Neutral Citation Number: [2022] EWHC 2643 (KB) Case No: QB/2021/000899

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 25/10/22

Before :
John Kimbell KC
(sitting as a Deputy High Court Judge)

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Between :

(1) CAMBERLEY GROUP PLC **(2) CAM LOCK LIMITED** **(3) BROADOAK MANUFACTURING LIMITED**	**Claimants**
- and –	
(1) PAUL FOSTER **(2) MARK PILLING** **(3) SUCHADA CHURAT**	**Defendants**

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Mark Stephens (instructed by **Laytons LLP**) for the **Claimants**
James Wibberley (instructed by **Blake Morgan**) for the **First Defendant**
The Second and Third Defendants were not represented

Hearing dates: 4 - 8 July 2022

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APPROVED JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives by email and will be released for publication on the National Archives caselaw website. The date and time for hand-down is deemed to be 2 pm. on 25 October 2022

John Kimbell KC sitting as a Deputy High Court Judge:

Introduction

1. These proceedings are about a dispute between a family-owned group of companies and three former employees. The claims against the former employees, one of whom was a statutory director of one of the companies in the group, include: breach of fiduciary duty, breach of contract, unlawful interference with contractual relations, misappropriation of funds and unjust enrichment. The First and Third Defendants deny all liability. The Second Defendant has made some limited admissions but denies for liability most of the claims advanced.

Background

CRM

2. Camberley Rubber Mouldings Ltd ('**CRM**') produces precision rubber mouldings for a wide range of industrial and military products. CRM was founded in 1969 in Camberley Surrey. CRM moved to its current premises on an Industrial Estate in Aldershot in 1998.

The Claimants

3. The First Claimant ('**CGP**') is the holding company for CRM and the Third Claimant.

4. The Second Claimant ('**CLL**') trades as Cam Lock. CLL produces protective equipment for military and industrial applications. In particular, it produces masks and breathing apparatus for aircrew, emergency responders, medical and other professionals.

5. The Third Claimant ('**BML**') was acquired by CGP by share purchase from its founder, David Fuller, in 2016. BML was originally based in Yateley, Hampshire. Following a transitional period, BML's machinery was moved to CRM's premises in Aldershot. BML added production and moulding capacity.

Cam Lock Holdings

6. Cam Lock Holdings Ltd ('**CLH'**) is the holding company for CLL. I will refer to the companies owned by either CGP or CLH as 'the Camberley Group'.

Mr Griffiths

7. The majority shareholder and chairman of the board of both CGP and CLH is Mr Joseph Griffiths ('**Mr Griffiths**'). Mr Griffiths is the son and joint founder of the Camberley Group. Mr Griffiths is 73 years old.

8. Mr Griffiths owns 51% of the shares in CGP and 52% of the shares in CLH. The remaining shares were held by Mr Griffiths' wife, Janet, and a trust for the benefit of their only daughter, Lynn.

ITI

9. Inspired Technologies International Inc ('**ITI**') is another company owned and controlled by Mr Griffiths. ITI is incorporated in Barbados. It sells CLL's equipment to customers around the world. The purpose of ITI it seems was to insert a commercial 'fire break' between overseas customers and the Camberley Group.

Mid Trees

10. Mr and Mrs Griffiths live at a property called Mid Trees, Lythe Hill Estate, Haslemere ("**Mid Trees**"). The grounds are extensive. Located within the grounds were two storage units, an office, an archive store and workshop all of which are used by CLL. CLL pays rent to Mr Griffiths for these facilities. A fork-lift truck was kept on site to assist with moving heavier items on pallets. There is a track leading the to facilities used by CLL.

The Defendants

11. The Defendants are all former employees of the companies in the Camberley Group. The First Defendant ('**Mr Foster'**) was a statutory director of BML.

The First Defendant

12. Mr Foster began working for CGP in 2002 and remained employed by CGP until his departure in February 2019. In 2003, he married Mr Griffiths' daughter, Lynn ("**Mrs Foster**"). They had three children together, who are now 13, 15 and 17.

Common Cottage

13. Until January 2019, Mr and Mrs Foster lived together at property called Common Cottage, in Headley, Hampshire ("**Common Cottage**").

Family income of Mr and Mrs Foster

14. Mrs Foster worked 15 hours per week as a part time project manager for CLL. Mr Foster's salary was approximately £120,000 per year. However, both Mr and Mrs Foster had the benefit of directors' loan accounts.

Mr and Mrs Foster's loan accounts

15. The directors' loan accounts were administered by the accounts department of the Camberley Group in Aldershot. The department was headed by Richard Dodd, who was assisted by a Mr Watts.

16. Mr and Mrs Foster used the loan accounts to pay for their car loans and other items of personal expenditure. Mrs Foster received dividends on her shares as credits to her loan account. Personal expenses debited from this account. They also had access to corporate accounts with suppliers for purchases of such items as building materials. By using the accounts Mr and Mrs Foster could take advantage of discounts afforded to the Camberley Group companies. Purchases made in this way were initially charged to one of the companies in the Camberley Group and then recharged to Mr or Mrs Foster by the accounts department to one or other of their loan accounts.

17. The loan accounts were also used to pay any tax due from Mr and Mrs Foster on their income credited to these accounts. The print outs from the loan accounts in the trial bundle showed that they were frequently used by both Mr and Mrs Foster including for DIY home improvement expenses.

18. On one occasion Mr and Mrs Foster queried with the accounts department how the cost of flights to Barbados for them and their children had been treated. Mrs Foster told the accounts department that her father had said that the Camberley Group would bear the cost of the flights. This seemed to be on the basis that Mr Foster had attended some business meetings while in Barbados. The accounts department refused. It was their view that even if Mr Foster had attended a business meeting, the predominant purpose of the journey was plainly for the Foster family to have a holiday. The cost was therefore

charged to Mrs Foster's loan account as a debit rather than being borne by ITI or any company in the Camberley Group. Mr and Mrs Foster accepted this.

Mr Griffith's relationship with his son-in-law

19. Mr Griffiths treated his son-in-law in many ways as his heir apparent. However, their relationship was not straightforward. In his oral evidence Mr Foster described Mr Griffiths as a controlling bully. Mr Foster gave three months' notice of resignation in June 2017. He said he took this step because of Mr Griffith's interference. He said he was persuaded by Mr Griffiths to withdraw the notice and that one of the means of persuasion used by Mr Griffiths was that he threatened to stop paying the school fees for Mr and Mrs Foster's children. Mr Griffiths did not give evidence so I do not know what Mr Griffith's account of the 2017 resignation or of his relationship with Mr Foster generally would have been.

20. Mr Foster, Mr Griffiths and Mr Acey, the Group Business Director for the Claimants, each had a desk in the main directors' room at the Camberley Group's office in Aldershot. I heard evidence that Mr Griffiths was often away promoting the Camberley Group's products abroad. Mr Foster was given the title of managing director of CGP and CLL in 2013 but was not in fact employed by either company. Nor did he become a statutory director of either CGP or CLL at any time. He did become a statutory director of BML in 2016. He acted as the de facto managing director of BML.

The separation

21. Mr and Mrs Foster separated acrimoniously in January 2019. Mrs Foster moved back in with her parents. The financial aspects of the divorce proceedings are on-going. It is part of Mr Foster's case that one of the prime motivations for this litigation is Mr Griffiths' desire to punish him for leaving his daughter. It is common ground that Mr Griffiths informed Mr Foster in February 2019 that in his view, Mr Foster had ruined his daughter's life.

Mr Foster's departure

22. Mr Foster ceased to be employed Camberley Group with effect from 1 March 2019 on the terms of a settlement agreement between himself and CGP dated 28 February 2019

('**the Settlement Agreement**'). Both parties instructed solicitors to assist with the process. The Settlement Agreement refers to Mr Foster reason for leaving the Camberley Group as redundancy. It was not in dispute that this was not accurate. Mr Foster's position was immediately filled after he left by Mr John Height. Mr Foster maintains that he was in reality forced out of the family business because of the breakdown of his marriage. He received £97,449 under the Settlement Agreement. £30,750 of the total represented a payment in lieu of 3 months' notice. The balance of £66,699 was an ex gratia payment in recognition of the length of his employment within the Camberley Group.

The Second Defendant

23. The Second Defendant ('**Mr Pilling'**) met Mr Foster socially and was employed by CLL on 5 September 2005. He was promoted to production manager of CLL in July 2013.

24. In November 2016, Mr Pilling became the general manager at BML. It appears from the documentary evidence that Mr Pilling remained legally employed by CLL throughout. Accordingly, when Mr Pilling was put on Covid- 19 related furlough in June 2020 it was CLL and not BML which issued the notice. However, it is clear that his day-to-day work responsibilities were exclusively for BML. His salary was paid by CLL but the cost was recharged by CLL to BML.

25. Mr Pilling resigned on 8 September 2020. His resignation followed an investigation by Mr Acey, into allegations made by a fellow employee at BML, Mr Dariusz Dobrowolski. Mr Dobrowolski informed Mr Acey in June 2020 that he believed Mr Pilling and Mr Foster were acting in concert to set up a rival business and that they intended to entice customers of BML away to the new business. A formal notice of investigation was sent to Mr Pilling on 28 August 2020.

The Third Defendant

26. The Third Defendant ('**Mrs Pilling**') is the wife of Mr Pilling. They have two small children. Mrs Pilling started working for BML in November 2016. She worked from home, trimming excess rubber off moulded products (where required). The authenticity

of the terms of her contract of employment is in dispute. She also received a formal notice of investigation on 28 August 2020. She resigned from BML on the same day as her husband.

The Proceedings

27. The Claim Form was issued on 12 March 2021. Particulars of Claim were served with the Claim Form. The Particulars were amended in February 2022 to add three further particulars of false invoicing by Mr Foster.

28. A joint Defence was served by the Second and Third Defendants on 15 April 2021. At this time they were legally represented by solicitors and counsel. They subsequently became litigants in person. Replies and a Rejoinder followed.

29. An Amended Defence was served by Mr Foster in March 2022.

The claims and the pleaded defences

30. The claims may be divided into three broad categories as follows:

    a. A breach of warranty claim (against Mr Foster alone). This involved an alleged breach of a condition in the Settlement Agreement with CGP.
    b. A damages claim against Mr Foster and Mr Pilling arising out of their alleged joint and co-ordinated actions designed to harm the Claimants
    c. Unjust enrichment claims against Mr and Mrs Pilling.

(a) The warranty claim

31. The warranty claim is based on clause 9 of the Settlement Agreement dated 28 February 2019 between Mr Foster and CGP. This provided as follows:

> "9.1 The Employee represents and warrants that there are no circumstances of which he is aware or ought reasonably to be aware which would amount to a material breach of the terms and conditions of employment which would justify summary dismissal.

9.2 the Employee acknowledges that the Employer has acted in reliance on these representations and warranties in entering into this Agreement."

32. The Claimants allege that:

    a. The representation in the warranty was false in that Mr Foster caused third parties to submit false invoices to CLL purporting to be for goods or services supplied to CLL but which were in fact payments for work and goods supplied to Common Cottage to a total value of £20,050 and to submit false invoices to CGP for four items of furniture in the total sum of £9,214; and

    b. These actions constituted a material breach of the terms of his employment contract with CGP which would justify summary dismissal.

CGP says that had it been aware of the false invoices and the alleged misappropriation of funds it would not have entered into the Settlement Agreement and/or paid Mr Foster the agreed sums but would instead have simply summarily dismissed Mr Foster.

The defence to the warranty claim

33. In his defence, Mr Foster admits that false invoices were presented to CLL but says:

    a. Mr Griffiths habitually invoiced personal purchases in such a way as they were paid directly by the Claimants (to avoid tax).
    b. In particular, Mr Griffiths caused invoices of Aspen Arboricultural Limited and Aspenarb Limited ('**Aspen**') to be paid by CGP for works at Mid Trees to create a lake view for his family's personal benefit.
    c. Mr Griffiths specifically authorised Mr and Mrs Foster to invoice CGP for the work done at Common Cottage.
    d. A quotation used to disguise the work at Common Cottage also covered landscaping works at Mid Trees to improve the view of the lake from the house but which was dressed up as drainage work to improve access for the benefit of CLL.

e. Mr Griffiths told Mr and Mrs Foster should feel free to invoice personal purchases to companies in the Camberley Group and should treat the Claimants as "his companies" but should not do so in such a way or to such an extent that it would expose the Claimants to an investigation by HMRC.
f. The alleged false invoicing was not discovered by the Claimants after he left the Camberley Group but was known about at the time the Settlement Agreement was entered into.

34. In summary, Mr Foster's pleaded factual case was that he had both a specific authority to procure and present false invoices in respect of the work on Common Cottage and that he held a general authority to procure and present false invoices for payment by CLL for his and Mrs Foster's benefit (following Mr Griffiths own example).

35. In their Reply the Claimants denied every aspect of Mr Foster's authorisation case and denied any tax avoidance on the part of Mr Griffith.

(b) The damages claim against D1 and D2

36. The damages claim against Mr Foster and Mr Pilling, is based on an allegation that Mr Foster unlawfully induced Mr Pilling to breach his contract of employment with BML. It is alleged that in March 2019, they created a business plan in the form of an Excel spreadsheet. The plan is said to represent the blueprint for a new business to compete with BML and entice its customers away. Pursuant to that plan, it is alleged that they co-operated to obtain confidential material codes for one client of BML's, CJ Carter Limited ('**CJC**'). BML claims it subsequently lost CJC as a client as a result of the activities of Mr Foster and Mr Pilling. BML claims four years of lost net profit.

37. It is said that CGP and CLL also suffered loss in the form of loss of management time investigating the activities of Mr Foster and Mr Pilling (£24,274) and in the cost of third party consultants who assisted with the investigation, including surveillance (£79,638).

38. Mr Foster admits that he did briefly contemplate setting up a rubber moulding company but his evidence was that he did not pursue the idea for very long. Mr Foster denied inducing Mr Pilling to breach his contract of employment. He said that had had only a

brief informal conversation (on a golf course) about the possibility of Mr Pilling joining any new company that Mr Foster might set up. Mr Foster admitted approaching CJC but this was said to for the purposes of establishing whether or not it was feasible for a new company of Mr Foster's creation to compete with BML.

39. Mr Pilling admits that he created a business plan in Excel format for a rival business in March 2019 ('**the Business Plan'**) i.e. at a time when he was employed by CLL and acting as the general manager for BML. He also admits to having "various discussions" from time to time with Mr Foster about the Business Plan. He admits inviting Mr Dobrowolski to join the new venture. However, Mr Pilling denies implementing the plan and denies causing BML to lose any customers. His case was that the Business Plan remained nothing more than "a pipe dream". Mr Pilling denies using any confidential information to seek to gain CJC's custom for a new business.

40. All the Defendants alleged that the sums spent on investigative consultants by the Claimants are wholly disproportionate and irrecoverable.

(c) **The unjust enrichment claims against Mr and Mrs Pilling**

41. The claim against Mr Pilling alone was that he dishonestly claimed as company expenses items of personal family use such as children's games and clothing with a value of £3,557 and also made unsubstantiated claims for car use in the sum of £1,530. In his Defence Mr Pilling admitted that he put through an invoice for £117 for non-work-related sports items. The claim for false car allowance was not admitted. In opening, the Claimants announced that in the interests of proportionality they were limiting their false mileage allowance claim to one incident where it appeared to them that Mr Pilling was abroad and limited their false expenses claim to the admitted games and clothing.

42. The claim against Mr and Mrs Pilling jointly is that Mr Pilling substituted a forged contract granting his wife a guaranteed 30 hours of work a week and that Mr Pilling submitted exaggerated claims for hours which Mrs Pilling had not in fact worked. Mr and Mrs Pilling deny these claims. They claim that Mrs Pilling worked all the hours in respect of which she claimed wages.

The Witness Evidence

43. The Claimant called three witnesses: Mr Dariusz Dobrowolski, Mr Acey and Mr Craig Carter.

Mr Dobrowolski

44. Mr Dobrowolski is 53 years old. He comes originally from Poland but has worked in the UK for 16 years. Before settling in England, he was a monk and later a policeman in Poland. He was first employed by CRM in 2001 as a production operative. He left CRM four years later but returned to work for CRM as a production manager in 2006. He left CRM again in 2014 but re-joined once again in 2016. It is clear that he feels a sense of loyalty towards Mr Griffiths and the Camberley Group, which, as he put it, enabled him to make a life for himself in England.

45. He worked closely with Mr Pilling, in particular, following the incorporation of BRM into the Camberley Group. They were both seconded to work at BRM's original premises in Yateley. Mr Dobrowolski oversaw production at BRM. He operated the machines for the more difficult jobs.

46. In his witness statement, Mr Dobrowolski described how, following Mr Foster's departure, Mr Pilling considered that he might be promoted to fill Mr Foster's place. He described how Mr Pilling was very unhappy when someone else (John Height) was appointed instead. This according to Mr Dobrowolski quickly turned into discussions with Mr Pilling about Mr Pilling starting a business which would compete with that of BRM. According to Mr Dobrowolski, Mr Pilling shared details of how the new business was to be financed, he was told that Mr Foster was to be Mr Pilling's partner and he was shown various versions of the Business Plan.

47. In June 2020, Mr Dobrowolski told another Polish employee, Jan Stubenvoll-Hanski, about the conversations he had been having with Mr Pilling. There followed a meeting with Mr Acey and Mrs Foster at which he repeated his story. Mr Acey suggested that Mr Dobrolowski call Mr Pilling the following day so that he could listen in to what was being said. That call took place on 12 June 2020. Notes were taken of what was said.

48. Mr Dobrowolski's witness statement was provided in Polish with a certified translation into English. He was due to give evidence through a translator but in the event he gave his evidence entirely in English because the translator became ill and no replacement could be found at short notice.

49. Mr Dobrowolski was clearly nervous about giving evidence at the trial. However, in my judgment, he did his best to answer questions to the best of his ability and did so honestly. He was clearly close to Mr Pilling. He was the only employee to attended Mr Pilling's wedding and referred to him naturally and affectionately as "Pillingski".

50. Mr Dobrowolski clearly felt conflicted. On the one hand he was being taken into Mr Pilling's confidence because he was a friend but on the other hand he felt he felt a duty of loyalty to the Camberley Group and its owner. It was put to him in cross-examination that he was giving evidence in the hope of some sort of financial gain from his employer. Mr Dobrowolski rejected this and I accept Mr Dobrowolski's response on this point. He reported on Mr Pilling because he felt what was doing he was in breach of trust and amounted to "eating the business from the inside".

51. He was, in my judgement, a credible and reliable witness. His witness statement and his oral evidence in cross-examination was in all significant respects consistent with the notes in Polish about those events which he made on 9 June 2020. I accept the main thrust of Mr Dobrowolski's evidence, in particular, as to what he was told by Mr Pilling about the plan for a new business to compete with BML. I also accept the thrust of his evidence about what remembered Mr Pilling doing and saying at work in the period of just over a year between Mr Foster's departure on 1 March 2019 and Mr Pilling being put on furlough in June 2020.

<u>Mr Acey</u>

52. Mr Acey had been a programme delivery director with BAE Systems. In that role he met Mr Griffiths who successfully bid to supply a new oxygen mask to BAE. Following early retirement from BAE, Mr Acey was offered a consultancy position with CLL in 2006.

53. By 2009, Mr Acey was working more or less full time for CLL. He sought and was given a 5% shareholding in ITI as part of his remuneration package.

54. Mr Acey's witness statement contained an uncontroversial overview of the activities and structure of the Camberley Group. He also provided an account of the operation of the loan accounts and described the investigations conducted into the allegations made against the Defendants. Finally, his witness statement contained some evidence about the cost of the investigations and the quantum of the alleged loss and damage claimed.

55. Mr Acey gave evidence in a straightforward manner and answered questions put to him in a direct manner. I did not detect any personal negative animus towards Mr Foster. When asked about his view of Mr Foster's character, Mr Acey responded with a balanced picture of positive and negative characteristics. This struck me as clearly being his own genuinely held view which had not been tainted by the litigation.

56. His evidence as to the how his notes of the telephone call between Mr Pilling and Mr Dobrowolski on 12 June 2020 were originally produced and refined was somewhat confused in that he was sure that he produced a manuscript note which was back at the office. Upon being recalled on the final day of the trial he said he had been wrong and now recalled that he had taken electronic notes (which were disclosed). When it was pointed out to him by Mr Pilling in cross-examination that he may have miscalculated some of his figures in relation to the overpaid wages claim, he took those points on board and revised his calculations. Overall, his evidence was measured and I found him a credible and reliable witness.

Craig Carter

57. Mr Carter was a reluctant witness. The Claimants issued a witness summons to secure his attendance at court and had sought documents from him by way of an application for specific disclosure. Due to health reasons, it was agreed that Mr Carter would give evidence via a video link from his home. No witness statement or witness summary was produced. He was instead examined in chief by Mr Stephens and then cross-examined by Mr Wibberley.

58. His oral evidence both in chief and in cross-examination was largely consistent with what he had said in a letter dated 26 May 2022 and an earlier e-mail of 18 August 2011 both of which were sent to the solicitors acting for the Claimant. The main points of his evidence were that:

    a. He had dealt BML as a sole trader rather than as CJC and had done so since 2015.
    b. His point of contact at BML was Mr Pilling.
    c. The rubber compound for the products he ordered from BML was supplied by Clywd Compounds. If he needed the product number for that compound for some reason (e.g. to pass on to a customer for their data sheet), he could get it without any difficulty.
    d. He was not aware of have having had any dealings at all with Mr Foster. He had received an email from a "Mr Peter Foster" in August 2019 seeking to quote for his business. He was not aware at the time that this email was in fact from Mr Foster using his father's name.
    e. No quotation was received either from Peter or Paul Foster after these exchanges and he did not hear from either again.
    f. Mr Carter called for his moulds to be collected from BML in April 2020 solely for purpose of having them cleaned.
    g. Mr Carter did not consider moving his business away from BML until September 2020. The reason he finally did move his business elsewhere in January 2021 was because of the manner in which he had been dealt with and had nothing to do with the approach from Peter/Paul Foster in August 2019.

59. Mr Carter appeared to somewhat bemused and irritated that he had become caught up in these proceedings. He was able to explain some of the context for the email exchanges and clarify some matters, such as the identity of the persons he thought he was dealing with. Whilst he was clearly unhappy with the way he had been treated by the Camberley Group, this did not, in my judgment, colour his evidence. He answered questions put to him in a straightforward way and those answers were consistent with his previous account in writing provided to the Claimants.

Mr Foster

60. Mr Foster provided one trial witness statement. This was dated 4 April 2022. There were two other statements provided in May 2022 both of which responded to applications for specific disclosure made by the Claimants. In his trial witness statement, Mr Foster stated amongst other things:

    a. He was firmly of the view that these proceedings have been brought to put pressure on him to settle the financial side of his divorce proceedings on more favourable terms than had been indicated by a family court judge at a hearing on 16 October 2020.
    b. He was forced out of his employment because of his separation from Mrs Foster.
    c. Mr Griffiths put through the companies' books large sums in personal expenses.
    d. He had "general approval" to put personal expenses through the business.
    e. The purchase of a bar in 2016 was covered by Mr Griffiths' general authority to put personal expenditure through the companies' accounts.
    f. The works at Mid Trees was dressed up as road improvements to ease access for CLL but were in reality done as an excuse to cut down some trees so as to create a clear a view of the lake from Mr and Mrs Griffiths' house.
    g. The creation of false invoices to hide personal expense as company expenses happened on a sporadic and opportunistic basis. It was only possible with services or goods provided by companies with very close relationship with Mr Griffiths.
    h. He and Mr Pilling discussed the possibility of a rubber moulding business in 2019.
    i. He approached Mr Carter to get some figures to assist with assessing the viability of his own proposed business venture.
    j. He told Mr Pilling in August or September 2019 that a new rubber moulding business was not a viable option.
    k. He had never seen a copy of the Business Plan produced by Mr Pilling.
    l. He leased an industrial unit in his father's name and with a contribution of £19,000 from Mr Pilling to store his own personal furniture.

61. In cross-examination, Mr Foster was adamant that he had been instructed by Mr Griffiths to put add things to company invoices on previous occasions. He said that Mr Griffiths would say things like "See if you can dress this up as work related". Mr Foster said that Mr Griffiths was good friends with the owner of Aspen, who was willing to invoice for services "under the counter".

62. He accepted that he could use his loan account almost without limit. He accepted that no-one said in terms that he could use accounts of companies in the Camberley Group "as his own". He described he felt that he had been manipulated by Mr Griffiths who was never going to step back from the business. He said that Mr Griffiths had a record of being vindicative and hadn't spoken to his own brother for 30 years following a High Court litigation with him.

63. He denied any wrongdoing either in relation to the personal expenses put through as company expenses or in relation to setting up a new business venture with Mr Pilling.

64. Mr Foster was a combative witness who clearly felt aggrieved at the way he has been pursued in these proceedings. Taking account of both the evidence I heard and the evidence which I would have expected to have seen but which was not produced by the Claimants (as to which see below), I found the broad outlines of account of his relationship with Mr Griffiths and the circumstances surrounding his departure from the Camberley Group generally credible. By contrast, I found much of his evidence in relation to alleged authority to use company funds for personal expenditure, his dealings with Mr Pilling with respect to their new business venture, the approach to CJC and the reason for taking a five-year lease on a storage unit wholly unconvincing and unreliable.

<u>Mr Pilling</u>

65. Mr Pilling submitted a single witness statement dated 31 May 2022. Mr Pilling admitted that he had on occasion put through private expense as company expenses. He denied making false claims for a milage allowance or falsely claiming for hours worked by his wife. Whilst he admitted creating the Business Plan, he claimed it was all his own work and merely aspirational.

66. I did not find Mr Pilling a credible witness. He accepted that he had misappropriated funds from a former employer and that misused company expenses while working for the Camberley Group. He was unable to explain many of the detailed entries in the Business Plan even though he was its author. His evidence as to why he advanced money to Mr Foster's father, why had asked Mr Dobrowolski to removed certain tools and destroy records was simply not credible. Where his evidence conflicted with that of Mr Dobrowolski, I had no hesitation in preferring the evidence of Mr Dobrowolski.

Mrs Pilling

67. Mrs Pilling submitted a short witness statement. It dealt almost exclusively with her trimming work. She said that she kept records of what hours she worked each day and then gave them to Mr Pilling to submit. She said that sometimes she had to work very long hours. She said that sometimes her mother had helped out and her hours had been added in. In cross-examination she accepted that she was responsible at home for all the shopping, cooking, child-care and that she liked to go out and exercise.

Mrs Foster

68. Mr Foster's solicitor produced a witness summary of the evidence they expected could be obtained from Mrs Foster. It was in the form of a series of questions and answers. The answers (as drafted) were supportive of Mr Foster's case. However, when it was served on Mrs Foster, she responded by producing a witness statement herself which contained her own answers to the questions in the witness statement and which, if anything, supported the Claimants' case. This witness statement accompanied by a statement of truth is dated 12 May 2022.

69. Although it was open to any of the parties to call Mrs Foster to give evidence, no-one did. The parties agreed that her statement was admissible in evidence and that they would make submissions as to the weight to be given to it given that she had not been called as a witness and cross-examined.

70. In the statement, she said:

a. It was the accounts department in Aldershot who controlled the loan accounts. If a purchase was signed for by her or was for delivery to Common Cottage, it was debited against her loan account.
b. The accounts department paid Mr and Mrs Foster's tax from the account.
c. Mr Griffiths had not authorised the charging of personal expenses to the company outside of the directors' loan accounts. All personal expenses signed for by her were set against her loan account.
d. Mr Griffiths did not authorise her to charge any work at Common Cottage to CLL.
e. She was not involved in dealing with the paperwork for the furniture supplied to Common Cottage.

Mr Griffiths

71. Despite the serious tax avoidance allegations pleaded against him by the First Defendant, no witness statement was produced by Mr Griffiths to refute them. He was not called to give evidence and he did not attend court. I was told that this was because he was in Barbados. No explanation was provided as to why he did not submit a witness statement denying the allegations against him by Mr Foster.

A. THE WARRANTY CLAIM

72. In support of his defence to the Warranty Claim, Mr Wibberley on behalf of Mr Foster placed a great deal of reliance on the absence of any evidence from Mr Griffiths to contradict Mr Foster's authority defence to the Warranty Claim. He submitted that it was appropriate to draw adverse inferences in accordance with the principles set out in Wisniewski v Central Manchester Health Authority [1998] EWCA Civ 596, Ahulja Investments Limited v Victorygame Limited and Pandher [2021] EWCA Civ 993 and Mackenzie v Alcoa Manufactoring (GB) [2019] EWCA Civ 596.

73. In Wisniewski v Central Manchester Health Authority [1998] PIQR P324 Brooke LJ reviewed the previous authorities from which he derived the following four principles:

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

74. In Efobi v Royal Mail Group Ltd [2021] UKSC 33 [2021] 1 WLR 3836 Lord Leggat (with whom Lord Hodge, Lord Briggs, Lady Arden and Lord Hamblen agreed) said this:

> "The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances."

75. Lord Leggatt continued:

> "Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."

76. I was also referred to Magdeev v Tsvetkov [2020] EWHC 887 in which Cockerill J made the following observations about Wisniewski:

> "The tendency to rely on this principle in increasing numbers of cases is to be deprecated. It is one which is likely to genuinely arise in relatively small numbers of cases; and even within those cases the number of times when it will be appropriate to exercise the discretion is likely to be still smaller."

77. She continued:

> "i) This evidential "rule" is, as I have indicated abo above, a fairly narrow one. As I have noted previously ([2018] EWHC 1768 (Comm) at [115]), the drawing of such inferences is not something to be lightly undertaken.
>
> ii) Where a party relies on it, it is necessary for it to set out clearly (i) the point on which the inference is sought (ii) the reason why it is said that the "missing" witness would have material evidence to give on that issue and (iii) why it is said that the party seeking to have the inference drawn has itself adduced relevant evidence on that issue.
>
> iii) The Court then has a discretion and will exercise it not just in the light of those principles, but also in the light of:
>
> a) the overriding objective; and
>
> b) an understanding that it arises against the background of an evidential world which shifts - both as to burden and as to the development of the case - during trial."

78. Mr Wibberley submitted in opening that:

    a. Mr Griffiths' evidence could not be any more central to the claim against Mr Foster. Mr Griffiths' authorisation is Mr Foster's pleaded primary line of defence.

    b. The Claimants might reasonably have been expected to call Mr Griffiths and no explanation has been given as to why he did not provide a witness statement and why he was not called.

    c. Mr Foster has put forwards evidence in support of his defence.

d. In the circumstances the Court is invited to infer, and to find as a fact, that the reason Mr Griffiths has not been called to give evidence is because the Mr Foster's case that he had authority from Griffiths to do what he did is true.

79. During his oral opening, Mr Stephens offered to tender Mr Griffiths but said he was in Barbados. No explanation was forthcoming as to why no witness statement was produced by Mr Griffiths in response to Mr Foster's pleaded case on authority.

80. Taking each of the factors enumerated by Lord Leggatt and applying them to this case:

a. Mr Griffiths was clearly available to provide evidence both initially in the form of a witness statement and then at trial either in person in London or remotely from Barbados.

b. He might reasonably have been expected to give direct evidence as to whether: (i) he had habitually engaged in 'under the counter' transactions as alleged by Mr Foster (ii) had expressly or impliedly approved any of the transactions in issue (iii) when and how he found about the transactions and what his reaction was.

c. The evidence which he could have given was obviously material to the breach of warranty case.

81. I accept Mr Wibberley's submission that it is highly surprising that Mr Griffiths was not prepared to say in a witness statement that he had never dressed up personal expenses as a company expense and to deny that he authorised any of the transactions in issue. In the absence of any sort of explanation, it is, in my judgment, appropriate to draw the inference that Mr Griffiths did not provide a witness statement addressing these points because he did not want to have answer questions in relation to his attitude to or knowledge of 'under the counter' transactions and/or or whether he may have made comments to Mr Foster condoning such a practice.

82. I am fortified in that view by the following circumstantial evidence:

a. Mrs Foster message to ITI on 14 November 2018. In this email, Mrs Foster told the accounts department at ITI that Mr Griffiths had agreed that the costs of her family travel to Barbados in 2016 and 2017 should be "paid by the business". Her complaint was that having the costs paid by the CRM but recharged to her did not meet her "dad's objective of getting the business to pay our costs".

b. The email from Mr Dymott at Aspen of 12 October 2015. This message shows that he was prepared to 'hide' in a quotation the cost of private work at Common Cottage in the value of £18,000. If Mr Dymott knew that Mr Griffiths would not have tolerated this deceit, he would have been risking Aspen's relationship with the Camberley Group just to save Mr Foster some tax. It seems more likely that Mr Dymott either thought that Mr Griffiths approved or at least was prepared to turn a blind eye to the suggestion.

83. However, whatever Mr Griffiths' private views were about under the counter transactions, those views do not, in my judgment, ultimately assist Mr Foster in defending the Warranty Claim for the following three reasons.

84. First, what is just as significant about the attempt by Mr and Mrs Foster to claim the cost of her family travelling to Barbados was that it was rejected by the accounts department. Mr Foster knew this because he saw their reply and forwarded it to Mrs Foster. There is no evidence that Mr Griffiths sought to reverse that decision or impose his will. This, in my judgement, demonstrates that even if Mr Griffiths may have made statements about what he considered was reasonable to put through as a business expense, the accountants for the Camberley Group exercised an independent and conventional view as to what was and was not a genuine business expense and Mr and Mrs Foster understood this.

85. Secondly, in relation to the work carried out at Mid Trees, it is entirely possible (though I make no finding one way or the other) that that Mr Griffiths' principal interest in the road drainage work was that it would lead to an improved view of the lake from his house but the work also improved the drainage for the access road used by CLL vehicles. I

accept Mr Acey's evidence given in cross examination that the cost of the work was ultimately split in the accounts between Mr Griffiths personally and CLL in accordance with standard accounting practice.

86. Thirdly, in my judgement, the most compelling evidence of how Mr and Mrs Foster understood personal expenses ought to be dealt with when paid by a Camberley Group company is the evidence of how the directors loans account were used by them. Mr and Mrs Foster could in effect get the business to pay for a whole range of personal expenditure, including home improvements, but they understood that this had to be properly accounted for both vis-à-vis the company and vis-à-vis HMRC.

87. I consider that the idea that alongside this scheme there existed a parallel 'general authority' from Mr Griffiths for Mr Foster to present false invoices for personal expenses whenever he liked and to hide them from the accounts department is implausible. Even if Mr Foster believed (with justification) that Mr Griffiths thought this was morally defensible and that he had boasted of doing so himself in the past, it is clear that this is not how private expenses within the companies in the Camberley Group were operated at the time that Mr Foster submitted the disputed invoices.

88. Having considered carefully all the documentary and oral evidence and the submissions of the parties and also taking into account the absence of any evidence from Mr Griffiths, I make the following findings of fact in relation to the authority aspect of the warranty claim:

    a. The directors' loan account was the only way in which Mr and Mrs Foster were authorised to use companies who supplied the Camberley Group to provide goods and services for their own personal benefit. They both knew that they had to declare items of personal expense.

    b. Mr Foster knew that if the accounts department realised that any invoice was disguised or any personal expense was being improperly claimed they would

object (just as they had in relation to the cost of travel to Barbados) and would insist that the expense in question be put through the directors' loan account.

c. Mr Foster may well have believed that Mr Griffiths had put personal expenses through as company expenses in the past and/or dressed up personal benefits as company expenditure but whether he did or did not do so did not constitute as a matter of fact or law an authority from any company in the Camberley Group for him to do so.

d. Mr Foster dishonestly concealed the purpose of the payments from the accounts department of the Camberley Group by creating fake invoices. He did not honestly believe that he was entitled to present false invoices as a means to procure the payment out of company funds for his own benefit (or for the benefit of Mrs Foster).

e. Mr Foster did not have the express approval of Mr Griffiths to conspire with any suppliers to present false invoices to any company in the Camberley Group as cover for personal expenditure

89. As to the discovery of the false invoices, I reject Mr Foster's evidence that their existence was known at the time of the Settlement Agreement. I prefer Mr Acey's evidence that the invoices admitted by Mr Foster to be false came to light in the course of investigating the allegations made by Mr Dobrowolski.

90. As to the consequences of the above findings of fact, Mr Wibberley accepted in opening that "knowingly misappropriating funds from one group company would fatally undermine trust and confidence between Mr Foster and CGP and would thus justify summary dismissal." This was based on the test for misconduct set out by Choudhry J in Mbubaegbu v Homerton University Hospital UKEAT (18 May 2018) unreported and by Elias J in Claridge v. Daler Rowney [2008] IRLR 672 EAT.

91. Mr Wibberley was, in my judgment, correct to make this concession. The employee handbook gives the following examples of gross misconduct for which it is CGP policy

to summarily dismiss: "deliberate falsification of any records", "the theft of money or property, whether this belongs to us or any third party" and "any act of dishonesty". The effect of Mr Foster's actions was to cause CLL to pay money against false invoices for his (and Mrs Foster's) benefit. By failing to declare the sums to the accounts department Mr Foster also deceived the Inland Revenue.

92. I am therefore satisfied that Mr Foster was aware of circumstances in which he presented the false invoices were such that this would amount to a material breach of his employment contract and would justify summary dismissal within the meaning of clause 9.1 of the Settlement Agreement.

93. As to the legal consequences of making the factual finding that I have made, Mr Wibberley submitted that as the Claimants have not sought recission of the Settlement Agreement, it was necessary for the Claimants to prove the actual loss caused by the breach of warranty. In other words, the Claimants must prove the extent to which the Settlement Agreement was less valuable because of the breach of the warranty.

94. Mr Stephens in response referred me to Collidge v Freeport [2008] IRLR 697. That case concerned a term in a settlement agreement between an employee and his employer (Freeport). The clause was as follows:

> "You warrant as a strict condition of this agreement that as at the date hereof… (b) there are not circumstances of which you are aware or of which you ought reasonably to be aware which would constitute a repudiatory breach on your part of your contract of employment which would entitle or have entitled the company to terminate your employment without notice"

95. It was held that the above clause was a condition precedent for any liability on the part of Freeport.

96. Before the date came for performance the Freeport's solicitors wrote to say that an investigation into financial impropriety had concluded that Mr Collidge was in breach of the clause and therefore no money would be paid. Mr Collidge sued and his claim was dismissed by Jack J. That result was upheld by the Court of Appeal. The Court of Appeal went on to consider what would have been the position if before discovering the facts

relied upon as constituting a breach of the warranty clause, the money due under the settlement agreement had been paid. Counsel for Mr Collidge submitted that in this scenario damages would have to be assessed on normal principles but would be less than the total amount paid because the employer had agreed to pay money not only in return for the clause 7 promise but also in return for other promises. This argument was practically identical to that advanced by Mr Wibberley.

97. All three judges in the Court of Appeal rejected this submission. Tuckey LJ said that the suggested process of assessment would be "well nigh impossible". He went on:

> "Such legal uncertainty cannot have been intended by whoever drafted this carefully worded agreement. This points strongly to the fact, as I have already concluded, that the agreement contemplated that if the clause 7 promises were untrue nothing would be due to be claimed whether or not Freeport elected to affirm the agreement"

98. Lord Justice Waller said this (with emphasis added):

> "On the true construction of this agreement, particularly the words at the beginning of Clause 7, it was clearly agreed that if the facts warranted were not true, Freeport would have no obligation under the agreement. It is also my view that because that is the proper construction of the agreement, if Freeport had in fact paid but found the facts were untrue later, Freeport would have had a claim for the return of any of the payments they had made.,"

99. Sedley LJ considered that if an officious bystander were asked what would be the position if it turned out that Claimant had been guilty of conduct falling withing the clause, he would have said "In that case he doesn't get paid and if he has been paid, he has to give it back".

100. The comments of Sedley LJ and Waller LJ about what the position would have been if the claimant in that case had been paid, were, as Mr Wibberley submitted, clearly obiter. However, in my judgment, Mr Stephens is right to submit that the approach of the Court of Appeal as a whole is inconsistent with Mr Wibberley's submission in this case to the consequences of finding a breach of the clause.

101. The wording of clause 9.2 of the Settlement Agreement, in my judgement, makes it clear that the warranty is intended to be a condition of any liability on the part of CGP because it says in terms that CGP has relied on the representation in entering into the agreement as a whole. The opening words of clause 5.1 ("subject to the Employee complying with the terms of this Agreement") reinforce the point that CGP would not be liable to pay the agreed sum.

102. Mr Wibberley submitted that there was a distinction to be drawn between the sums promised by CGP under 3.2 and clause 5.1. I agree that the position in relation to clause 5.1 is stronger because of the words cited above but I do not accept that clause 3.2 of the Settlement Agreement should be read as not being subject to clause 9.2. In my judgment the wording of clause 9.2 makes clear that the warranty has been relied upon for entering into the Settlement Agreement at all, including the sum promised under clause 3.2. As a matter of commercial common sense if the employee knows facts which amount to misconduct which are sufficient to justify summary dismissal why should there be a carve out for a payment in lieu of a three month notice period? If the employee engages in conduct which gives the employer a right to summary dismissal, the right to three months' notice would be expected to fall away just as much as the right to any ex gratia compensation.

103. Mr Wibberley was of course right to point that the factual context of Collidge v Freeport was somewhat different in that at the time it was entered into the employee's conduct was already under investigation. However, that distinction is not sufficient to persuade me that the construction of clause 9.2 should be any different to that given to the very similarly worded contractual term by the Court of Appeal in Collidge v Freeport.

104. I am satisfied that if before signing the Settlement Agreement, CGP had discovered that Mr Foster had done something which amounted to wilful misconduct, they could have dismissed him without notice and without paying any sum in lieu of notice or any ex gratia sum. It should therefore come as no surprise that in the event that such facts are discovered after the Settlement Agreement is entered into, that any sums should prima facie be returnable.

105. Mr Wibberley's final argument was to submit that if the effect of clause 9.2 was to make any sums paid repayable, then clause 9.2 is an unenforceable penalty. He referred me to the decision of the Supreme Court in Cavendish Square Holding BV v Makdessi [2015] UKSC 67; [2016] AC 1172. In particular, he highlighted the following points:

(1) Whether a clause is an unenforceable penalty is a matter of construction to be answered at the time the contract was entered, not against the circumstances in which it was breached (judgment at [9], [28H] & [142]).

(2) The court looks at the substance of the clause in question (i.e. how it operates) rather than its form (judgment at [15]). The rule is not limited to claims for damages and may cover the forfeiture of sums paid or received (judgment at [16]).

(3) A clause is likely to be regarded as penal where the same sum is payable on the occurrence of one or more events, some of which occasions serious damage but others merely *"trifling"* damage (see Lord Dunedin in Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Lt*d* [1915] AC 79 as cited with approval at [220])

106. Mr Stephens did not dispute the accuracy of the above points. His submission was that the law of penalties was not engaged at all.

107. I consider that clause 9.2 is better regarded as a primary obligation to which the law of penalties does not apply for the reasons given in Cavendish Square Holding BV v Makdessi at [73]. However, even assuming in Mr Wibberley's favour that the law of penalties is potentially engaged, the provision in my judgment plainly does not amount to a penalty. In Cavendish Square Holding BV v Makdessi Lords Neuberger and Sumption held at [32] as follows:

> "The true test is whether the impugned provision is a secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation"

108. Lord Mance held at [152]:

> "What is necessary in each case is to consider, first, whether any (and if so what) legitimate business interest is served and protected by the clause, and, second, whether, assuming such an interest to exist, the provision made for the interest is nevertheless in the circumstances extravagant, exorbitant or unconscionable."

109. Lord Hodge, with whom Lord Toulson and Lord Clarke of Stone-cum-Ebony agreed, held at [255]:

> I therefore conclude that the correct test for a penalty is whether the sum or remedy stipulated as a consequence of a breach of contract is exorbitant or unconscionable when regard is had to the innocent party's interest in the performance of the contract

110. In my judgement, CGP had a legitimate interest in the enforcement of clause 9.2. It was handing over sums of money in return for Mr Foster giving up certain potential claims. However, those claims by Mr Foster would all be worthless if he had acted in such a way as to entitle CGP to dismiss him summarily for misconduct. The legitimate purpose of the clause was for CGP to protect itself from having paid money under a mistake going to the heart of the Settlement Agreement. The potential forfeiture was not, in my judgment, out of all proportion to the interest which CGP was seeking to protect by inserting the clause. The effect of the clause was not, in my judgement, extravagant, exorbitant or unconscionable. It is noteworthy that the Court of Appeal in Collidge v. Freeport thought it obvious and unobjectionable that if Mr Collidge had acted in such a way as to entitle Freeport to dismiss him summarily, he would have to return any money paid.

111. The law of penalties is not therefore apt to rescue Mr Foster from liability to repay the sums he received from CGP. The First Claimant is accordingly entitled to the return of the sums paid to Mr Foster.

112. Mr Stephens additionally sought two further awards, namely:

(i)	Legal fees in respect of the Settlement Agreement	£2,700.00
(ii)	Legal fees to the First Defendant's independent legal advisors	£900.00

I do not consider that these sums are recoverable. They are sums which might be recoverable if the CGP had sought to have the Settlement Agreement set aside for misrepresentation but that has not happened. Instead, a claim for breach of warranty has been made in which sums paid to Mr Foster are reclaimed. That is not the same thing as a claim for damages for expenses incurred in entering into the Settlement Agreement. I decline to order the legal fees sought.

B. THE DAMAGES CLAIM

113. Mr Stephens puts his case in two ways. His primary case is that Mr Foster induced a breach by Mr Pilling of his employment contract. His alternative case is that Mr Foster and Mr Pilling conspired to injure BML.

114. In relation to his primary case, both Mr Wibberley and Mr Stephens relied on *OBG Ltd v Allan* [2008] 1 AC 1. In particular, Mr Wibberley relied on paragraph 39 where Lord Hoffmann says:

> 'To be liable for inducing breach of contract, you must know that you are inducing a breach of contract. It is not enough that you know that you are procuring an act which, as a matter of law or construction of the contract, is a breach. You must actually realise that it will have this effect. Nor does it matter that you ought reasonably to have done so.'

115. Mr Stephens accepted that this is the test that he had to meet but he pointed out that Lord Hoffmann goes on to make it clear that 'knowledge' includes turning a 'blind eye'.

116. Mr Stephens referred me to the helpful summary of the ingredients of the tort In *Aerostar Maintenance International Ltd v Wilson* [2010] EWHC 2032 (Ch); [2010] All ER (D) 364 (Jul). In paragraph 163 of his judgment, Morgan J. described the five steps necessary for a finding of inducing breach of contract:

> '[1] There must be a contract,
>
> [2] There must be a breach of that contract,
>
> [3] The conduct of the relevant defendant must have been such as to procure or induce that breach,

[4] The relevant defendant must have known of the existence of the relevant term in the contract or turned a blind eye to the existence of such a term and,

[5] The relevant defendant must have actually realised that the conduct, which was being induced or procured, would result in a breach of the term.'

117. Mr Wibberley did not dispute the accuracy of the five steps as a summary of the relevant legal test. They are, in my judgement, consistent with paragraphs [39] – [44] in *OBG v Allan* [2008] 1 AC 1 as summarised by Mr Wibberley in paragraph 51 of his opening skeleton as follows:

(1) A breach of contract has occurred. This must be a breach actionable by a party to the contract. Judgment at [44].

(2) The defendant has induced the breach: "… did the defendant's acts of encouragement, threat, persuasion and so have a sufficient causal connection with the breach …?". Judgment at [36].

(3) Knowledge that the defendant was procuring a breach of contract. For these purposes, knowledge, recklessness or indifference from a party who has the 'means of knowledge' but chooses not to enquire, will suffice (judgment at [40] and [41]).

(4) The defendant must intend to cause the contract to be breached. The breach must be the defendant's aim; it must be what they have "targeted" or "aimed at". It is not enough that a breach is merely a foreseeable consequence. Judgment at [43].

Step 1: The relevant contract

118. It is common ground on the pleadings that Mr Pilling was initially employed by CRM in 2005, that he transferred into the employment of CLL in 2013 and that from "early 2018" he acted as the general manager of BRM.

119. The evidence further showed that Mr Pilling continued to be paid by CLL and was put on furlough by CLL. Mr Pilling's salary was recharged to BML.

120. Mr Stephens submitted that the correct analysis of this factual evidence was that Mr Pilling's employment was transferred to BML by means of a novation by conduct from CLL to BML.

121. In support of this submission, Mr Stephens referred me to P14 Medical Ltd v Mahon [2021] IRLR 39. However, that case concerned the transfer of an employer's entire undertaking to a new company under the TUPE Regulations, which is very far from the factual situation in this case. Whilst it is no doubt correct that a contract of employment may, like any other contract, be novated and that novation may in certain circumstances be inferred from conduct, in my judgment, the evidence in this case does not support any such inference. On the contrary, CLL continued to act towards Mr Pilling as his employer by paying his salary and putting him on furlough. The fact that within the Camberley Group CLL recharged BML for Mr Pilling's salary suggests that Mr Pilling remained an employee of CLL but an employee who was in effect seconded to or provided on loan to BML. Such arrangements within groups of associated companies are not unusual.

122. In my judgement, it was not necessary for Mr Stephens to advance a novation case. It was common ground that Mr Pilling was appointed to act as the general manager of BML. The fact that his salary continued to be paid by CLL meant that his contract of employment continued to exist with them but in accepting role of general manager he owed duties of loyalty and fidelity to BML. There is nothing to prevent parties to a contract of employment agreeing that the employee shall act for the benefit of a third party especially where the third party is an associated company. Whether that obligation is enforceable by the legal employer or the company to whom the employee is seconded will be a matter of legal analysis in each case.

123. For the purposes of the claim in this case it suffices that there was contract of employment between CLL and Mr Pilling under which it was agreed Mr Pilling was to act as the general manager of and for the benefit of BML.

124. The practical reality of the relationship between Mr Pilling and BML was that Mr Pilling was in day-to-day charge of the management of BML. He enjoyed a great deal of independence and had authority to increase salaries of BML employees. He described

himself as the "new face of BML" and as having responsibility for "all the daily functions" of BML. Mr Dobrowolski's evidence on the degree of independence and responsibility enjoyed by Mr Pilling was not challenged. Mr Pilling was to a very great degree left alone to get on with his work and promote and develop BML's business albeit under the supervision initially of Mr Foster and then subsequently Mr Height. I have no doubt that in these circumstances, Mr Pilling owed an implied duty of fidelity to BML applying the principles summarised by Haddon-Cave J (as he then was) in QBE v Dymoke [2012] EWHC 80 QB (regardless of whether that duty was enforceable by CLL on behalf of BML or BML directly.

Step 2: Breach

125. The Claimants case on breach was based on two elements: the content and implementation of the Business Plan and the approach to CJC in August 2019.

(a) The Business Plan

126. It was uncontroversial that the Business Plan was created in Excel by Mark Pilling on 11 March 2019. It was located by a digital forensic investigator on Mr Pilling's Acer laptop issued to him for work and returned to him when he left employment. It was a document which was worked on from time to including in June 2019. It was saved by Mr Pilling on his laptop for the final time on 11 June 2020 as an e-mail attachment. It was this version which was in the trial bundle.

127. On page one of the Business Plan are a series of implementation steps arranged in chronological order. The table below reproduces the first three columns:

Item No.	Task	Responsibility	Completion Date
1	Run through Set up costs & find/confirm pricing	Paul Foster/MP	19 Jun
2	Where do we get funds from ????	Paul Foster/MP	
3	Agree Company Name	Paul Foster	
4	Info about setting up a company – sole trader? VAT Registered	Paul Foster	
5	How much will business rates be on a 15k a year Factory	Paul Foster	
6	Power requirements for factory?	Paul Foster	
7	Search for factory – minimum 1000 square feet	Paul Foster	
8	Visit factory	Paul Foster	
9	Cashflow forecast based on actuals	Paul Foster	

10	Get facility	Paul Foster	
11	Purchase and move Presses	Paul Foster	
12	Purchase items agreed (set up costs)	Paul Foster	
13	Build presses to working	Paul Foster	
14	SET UP FACTORY	Paul Foster	
15	Move Craig Carter tools – Discuss Strategy	Paul Foster	
16	Visit JFD – Discuss moving business. Strategy??		
17	PEPPERS!!!!	Paul Foster	
18	Cashflow forecast based on actuals	Paul Foster	
19	Seek H&S support		

128. Page 2 of the Business Plan contains very detailed costings from premises to stationary as required on “Day 1” and later on a “Build up to” basis. Included in the former were two large presses (identified as being for three clients of BML including Craig Carter). A further three presses were envisaged later. Even the dimensions of both of the two desks and the two filing cabinets are stated.

129. Page 3 contained a monthly planner from set up in September 2019, income and purchase of (rubber) compound starting in November 2019 and running forward to July 2021. Mr Foster appeared as an overhead cost in this projection. A later version of this document had the name of four of BML’s customers inserted, starting with Craig Carter in November 2019

130. Page 4 of the Business Plan contained detailed costing for two customers, Craig Carter and JFD. Mr Foster’s name appeared as a wage cost for the Craig Carter budget. The Craig Carter costs projection contained internet links to particular bits of equipment such as compressors and scales and hydraulic stackers.

131. Page 5 of the Business Plan contained annual wage cost entries for Dariusz (Mr Dobrowolski), three operators, Mr Pilling, Mr Foster and Mrs Pilling. Against Mr Pilling’s and Mr Foster’s names only “Dividends?” appears. This is consistent with Mr Pilling and Mr Foster being the joint owners of the business. Page 5 also made clear that the idea was to secure Craig Carter as a customer of the new business in the first month. Thereafter under the heading “Order of winning business” thirteen further entities are listed. Mr Pilling accepted in cross examination that the first seven were all existing customers of BML.

132. The Business Plan also contained a table of parts numbers with values in sterling and VAT. In cross examination Mr Pilling accepted that the parts were all items supplied to Craig Carter.

133. In cross-examination Mr Pilling accepted that the essence of the Business Plan was to take customers away from BML. Mr Pilling was unable to explain why he put Mr Foster's name by entry "agree company name" or why it appeared in the Business Plan at all. He denied ever sending the Business Plan to Mr Foster. He admitted that he had borrowed £19,000 from Tesco Bank which was transferred to Mr Foster's father but said this was to assist Mr Foster with his divorce proceedings.

134. Mr Foster denied ever seeing the Business Plan or planning to go into a venture with Mr Pilling. When he was shown the Business Plan in cross-examination he was dismissive of the figures in it. Mr Foster's evidence was that he had asked Mr Pilling for a loan to help with the cost of his divorce and the five year lease signed by Mr Foster's father on Unit 12 on the Woolmer Trading Estate in Bordon, Hampshire ("Unit 12") was for the purpose of storing his furniture.

135. I accept the following evidence about the Business Plan provided by Mr Dobrowolski:

    a. It was "not long" after Mr Foster left that Mr Pilling started to talk about a plan to go into business with him.
    b. Mr Pilling was devasted when he did not get Mr Foster's job and became frustrated.
    c. Mr Pilling invited Mr Dobrowolski to join the new business.
    d. Mr Pilling told him that he was worried that Mr Foster would not have the money to get the new business stared and expressed frustration about this.
    e. Mr Pilling shared details from the Business Plan as it progressed, including that the costs started at £50k each. They then reduced it to £20k just to get going. This is consistent with the entry on sheet 5 of the Business Plan referred to above.

f. Mr Pilling told him that his father-in-law would assist to obtain second-hand presses, that they would need to be refurbished and that Mr Fuller had offered to help. This is consistent with Mr Fuller's appearance as a cost of set up in the Business Plan.
g. Mr Pilling planned to stay at BML while the new company got started.
h. Mr Pilling worked on the Business Plan in his office at BML in the afternoon during working hours.
i. Mr Pilling was worried he might get caught and said on one occasion to Mr Dobrowolski "if you tell anyone about this, I will kill you".

136. In my judgement, the Business Plan is clear evidence of a detailed joint plan by Mr Pilling and Mr Foster to go into business together. The level of detail down to the size and number of desks (one for each of Mr Pilling and Mr Foster), the detailed diarised strategy to approach BML's customers one by one demonstrates that it was far more than a mere private pipe dream of Mr Pilling.

137. I reject Mr Foster's evidence that he did not see the Business Plan and his evidence that his father took a five year lease on an industrial unit so that he could store furniture. That evidence was utterly incredible. There are any number of storage facilities for household furniture. No-one takes a five-year lease on commercial premises for that purpose. Furthermore, Mr Pilling referred to Unit 12 as 'our premises' in his conversation on 12 June 2020. It was clearly intended to serve the needs of the new business, which is why Mr Pilling advanced money to Mr Foster's father to pay for it.

138. I reject Mr Pilling and Mr Foster's evidence which attempted to suggest that they barely discussed the contents of the Business Plan. Mr Pilling was unable to explain why Mr Foster's name was entered against almost all of the steps to set up the business. If it had all been a private fantasy on the part of Mr Pilling, it is hard to explain why he should have contemplated taking the same salary as Mr Foster with both of them drawing dividends. The fact that Mr Pilling was willing to advance money to Mr Foster's father to purchase the lease on Unit 12 and the fact that Mr Foster's father was involved at all is clear evidence that the two of them were working hand in hand.

139. It may well be the case that between 1 March 2019 when the Business Plan was created and 15 June 2020 when Mr Foster's father paid the deposit of the lease on Unit 12 levels of interest and activity on the part of Mr Foster and Mr Pilling ebbed and flowed but it is clear that during this period, the intention of the two men was consistently to set up in business together and to entice all of BML's customers away to the new business. It was only Mr Dobrowolski's actions in revealing the plan to the management in June 2020 which stopped the implementation in its tracks.

140. I make the following findings of fact in relation to the Business Plan and its implementation:

    a. It embodied the joint plan of Mr Foster and Mr Pilling to set up a new business whose aim was to entice BML's customers away one by one, starting with Craig Carter.
    b. Mr Pilling and Mr Foster were to be equal owners of the new business.
    c. Mr Pilling was the driving force behind the detailed planning but it was Mr Foster who was expected to take the lead in the matters against which his name was entered in the plan.
    d. The aim was to entice Craig Carter away first and to use that work to generate income for the new venture from day 1.
    e. Mr Pilling worked on the Business Plan during the working day in his office when he should have been advancing the interests of BML.
    f. Mr Pilling borrowed 19k and gave it to Mr Foster's father at Mr Foster's request in order to pay for the lease on Unit 12 which they both intended to use to house the business.
    g. Quotations were subsequently sought from Thailand for presses and tooling for the new venture and not for the benefit of BML.

(b) The approach to Craig Carter and Clwyd

141. A great deal of time in cross examination and submission was spent arguing about whether the compound codes associated with the rubber used to produce products for

Craig Carter were confidential or whether they could have been obtained on request in any event. In my judgment, it was not necessary for the Claimants to go that far.

142. The following is, in my judgement, clear from the contemporaneous emails and Mr Carter's evidence about the approach to him from Mr Foster using both his own name and that of his father:

    a. Mr Foster created the e-mail address superiormouldingsolutions.com as a means to test the viability of his new venture with Mr Pilling by approaching Craig Carter.

    b. The fact that it is Craig Carter/CJC which was approached by Mr Foster and the timing of that approach is consistent with the Business Plan. The hope was clearly to investigate the cost of supply in August / September and then to start supply in November 2019, as recorded in the Business Plan.

    c. The approach to Craig Carter from "Peter Foster" was an attempt to see what price Mr Carter might be prepared to pay for his business requirements. The use by Mr Foster of his father's name was a clumsy attempt by Mr Foster to disguise his own involvement or at least to make it deniable if questions were asked.

    d. The approach to Clwyd and Craig Carter was clearly co-ordinated between Mr Foster and Mr Pilling. It was Mr Pilling who filled in the necessary authority letters required to get a full picture of the cost of production.

    e. Mr Pilling's communications with Clwyd and Craig Carter in August 2019 and the production of authority letters was not for the benefit of BML but were part of the implementation of the Business Plan.

    f. Mr Pilling initially felt that the approach had worked. This is consistent with Mr Dobrowolski's evidence that remember a day in late 2019 when Mr Pilling told him that there had been a breakthrough with Craig Carter and that it was Mr

Pilling's triumph. It is not a co-incidence that only a few weeks after this approach Mr Pilling advanced £19,000 to Mr Foster's father.

g. It is unclear why the approach to Clwyd and Craig Carter did not lead to an offer being formulated in November 2019. It is, however, clear that Mr Pilling had not given up hope that Craig Carter might yet be enticed away from BML. This is the only plausible reason why Mr Pilling should text Mr Dobrowolski and ask him on 3 April 2020 "to take certain tooling if I go quickly". I accept Mr Dobrowolski's evidence that Mr Pilling intended him to understand this to be a reference to mean Craig Carter's tools.

h. The approach to Craig Carter on behalf of the new planned business with Mr Foster took place when Mr Pilling was employed as manager to BML and ought to have acting exclusively for BML's interest.

The conversation on 12 June 2020

143. My conclusions about breach are reinforced by the content of the conversation between Mr Dobrowolski and Mr Pilling on 12 June 2020 which was overheard by Mr Acey and two investigators. Mr Pilling seems to have believed that Mr Dobrowolski was wanting an update on how the new business plan was coming along. He may well have still hoped that Mr Dobrowolski might agree to became part of the plan. What emerges from the conversation is that Mr Pilling *wants* Mr Dobrowolski to believe that he and Mr Foster have been working together and that the plan to set up the new business is going ahead. This is the only plausible explanation for why he tells Mr Dobrowolski that (i) he has money behind him and Paul "has 20k", (ii) they have a lease which Mr Foster is chasing up (iii) he has been working during the day and Mr Foster working nights (iv) potential presses have been sourced by Mr Pilling's father-in-law from Thailand and even cites the cost and time for carriage by sea.

144. In summary, for the reasons set out above, in my judgment, both Mr Pilling's work on preparing and implementing the Business Plan between March 2019 and 12 June 2020 and his involvement in the approach to CJC/Craig Carter were plainly in breach of the

standard duty of fidelity owed by him as an employee in a management position. Whether the duty was owed to CLL or to CLL for the benefit of BML or direct to BML is not material.

Step 3: knowledge of the term.

145. In my judgment, there can be no doubt that Mr Foster as a long statutory standing director who had signed off a number of contracts of employment in the Camberley Group knew that Mr Pilling, as a general manager of BML owed a duty of fidelity to BML. I am sure he gave no thought as to whether that duty was owed to CLL or whether it was owed to CLL for the benefit of BML but that does not matter. I am satisfied that he knew that he was encouraging Mr Pilling to breach his contract of employment by acting contrary to the interests of BML while still employed by them and during working hours.

Step 4: knowledge that the conduct amounted to a breach

146. Although Mr Wibberley is right to point out that there were no restrictive covenants in the Settlement Agreement to prevent Mr Foster from setting up a business to entice BML's customers away and employees are allowed to make detailed plans to compete with their current employer, he also correctly accepted that any such planning by an employee must be done outside of work time and do so in a way that does not put them in breach of any other duties. In my judgment, there is no doubt that Mr Pilling crossed the line between mere preparation and active competition and that Mr Foster was well aware that.

147. It was clear to Mr Foster from the way in which the approach to Craig Carter was made that Mr Pilling was acting in the interests of the new business and directly contrary to the interests of BML. Although there are very few messages between Mr Foster and Mr Pilling during the relevant period, that appears to be because Mr Foster no longer has a phone from that period and does not have his lap-top either. The amount of work done drawing up and then implementing the Business Plan between 3 March 2019 and 12 June 2020 must have required frequent contact between them by phone, email and or What's App.

148. There is no reason to believe that Mr Pilling's communications with Mr Foster were any different in tone to those he had with Mr Dobrowolski i.e. there was a permanent undertow of conspiratorial scheming with the overall aim of enticing BML's customers away to a new business. My finding that the Business Plan was a joint document which embodied their shared intentions proves that Mr Foster contemplated and agreed that Mr Pilling should attempt to move tools away from customers of BML so that the new business venture could generate income from day 1.

149. Under the law, as I have set out above, it is not necessary for me to find that Mr Foster was in the driving seat or that he imposed his will on Mr Pilling. In my judgment they acted at all times in concert with Mr Foster encouraging Mr Pilling to act against the interests of BML. In doing so Mr Foster necessarily procured and took advantage of Mr Pilling's willingness to breach his contract of employment. The reality is that Mr Foster and Mr Pilling conspired together and took active steps to seek transfer the customers of BML to their new venture. They were as Mr Dobrowolski put it seeking to "eat the business from the inside".

Conclusion on the Damages claim

150. For those reasons, each of the five steps set out in Aerostar Maintenance International Ltd v Wilson [2010] EWHC 2032 (Ch) are proved on the evidence. The First Claimant succeeds in establishing liability. In the circumstances, it is unnecessary for me to give detailed consideration to the alternative claim of conspiracy between Mr Foster and Mr Pilling to injure BML. However, given my findings of fact set out above, there clearly was such a conspiracy.

Damages

151. The Claimants' contention that it lost CJC as a customer because of the activities of Mr Pilling and Mr Foster was not made out on the evidence.

152. It was quite clear that their approach to Mr Carter in November 2019 did not lead to him being enticed away. The rather confusing approach from Paul and/or Peter Foster did not lead to any offer to manufacture products, let alone an offer which sought to undercut or

entice Mr Carter away from BML. I accept Mr Carter's evidence that he withdrew his tools for refurbishment and he was more than happy to continue a commercial relationship with BML in 2020 and only became fed up with BML well after Mr Pilling and Mr Foster left due to the attitude of BML The contemporaneous email exchanges in 2020 January 2021 between Mr Carter and Mr Acey unequivocally support Mr Carter's recollection of why CJC ceased its business relationship with BML.

153. The reality is that Mr Pilling and Mr Foster's plans were revealed and effectively scuppered at a point before they were in a position to offer to produce anything for anyone, including CJC or entice any customer of BML away.

154. As to the other head of damages claimed, that of the cost of investigations, in principle this is a recoverable head of loss. It is eminently foreseeable that if a former employee and a current employee conspire to take customers to a new business, the victim will want to investigate how far the plan has gone and seek to establish what has occurred. In my judgment, it was in principle reasonable for the Claimants to employ outside assistance from computer experts to recover messages and documents.

155. However, in my judgment, there was an unreasonable over-reaction on the part of the Claimants in terms of the other investigations carried out. It is not at all clear why it was thought to be necessary to have two ex-Special Branch police officers to listen in to the call between Mr Pilling and Mr Dobrowolski or why it was necessary for retired policemen to follow Mr Foster for extended periods of time. Mr Acey's witness statement was extremely thin as what surveillance was carried out by Dilitas and VZX Consultancy, for how long and for what purpose. It ought to have been quickly apparent that the new venture had not got very far. It had an empty industrial unit, no machinery, no employees and was plainly not in a position to compete with BML.

156. Furthermore, by the time of the conversation on 12 June 2020, the country had been in lockdown for over two months and BML's own activities had sharply declined. The prospect of Mr Pilling and Mr Foster representing a real danger to BML or the Camberley Group was near zero.

157. Whilst it was reasonable for Mr Acey and the accounts department to carry out a detailed internal investigation into what had occurred, the time spent was in my judgment part of their role for which they were employed and I am not satisfied that BML or any other company in the Camberley Group lost income or profit because staff were diverted into investigating Mr Pilling or Mr Foster instead of doing other work – particularly as much of the work was done during the pandemic. I find that there was no significant disruption to the business of the Camberley Group caused by the activities of Mr Foster and Mr Pilling.

158. In the circumstances, given the principles set out in R+V Versicherung AG v Risk Insurance and Reinsurance Solutions SA & Others [2006] EWHC 42 (Comm) at [77] and Aerospace Publishing Limited v Thames Water Utilities Limited [2007] BUS LR 726 at [85], I award as damages only £2000 for IT security and £4,500 for Cyfor for the work in recovering data from Mr Pilling's laptop.

159. For reasons which are not entirely clear, these two heads of loss were only ever advanced against Mr Pilling rather than Mr Pilling and Mr Foster jointly. As Mr Wibberley correctly pointed out in submissions received after the circulation of my judgment in draft, the only claims for damages advanced against Mr Foster were those claims which I have dismissed, namely: (i) the claim for loss of management time, (ii) the cost of investigation consultants (specifically, £26,200 spent on VZX Consultancy); and (iii) the alleged loss of profits arising from the loss of Craig Carter's business.

160. Accordingly, the sum of £6,500 is awarded against Mr Pilling only.

C. THE CLAIMS AGAINST MR AND MRS PILLING

The false milage claim

161. As set out above, the false milage claim against Mr Pilling was reduced to one allegation. This allegation appears to have been advanced because on the date that Mr Pilling made the claim, a picture was posted on Facebook suggesting that he and his family were on holiday abroad. Mr and Mrs Piling's evidence (which I accept) and their submission made in their admirably succinct written closing document was that:

a. The photograph was taken at Center Parcs as the screenshot relied upon by Mr and Mrs Pilling in their written closing clearly shows;
b. Mrs Pilling had driven there in her car ahead of Mr Pilling;
c. Mr Pilling joined them there after dropping of some items at a customer of BML.

I accept this evidence and Mr Pilling's submission that the milage claim fails.

The false hours claim

162. The origin of this claim was a What's App message sent by Mr Pilling to Mr Dobrowolski asking him to dispose of all paper timesheets except those for May and June 2019. This prompted Mr Acey to order an investigation into the number of hours claimed for trimming work carried out by Mrs Pilling. According to Mr Acey, whose evidence on this I accept, two facts emerged from this investigation: (1) Mr Pilling had recorded other employees time on a daily basis but he only supplied a total monthly figure for Mrs Pilling (2) Mrs Pilling's hours far exceeded everyone else's. Mrs Pilling's recorded hours were often 300 hours per month and sometimes more than 400 hours per month.

163. Mrs Pilling's evidence was that she worked long hours for BML doing trimming work as and when required (including at weekends) and that it often felt like it was taking over their home life. In cross examination he explained how she recorded her hours each day and Mr Pilling took them into work with him. She accepted that in addition to her trimming work she looked after two young children, did all the shopping and cooking for the family and liked to keep fit. Although she sometimes had assistance from her mother, it is difficult to see how she could really have managed to work 10 hours a day virtually seven days a week.

164. In cross examination, Mr Pilling was unable to provide any explanation as to why he asked Mr Dobrowolski to destroy time sheets. It is a highly unusual request for a manager to make of another employee and if there was a good explanation for it, I would expect Mr Pilling to have been able to provide it. I am driven to the conclusion that the reason

why Mr Pilling asked Mr Dobrowolski to do this was to cover his tracks and hide the exaggerated claims.

165. Mr Pilling was also unable to explain the discrepancies in his wife's contract. As far as the HR department was concerned Mrs Pilling had a zero hours contract. It appears to have been signed on a day before it was created. Mr Pilling was unable to explain how it came about that a contract signed by him on behalf of BML granted his wife a minimum of 30 hours a week.

166. I also accept Mr Dobrowolski's evidence that he was shocked when he found out how many hours of trimming work were being claimed by Mrs Pilling. Despite Mr and Mrs Pilling's attempt in closing to throw doubt upon the accuracy of Mr Acey's evidence, taking all the evidence together, I find:

    a. Mrs Pilling worked very hard for BML doing long hours of trimming work which she fitted in around the rest of her life.
    b. She had support from her mother in relation to child care.
    c. Mrs Pilling gave Mr Piling accurate daily figures.
    d. However, Mr Pilling dishonestly submitted exaggerated figures for her work which he sought to disguise by only recording monthly figures for his own wife rather than the daily figures for everyone else and later by asking for timesheets to be destroyed so that the discrepancy could not be investigated.

167. I accept Mr Acey's evidence that a reasonable way to assess the degree of exaggeration was to look at the quantity of products actually produced in the period February 2018 to June 2020. Having done so, he concluded that Mr Pilling had overclaimed for a minimum of 37.76 hours per month. The overclaim many have been more in some months but it still leaves Mrs Pilling with a claim for nearly full time trimming work. I am rather sceptical that she really managed 40 hours a week but I am satisfied that the Claimants have proved that at least 1549.2 hours have been overclaimed which carries with it an overclaim of holiday entitlement of 186.99 hours which amounts to an overclaim of £13,818.99 and £1,667.94 in holiday pay.

168. I am not satisfied that any further sum is due as a result of the new tooling for Eschmann being introduced. I am not satisfied that the introduction of this new tooling necessary reduced the trimming work as drastically as the Claimants sought to suggest. It may have done so to some extent but I accept Mr Pilling evidence and the submission made in paragraphs 31 and 32 of his written closing that the amount of trimming work required varied according to many factors including the skill of the operator and pressure issues with the presses.

D. CONCLUSION

169. In summary, for the reasons set out above:

    a. The First Claimant's claim for the repayment of £97,449.03 succeeds against Mr Foster.
    b. The First Claimant is entitled to recover £20,050 from Mr Foster being the total value of false invoices submitted to it and paid at his request.
    c. The Second Claimant is entitled to recover £9,214 from Mr Foster being the total value of false invoices submitted to it paid at his request.
    d. The claim for damages against Mr Pilling succeeds in the sum of £6,500.
    e. The claim against Mr and Mrs Pilling for overclaimed wages succeeds in the sum of £15,486.93.