of the claimant company's moneys, in breach of the duties that Mrs Oronsaye owed to the claimant as its statutory director (and that Mr Oronsaye owed as a statutory and later - as I find - its de facto director). With the knowledge that Mrs (and Mr) Oronsaye possessed, it would be unconscionable for Accounting to retain the benefit of those moneys. The claim in knowing receipt is made out against Accounting.

87. Mimshach has received sums totalling £115,821 from the claimant, with £12,114 being paid into an account held in its own name and £103,707 into the Santander account (but with references indicating that this was for the benefit of Mimshach). The defendants have sought to justify these payments on the footing that they were made in respect of rent and utilities for a commercial property in Bedford known as Salamander House. However, the evidence discloses that the entire purchase price for this property was funded from moneys in the Lloyds account which I find were the property of the claimant. Since I find that the claimant was the beneficial owner of Salamander House, these payments properly represent funds belonging to the claimant. The defendants have advanced no other credible justification for the receipt of these sums. Absent such justification, this was a clear misappropriation of the claimant company's moneys, in breach of the duties that Mrs Oronsaye owed to the claimant as its statutory director (and Mr Oronsaye owed as a statutory and later - as I find - a de facto director). With the knowledge that Mr and Mrs Oronsaye possessed, it would be unconscionable for Mimshach to retain the benefit of those moneys. The claim in knowing receipt is made out against Mimshach.

88. It is clear that monies belonging to the claimant company, as described above, can be traced into the hands of the various defendants; and the claimant is therefore entitled to summary judgment for declarations that assets representing those monies are held on trust for the claimant.

89. As an alternative to its claim in knowing receipt, the claimant seeks summary judgment on its claim against the corporate defendants for dishonestly assisting in the breach by Mr and Mrs Oronsaye of their fiduciary and statutory duties owed to the claimant. In light of my decision on the other heads of claim, it is unnecessary for me to address this further, and alternative, head of claim.

90. As set out at paragraph 184 and following of Mr McTear's first witness statement, his analysis of the Lloyds account bank statements, together with information provided to him by certain firms of conveyancing solicitors and mortgage providers, has led him to conclude that payments of the claimant's monies from the Lloyds account have been used to purchase, and/or to redeem mortgages secured upon, four properties, all in Bedford, which are variously registered in the names of Mr and Mrs Oronsaye and Mimshach. The claimant also seeks declarations that these four properties are held on trust for the claimant, and orders for their transfer to the claimant. I shall deal with each of these properties in chronological order.

91. The first in point of time is **1 Hazelwood Road**. This was registered in the names of Mr and Mrs Oronsaye in April 2014. The purchase price was £163,000, which was partly financed by a mortgage of £130,000 from the Halifax. That mortgage was redeemed on 1 May 2018, with a payment of £110,149.44 from the Lloyds account. There is no evidence that either the original balance of the purchase price, or the ongoing mortgage repayments, were financed from the claimant's monies. Mr Brockman therefore accepts that there will need to be an account or inquiry as to the respective beneficial interests in this property of Mr and Mrs Oronsaye (on the one hand) and the claimant (on the other).

92. The next property is **1 Tyne Crescent**. This was registered in the names of Mr and Mrs Oronsaye on 16 October 2017. The price paid was £600,000. A payment of £340,753 was made to Grindeys Solicitors from the Lloyds account on 6 October 2017 which was used in the purchase. The balance of the £600,000 purchase price was funded by a mortgage from Precise Mortgages, which was redeemed with a payment of £298,036.74, made from the Lloyds account, on 28 December 2018. It is therefore apparent that the entire purchase price of this property was derived from the claimant's funds.

93. 1 Brereton Road and 2 and 4 Priory Street was registered in the sole name of Mrs Oronsaye on 1 August 2018. The entire purchase price of £458,000, and the associated costs, were financed using payments from the Lloyds account to Woodfines Solicitors, totalling some £473,000 odd.

94. Salamander House was registered in the name of Mimshach on 11 September 2019. The entire purchase price of £1.5m (including VAT) was paid using moneys from the Lloyds account, which were paid to DV Solicitors, totalling £1,504,382.19.

95. The evidence of Mr and Mrs Oronsaye (at paragraph 20 of their respective witness statements) is that the moneys used to purchase the residential properties did not come

from the claimant but from the Firm for work they had undertaken for it. Later (at paragraphs 144 and 145) they say that the moneys came from the Lloyds account, but that they represented accrued remuneration for services rendered to Financials. As Mr Brockman observes, this is confusing because the Lloyds account was held in the sole trading name of Mrs Oronsaye, and not Financials; and, in any event, the evidence is overwhelming that the funds in the Lloyds account belonged to the claimant. I am satisfied that there is no real prospect of the defendants adducing at any trial sufficient evidence to rebut the presumption of a resulting or constructive trust of these properties in favour of the claimant, which was the source of their purchase prices, or, in the case of 1 Hazelwood Road, that part of the beneficial interest represented by the redeemed mortgage.

96. The defendants' position in relation to Salamander House (as set out at paragraph 140 of their witness statements) is that the property was purchased with a loan from Mr and Mrs Oronsaye, and that the money was also from accrued remuneration from the accounting firm, and was not the claimant's money. The defendants have provided no evidence of the alleged loan, or any details or independent and credible proof of the alleged remuneration; and they have failed to explain why they should have lent Mimshach funds belonging to the claimant, and which were paid from the Lloyds account. Again, I am satisfied that there is no real prospect of the defendants adducing at any trial sufficient evidence to rebut the presumption of a resulting or constructive trust of Salamander House in favour of the claimant, as the source of the purchase price.

VIII: *Conclusion*

97. For the reasons set out above, I am satisfied that the claimant has established its entitlement to summary judgment along the lines of its draft order on the footing that none of the defendants have any real prospect of successfully defending the claims against them, and that there is no other compelling reason why the case should be disposed of at a trial. I will consider the precise form of order when I formally hand down this judgment. I invite Mr Brockman and Ms Lintner to prepare a draft form of order to give effect to this judgment.

98. I will also consider the claimant's application for post-judgment freezing and proprietary orders upon the formal handing down of this judgment.

99. That concludes this written judgment.