THE HIGH COURT

COMMERCIAL

[2022] IEHC 599

Record No. 2018/7326P

BETWEEN

WILLIAM THOMAS POWERS

PLAINTIFF

AND

GREYMOUNTAIN MANAGEMENT LIMITED (IN LIQUIDATION),

RYAN COATES, LIAM GRAINGER, DAVID CARTU AND JONATHON CARTU

DEFENDANTS

JUDGMENT OF Mr. Justice Twomey delivered on the 28th day of October, 2022

SUMMARY

1. The following sad and very personal email is what Irish corporate fraud looks like in real-life terms:

> "**Can anybody help me with the withdrawing of €210,882** and wire it to my Beobank account; see attachment. Please understand that **my life has become unbearable**; **daily I am having stress**; I can't believe this is happening… **these were all my savings** from myself and my children. Please proof me that all of this is not **a scam**." (Emphasis added)

This is an email from a member of the public to Greymountain Management Limited ("Greymountain"), which has its registered office at Ulysses House, Foley Street, Dublin 1 and an administrative office in Willow House, Pearse Street, Gorey. As will be seen, the use of this Irish company was a critical factor in the structure and overall success of an alleged international fraud worth €186 million. This is because Greymountain was a key middleman in a chain of payments which defrauded unsuspecting members of the public, primarily based in America, out of millions of euro.

2. On one level, this case is about a technical point of company law, i.e. whether a company is a separate legal person from the people that control, or should control, it. Thus, it considers the role of passive directors, who take no active role in a company and how this aligns with '*the whole notion of proper corporate regulation'* (*per* the Court of Appeal). On another level, it is important when considering these technical issues regarding inanimate corporate entities, to bear in mind that proper corporate regulation has very real and serious effects on members of the public.

3. It is against this background that this Court will consider whether directors/shadow directors should be able to evade responsibility for their company's actions by hiding behind the veil of incorporation. In this case, an order is sought against the directors and shadow directors making them personally liable for the funds which have been lost as a result of the alleged fraud. To date, no Irish court has held that the veil of incorporation should be pierced in order that directors are held personally liable for the acts or omissions of their company in a case like this one. This is because of the well-established principle from *Salomon v. Salomon* [1897] A.C 22 that a company is a separate legal person from its directors.

4. However, in the High Court case of *Dublin County Council v. Elton Homes Ltd* [1984] ILRM 297 at p. 301, Barrington J. stated that:

"*If the case were one of fraud…the court might be justified in lifting the veil of incorporation and fixing the directors with personal responsibility"*.

5. While lifting the corporate veil is not to be done lightly, it seems to this Court that if the circumstances of this case do not justify piercing the corporate veil and affixing the directors and, in particular, the shadow directors, with personal liability, then it is difficult to think of other circumstances which might justify making directors liable for the acts/omissions of their company.

6. While uncontroverted evidence was provided to this Court that some €186 million in credit card payments from the large number of 'investors' in the fraudulent scheme flowed through the accounts of Greymountain, this case is concerned only with a relatively small group of 35 investors, who claim to have lost a total of $4,638,584.45. Indeed, while the current proceedings concern 35 plaintiffs, the hearing in this case concerned just one of those plaintiffs, who claims to have lost $124,027 as a result of his dealings with Greymountain. This is because on the 25th June, 2020, O'Moore J. ordered that this litigation proceed in the name of one plaintiff only, i.e. Mr. William (Bill) Powers ("Mr. Powers").

7. In brief, the alleged fraud arose in the context of a scheme where individual 'investors' were led to believe that they were trading in financial instruments known as binary options. However, no evidence was produced to this Court that binary options were ever purchased on their behalf and unchallenged evidence was provided to this Court that their money was converted to the use of the third and fourth defendants, Mr. David Cartu and Mr. Jonathan Cartu (the "Cartu Brothers"). Mr. David Cartu is a shadow director of Greymountain and he is currently resident in Dubai, but he has an address both in Israel and in Georgia. His brother, Mr. Jonathan Cartu, is also a shadow director of Greymountain and he is resident in Israel.

8. The fraud was initiated by people operating from a call centre in Israel, who contacted individuals, based mainly in America, to induce them to 'invest' in binary options. However,

the ‘engine’, or a key component, of the fraud was the veneer of legitimacy which was provided by the fact that the recipient of their credit card payments, Greymountain, was a company incorporated in Ireland/the EU. Because the recipient of their funds was an Irish company, the ‘investors’ were thereby given the impression that their funds were in the hands of a company apparently subject to regulation in Ireland/the EU, and not in the hands of individuals resident in Georgia or Dubai or a company incorporated in Belize. These were some of the actual recipients of those funds. This deception is at the heart of what appears to have persuaded these ‘investors’ to part with their money and not be immediately concerned about the security of that money.

9. Greymountain took credit card payments from unsuspecting ‘investors’ (who wrongly believed they were investing in binary options) and passed them on, less Greymountain’s commission, to the Cartu Brothers and other persons who were allegedly trading in binary options on behalf of the ‘investors’. The fraudulent scheme was structured with an Irish company at its core because the ultimate beneficiaries, of the payments received from ‘investors’, would not have been able to receive credit card payments themselves. This was because the recipient of the credit card payment (Greymountain) needed to be based in the EU to have a payment processing agreement with a bank (known as an “Acquiring Bank”). The Acquiring Bank is in effect a ‘middleman’ that receives the money from the credit card company of the ‘investor’, such as Visa or Mastercard, and then forwards the money to Greymountain. Greymountain, as a company subject to regulation in Ireland/EU (unlike the Cartu Brothers or a company in Belize), had such an agreement with a reputable Acquiring Bank (which itself had an agreement with Visa/Mastercard). In this way, Greymountain provided this essential link, whereby it would obtain money via the Acquiring Bank from investors’ credit card companies.

10. Evidence was provided to the Court that Greymountain carried on its operations for *circa* three years, i.e. from its incorporation at the Companies Registration Office in Dublin, on the 20th May, 2014, until the 25th April, 2017. This was the date it stopped taking any more money from 'investors', as evidenced by the electronic diary entry of the Administrative Manager of Greymountain in Gorey, Ms. Danielle Earle ("Ms. Earle").

11. Mr. David van Dessel of Deloitte was appointed as liquidator ("Liquidator") of Greymountain on 13th July, 2017 and it was wound up by Order of the High Court dated 9th October, 2017. During the three-year period of its existence, Greymountain had $186 million in credit card payments made to it. Greymountain had its bank accounts with AIB in Rathgar, (sort code 93-10-71) and with AIB in Gorey (see para 6.6.2 of the Report of the Liquidator of Greymountain covering the period 13th July, 2017 – 7th December, 2018). As previously noted, while $186 million in payments went through the Company accounts, these proceedings, as instituted, only deal with claims of *circa* $4 million from 35 individuals (and this hearing only dealt with one of those individuals). Accordingly, the number of people affected by the operations of Greymountain may well be much more than the 35 plaintiffs in this litigation.

The lead plaintiff - Mr. Powers

12. The lead plaintiff in this case, Mr. Powers, is a 71-year-old retired gentleman who is resident in America. He lost $124,027 of his life's savings as a result of his alleged investment in binary options, which he made through Greymountain. Mr. Powers alleges that this fraud was carried out, in particular, by the Cartu Brothers.

13. Mr. Powers' involvement with Greymoutain arose when Mr. Powers was looking for investment opportunities in 2016 as he did not have enough money to sustain himself and his family in retirement. As part of his search, Mr. Powers came across a business operating under the name Glenridge Capital ("Glenridge"), using the website www.glenridgecapital.com, which was offering a binary options trading platform. He was contacted by a 'broker' who

advised Mr. Powers that Glenridge traded in binary options and was based in Dublin. This Irish connection was a factor in Mr. Powers' decision to proceed with the 'investment'. This was because his great-grandfather was an O'Hanlon and of course Mr. Powers' own surname is Irish. It is important to note that Glenridge is not a legal entity, but a website address. It was the name used by the alleged 'brokers' who induced Mr. Powers to 'invest' in binary options by transferring money to Greymountain. As a result of Mr. Powers' dealings with these 'brokers', he made a series of credit card payments to Greymountain.

Other 'investors'

14. In support of Mr. Powers' case, evidence was also provided *via* video link by one of the other plaintiffs, Ms. Elaine Hoffmann ("Ms. Hoffman"), who is a 78-year-old lady who is also resident in America. She had to give up work at 55 because of a liver transplant operation and was therefore trying to make the best use of her assets in her retirement. She was promised, by brokers who used the Glenridge name, returns of 20% - 40% in a 2–3 month period of trading binary options. Like Mr. Powers she too was induced to transfer money to Greymountain and she made, what she termed, a *'deposit to Glenridge using my Visa card'*. However, since there is no legal entity with the name Glenridge, this was in fact a payment to Greymountain, just as Mr. Powers' investment was also paid to Greymountain. She lost a total of $154,000 as a result of her involvement in the alleged fraud.

15. The real-life effect of the alleged fraud involving Greymountain is starkly illustrated by one email dated 1st May, 2017 from Mr. Van Holen, another 'investor' in these binary options, to Ms. Earle, the Administrative Manager for Greymountain in Gorey, Co. Wexford. The complete email, insofar as relevant, states:

> "Dear Danielle,
>
> […]I understand that Greymountain Management […] are the payment processor for Edgedale Finance [..]

I want to ask you for the withdrawing of my money on my account, which is €210,882, as you can see in the print screen of 13/2/2017 from my account.

After 13/2/17 I can't login on my account anymore; I have been told that all the money has been lost in bad trades?!

I can only tell you that I've never done any trade binary options myself and that I never have given permission to any broker to trade on binary option on my behalf.

[…]

Can anybody help me with the withdrawing of €210,882 and wire it to my Beobank account; see attachment. Please understand that my life has become unbearable; daily I am having stress; I can't believe this is happening… these were all my savings from myself and my children. Please proof me that all of this is not a scam."

16. During the course of the hearing, counsel for Mr. Powers made it clear that one significant relief he was seeking was that he wanted this Court to pierce Greymountain's corporate veil, as he was seeking an order making all four directors and shadow directors of Greymountain personally liable for the fraud committed by it. This was on the basis that Greymountain had one purpose only, namely to deprive 'investors', and in particular Mr. Powers, of their savings for the benefit of the Cartu Brothers. It was achieved by a fraudulent misrepresentation made to Mr. Powers (and other 'investors'), that they were investing their money in binary options trading, when in fact there was no such investment. The money was instead being converted to the use of the Cartu Brothers and other third party owners of 'binary option' brands/websites like Glenridge.

17. It is now necessary to consider in detail the background to this case and the evidence produced to this Court.

BACKGROUND

18. Mr. Powers' claims are set out in detail in his Statement of Claim. Before referring to it, it is relevant to note that while Mr. Powers adduced evidence in support of his claims, no evidence was adduced by any of the defendants to refute the following claims set out in the Statement of Claim:

> "1. The fourth and fifth Defendants (the "Cartu brothers") controlled and operated online platforms for trading in so called binary options and in particular www.glenridgecapital.com ("Glenridge").
>
> 2. The Plaintiff does not know whether there was any legal entity supposed referable to the binary options provider Glenridge Capital. If there was a legal entity supposedly referable to the supposed provider Glenridge Capital, that entity was of no substance and did not provide any substantial services. Insofar as the Plaintiff refers in this statement of claim to Glenridge that in no way amounts to an admission that Glenridge was an independent entity with any independent existence from the Defendants.
>
> 3. The **Cartu Brothers used Greymoutain in furtherance of the scam**. Victims of the scam including the Plaintiff made payments to Greymountain. In addition, **various documents issued by the supposed provider Glenridge stated "Services provided by Greymountain Management"** albeit that the precise nature of those services is unspecified and in the absence of discovery and interrogatories impossible to ascertain.
>
> 4. The second and third defendants (the "Irish directors") operated and manged Greymountain for the purpose of the scam.
>
> 5. Insofar as it may be asserted by Greymountain or the Irish Directors that they were providing some separate service that was unconnected to the underlying binary option trading scam, then the Plaintiffs claim that Greymountain and the Irish Directors were

at all material times acting as agents for an undisclosed principal, i.e. the Cartu Brothers.

6. At all material times the Cartu Brothers were shadow directors of Greymountain for the purposes of Section 221 of the Companies Act, 2014.

7. **At all material times the Irish Directors and the Cartu Brothers used Greymountain as a device to facilitate the binary options trading scam.**

8. In addition to websites directly controlled and operated by the Cartu Brothers, the Defendants performed the roles identified above (save that they may not have directly operated the websites) for the persons who were engaged in the activity of defrauding third parties through the promotion and operation of binary option trading websites. Insofar as the Defendants may allege that the business activities they were engaged in were legitimate, the Plaintiff reserves the right to rely upon the Defendants' participation in and knowledge of the wider fraudulent scheme as evidence that the Defendants' contentions concerning their dealings with the Plaintiff are untrue.

[….]

Particulars:

1. The Defendants and each of them misrepresented the location, qualification and identity of the brokers or advisors with whom the Plaintiff interacted. The Plaintiff variously dealt with persons calling themselves Mark Shaffer, Brian Green, Fabio Morganelli, David Silva and David Owen. The Plaintiff apprehends that the person describing himself as David Owen was in fact the fourth named Defendant, David Cartu;

2. The Defendants and each of them misrepresented the location of the business of Glenridge Capital and in particular they represented to the Plaintiff that Glenridge Capital was headquartered in Dublin, Ireland;

3. The Defendants and each of them **misrepresented to the Plaintiff that the brokers and advisors with whom he interacted were acting in the interests of the Plaintiff or in a neutral capacity when in fact their objectives were to cause harm to the Plaintiff;**

4. The Defendants and each of them misrepresented to the Plaintiff that the brokers and advisors with whom they interacted would earn commissions on profits earned by the Plaintiff thereby aligning the interests of the brokers and advisors with those of the Plaintiff. In fact their objectives were to cause harm to the Plaintiff;

5. The Defendants and each of them **misrepresented to the Plaintiff that there was a possibility of the Plaintiff earning significant or indeed any profits as a consequence of engaging in binary options trading.** The Defendants circulated marketing materials containing bogus descriptions of the business of Glenridge and the possibility of returns on investments using the online platforms used by Glenridge;

6. The Defendants and each of them **misrepresented to the Plaintiff that Glenridge Capital was a brokerage that gave its clients access to trades in an independent market. In fact, there was no such market.** All of the supposed trades carried on were carried on software systems owned or controlled by the Defendants or other fraudsters;

7. The Defendants and each of them misrepresented to the Plaintiff that binary options were a suitable investment for him;

8. The Defendants and each of them misrepresented to the Plaintiff that the Plaintiff could earn profits by trading in binary options;

9. The Defendants and each of them misrepresented to the Plaintiff that the software systems upon which trades were conducted and executed were fair and transparent when in fact they were rigged so as to ensure that the Plaintiff lost his investment;

10. On 9 March 2016 the Plaintiff made an initial deposit of $250. He was then contacted by Mark Schaffer who was described as a trader with Glenridge. Mark Schaffer persuaded the Plaintiff to make an investment of $25,000 on the basis that Glenridge would match that investment. On 16 March 2016 and 23 March 2016, **the Plaintiff deposited the sum of USD $25,000 by completing transaction declarations that stated "Services Provided by Greymountain Management Ltd";**

11. The Defendants and each of them and their servants did not disclose to the Plaintiff the import of the conditions attached to the matching investment or "bonus" to subsequent devices used by them referred to as "risk free trades" and "refunds" and in particular the Defendants did not disclose to the Plaintiff that this was a device intended to ensure that the Plaintiff would lose all of the monies invested by him;

12. **The Defendants and each of them used the devices referred to above to prevent the Plaintiff from withdrawing any of the funds invested by him and to cause him to continue making payments.** The bogus brokers and advisors including David Cartu (using the alias David Owen) represented to the Plaintiff that he would have to continue to invest more money and to continue trading in order to be able to get his money back;

13. **In order to persuade the Plaintiff to make further investments, the fictitious brokers would conduct online trades while on the phone to the Plaintiff**. The brokers would recommend the trades and would execute the trades purportedly on the instructions of the Plaintiff. When the Plaintiff made losses as a result of the trades purportedly executed by the fictitious brokers on his behalf the fictitious brokers would

recommend that the Plaintiff "insure" his losses by entering into bonus or refund agreements. The Plaintiff was then placed in a position where he was forced to continue trading and make further investments in order to have some prospect of obtaining the return of the monies paid by him. Amongst the devices used by the Defendants they were asking him for further investments in order to "incentivize" the broker to trade and make profits. Further, when the Plaintiff traded with David Cartu the trades were always winning trades. All of the activity described above was part of the fraud designed to induce the Plaintiff to pay monies to the Defendants which they would then convert to their own use;

14. **When the Plaintiff sought to withdraw the "balance" showing on his "account" the Defendants failed to pay those monies to him and the Plaintiff lost the entirety of the sum of $130,072 paid by him**." (Emphasis added)

19. It can be seen from the foregoing Statement of Claim that the alleged fraud in this case arises in relation to the alleged purchase of binary options by the defendants on behalf of Mr. Powers.

<u>What are binary options?</u>

20. Unlike ordinary options (where the option holder has a right to acquire the underlying share, which option she can sell at a profit or loss, depending on the amount by which the share price goes up or down), binary options are akin to a straight 50:50 bet on the movement of a share price. The investor wins if the movement goes the way predicted. However, she loses if the movement does not go the way predicted. Uncontroverted submissions were made on behalf of Mr. Powers that trading in binary options was illegal in a number of jurisdictions at the time when Mr. Powers was 'investing' in them through Greymountain.

<u>None of Mr. Powers' allegations of fraud were disputed at the hearing by the defendants</u>

21. Up until two weeks before the trial, Matheson (and senior counsel) were acting for Mr. David Cartu, Mr. Coates and Mr. Grainger (the firm had also previously acted for Mr. Jonathan Cartu). However, this Court was advised that Mr. David Cartu stopped paying his legal team and accordingly these lawyers came off record at that stage. This Court was also advised that Mr. David Cartu would not be attending the hearing as he has a 'legal issue' in Dubai and cannot leave. Mr. Jonathan Cartu, who is resident in Israel did not attend the hearing.

22. While the Cartu Brothers are shadow directors of Greymountain, the other two defendants are the only directors of Greymountain and they are resident in Ireland.

23. The second defendant, Mr. Ryan Coates ("Mr. Coates"), was a college student when he first became a director of Greymountain and he claims that he had absolutely no role in the Company. He says that he was a director in name only and he became a director at the suggestion of his mother, who was director of companies in the Wirecard group, in order to receive the €1,200 monthly directors' fees, which he used to help him to cover his student expenses in Dublin.

24. The other director is the third defendant, Mr. Liam Grainger ("Mr. Grainger"). He has acted as a director for many companies during his career (approximately 500 companies over a 20-year period). At the relevant time he worked as a consultant/sub-contractor for the company secretarial arm of the accountancy firm, Moore Stephens in Dublin, which is based at Ulysses House, Foley Street, Dublin 1 - the registered office for Greymountain. He was a;so paid for being a director of Greymountain and the bank statements exhibited by Mr. Powers show the receipt by Mr. Grainger of a similar monthly salary to that received by Mr. Coates, i.e. €1,170. In addition, Mr. Grainger's own company (Procorp Management Consultants Limited) received €10,000 plus VAT for the services which Mr. Grainger provided to Greymountain. Like Mr. Coates, Mr. Grainger claims that he had no knowledge of or role in the alleged fraud. This was because his role as a director was what he describes as an

'administrative' role, comparable, in his view, to that of a company secretary, rather than that of a normal director.

The directors were directors in name only, so they claim no liability for fraud

25. In essence, both Mr. Grainger and Mr. Coates are relying on the fact that they were directors of the company in name only. Thus, they are claiming that they should not be held liable for any losses caused to Mr. Powers. This is because they say they knew nothing of the alleged fraud for the simple reason that they abrogated their duties as directors in favour of the shadow directors of Greymountain, the Cartu Brothers.

26. However, a director of a company has a duty to *'acquire and maintain a sufficient knowledge and understanding of the company's business to enable them properly to discharge their duties as directors'* (per Finlay Geoghegan J. in *Kavanagh v. Delaney* [2005] 1 ILRM 34 at p. 40 quoting Parker J. in *Re Barings plc & Others (No. 5)* [1999] 1 BCLC 433). In *Fennell v. Appelbe* [2022] IECA 160, the Court of Appeal relied upon the judgement of by Keane J. in in *Re Laragh Civils Limited* [2016] IEHC 533. In that case, in which the director was subjected to a restriction order, Keane J. stated at para. 26 *et seq* that:

> "26. Whatever the variation in the level of permissible delegation may be between different sorts of director in various kinds of company, and that point has yet to be definitively considered, it is difficult to see how any director – executive or non-executive - can escape any of the following basic responsibilities: **first, to inform himself or herself about the nature of his or her duties as director; second, to acquaint himself or herself with the affairs generally of the company concerned; and third, to exercise appropriate supervision or oversight at board level in respect**

of the execution or discharge of whatever tasks or functions have been properly and appropriately delegated to others.

27. More fundamentally, in my view the present case raises the issue of 'abdication of responsibility', rather than that of 'delegation of responsibility'. I did not understand Counsel on behalf of the second named respondent to argue other than that, on the evidence before the Court, the second named respondent was a 'token' or 'passive' director who agreed to assume that position at the behest of her spouse, the first named respondent and did not purport to discharge any responsibility whatsoever thereafter in relation to any aspect of the conduct of the company's affairs or the supervision of that conduct." (Emphasis added)

27. This means that Mr. Coates' and Mr. Grainger's response to the claims that they should not be personally liable for the losses suffered by Mr. Powers does itself involve an acknowledgment that they breached their duties as directors, since they claim that, although directors, and paid to be directors, they had absolutely no idea of the company's operations.

28. In this regard, Mr. Grainger states in his Witness Statement that:

'I was neither privy to nor consulted in any manner about the Company's affairs and I had no knowledge of the matter the subject of these proceedings until I was served with them'.

29. Mr. Coates in his witness statement states:

'*I have never had any involvement whatsoever in the operations of the Company*'.

30. Accordingly, at the end of the three-year period of the operation of Greymountain, both Mr. Coates and Mr. Grainger say they were surprised to learn of the fraud. On this basis, Mr. Grainger and Mr. Coates appear to be claiming that, whatever about the Cartu Brothers, both Mr. Grainger and Mr. Coates have no moral responsibility for the alleged fraud which occurred

and so they should not have any legal responsibility or liability to Mr. Powers for its consequences.

The shadow directors fail to attend hearing and offer no evidence contradicting the fraud

31. Since Mr. David Cartu and Mr. Johnathan Cartu did not attend the trial, they did not provide any evidence contradicting the evidence produced at the hearing to support the allegations of fraud set out in Mr. Powers' Statement of Claim.

32. It is also relevant to note that in their defences, all four individual defendants simply denied *seriatim* the claims in the Statement of Claim and they did not put forward any positive defence or any explanation for the various claims made by Mr. Powers.

33. Mr. Grainger appeared in person at the hearing and he made submissions at the close of the evidence. While he had provided a sworn Witness Statement in advance of the hearing, he did not go into evidence and therefore did not subject himself to cross-examination at the hearing. The effect of this is that he did not seek to challenge any of the evidence of fraud adduced by Mr. Powers.

34. Mr. Coates did not attend the hearing, but he communicated with the Court by email to outline that he had a 'watching brief' at the hearing. He made a submission by email towards the end of the hearing, which illustrated that he was following the trial. In that submission, he disagreed with the description (by counsel for Mr. Powers) that it was as an *'extraordinary feature'* that Mr. Coates was appointed a director of Greymountian when he was student. Mr. Coates sought to explain it as perfectly understandable, in light of his mother's role, noted below, in having him appointed when he was a student. However, he too did not contradict any of the evidence presented to the Court regarding the alleged fraud.

The position of the Company/Liquidator regarding the allegations

35. It is also relevant to note that Greymountain was not involved in the hearing before this Court. Greymountain has a cash balance of approximately €600,000, which is much less than the claims, of over $4 million, of the 35 plaintiffs. Accordingly, the Liquidator understandably took the view that incurring the considerable legal costs of attending the hearing would not be the most efficient use of what funds remain, particularly in circumstances where Mr. Powers has agreed that no order is being sought against Greymountain from this Court.

36. In light of the seriousness of the allegations of fraud made against Greymountain, it is important to note that the Liquidator provided extensive discovery of all of the company's documentation. Mr. Powers also made it clear that he had received full co-operation from the Liquidator regarding his claim against the company.

THE EVIDENCE OF FRAUD

37. Before considering the evidence presented to the Court, it is relevant to note that none of the defendants sought to adduce any evidence to contradict the following evidence provided to support the allegations of fraud against the defendants. In this regard, the first category of evidence to consider is the direct evidence provided by Mr. Powers.

The evidence of Mr. Powers

38. Mr. Powers gave evidence by video-link from America that he heard about binary options when he was watching CNBC's financial show on television in 2015. As a result, he began to research binary options on the internet in 2015 and in early 2016. As a result of this research, he began to receive emails and phone calls from platforms which were advertising these services.

39. Initially he was interested in 'robot trading' which advertised extraordinary results achieved by robot traders using artificial intelligence. Around this time, he received a call from a gentleman who called himself "Mark Schaffer" ("Mr. Schaffer") from 'Glenridge Capital'. However, it is relevant to note that Mr. Powers claims that aliases were used by the people from Glenridge who contacted him. The gentleman using the name 'Mr. Schaffer' told him that his firm specialised in binary options trading. He assured Mr. Powers that he would receive greater returns with individual traders such as himself, than if he were to use robot traders. He also advised Mr. Powers that Glenridge was based in Dublin which, as previously noted, gave Mr. Powers a certain degree of comfort regarding his investment.

40. In early 2016, Mr. Powers initially invested $250 in Glenridge. Subsequently, Mr. Schaffer encouraged him to invest $25,000 in Glenridge on the basis that Glenridge would match that amount and that this sum would go into his account for trading binary options. This account was available to be viewed by Mr. Powers on the Glenridge Capital website. This offer attracted Mr. Powers to Glenridge and he duly transferred the money. In order to make this payment, he was provided with the details of Greymountain as the beneficiary of any payments which he wanted to make to Glenridge (which, as previously noted, is not a legal entity but simply a website address and the name used by the 'brokers'). Expert evidence, referenced below, was produced to the Court to show that the various transfers made by Mr. Powers by credit card went to Greymountain.

41. There were two types of trades which Mr. Powers was led to believe were being conducted on his behalf. It is important however to point out that no evidence was ever produced to Mr. Powers or to this Court of trades ever having been executed on his behalf.

42. The first type of trade which was allegedly executed on his behalf was a binary options trade over a period of up to 3 weeks, at the end of which he would have either won or lost, depending on whether the share had gone up or down in value during that period. The second

type of trade was a binary options trade over a period of 15 minutes or so, at the end of which he would know whether he had won or lost.

43. An example of the type of email which was received by Mr. Powers was one dated 27th April, 2016 from a person using the name 'Mr. Brian Green'. This was an email from brian.g@glenridgecapital.com, which stated:

> "Bill, Apple! It's on fire, We must make money on it its that time to make a big move, Call me as soon as you can".

44. In relation to the various trades made on his behalf, Mr. Powers only knew whether he had won or lost based on what the 'brokers' in Greymountain/Glenridge told him. It is also relevant to note that various personnel operating under the name Glenridge gave Mr. Powers the impression that they were working on a commission earned by them which was based on Mr. Powers' profits from trading and so they only made money if Mr. Powers made money. In this regard, it is also relevant to note that in his Statement of Claim at para. 14, Mr. Powers claims that binary options are financial instruments and that Greymountain did not have authorisation to carry on trading in financial instruments under the European Communities (Markets in Financial Instruments) Regulations 2007. To the extent that any trading was ever actually carried on by Greymountaint/Glenridge, it is clear that Greymountain did not have any authorisation to carry out that trading in financial instruments.

45. Evidence was also provided by Mr. Powers that, when he sought to withdraw his money from his account, he was told by personnel operating under the Glenridge name that he had to invest more money and make a huge number of more winning trades to be in a position to withdraw funds, which was not feasible. Accordingly, he was effectively prevented from withdrawing his money. In any event, the withdrawal of his money became impossible when the Glenridge website was shut down, which occurred in mid-2017.

46. Evidence was provided by Mr. Powers and also by Mr. Michael Jennings ("Mr. Jennings") of BDO in Northern Ireland, a forensic accountant engaged as an expert witness by Mr. Powers, that Mr. Powers paid a total of $130,072 to Greymountain, of which he received back $6,000. On this basis, he made a net loss of $124,072. Evidence was provided by Mr. Jennings of Mr. Powers' bank statements showing that the sums which were transferred by Mr. Powrers to his 'Glenridge' binary options account were in fact paid to Greymountain and that Mr. Powers' bank statements had Greymountain listed as the 'descriptor', i.e. payee.

47. Mr. Powers also gave evidence that his binary options trading account, which was capable of being viewed *via* Glenridge's website, showed a balance of $292,000 in mid-2017 just prior to that website being shut down. For this reason, Mr. Powers believed that by mid-2017 he had made a profit of *circa* $168,000 on his 'investment' of $124,072 in binary options.

48. However, as already noted, no evidence was produced to this Court that any trades were actually executed on behalf of Mr. Powers to support the contention that Mr. Powers ever had a balance in his account of $292,000.

49. One definitive conclusion which can be drawn from the foregoing evidence is that Mr. Powers paid $124,072 net to a legal entity called Greymountain, which is incorporated in Ireland, for the apparent purpose of binary options trading under the name Glenridge, which he was told was based in Dublin, which sum he is seeking to recover, *albeit* that Greymountain is now in insolvent liquidation.

THE EXPERT EVIDENCE

50. Extensive evidence was provided to this Court of the manner in which Greymountain, and in particular the Cartu Brothers, carried out business using this Irish incorporated company. As the following evidence will show, it seems clear that the fears, expressed in the email from Mr. van Holen, previously referenced, were realised and that the defendants were all involved

(some as active participants and beneficiaries and some as directors in name only) in what Mr. van Holen correctly termed a 'scam'.

51. Mr. Jennings provided an independent report (the "Report") dated 17th May, 2022 to this Court detailing the business carried out by the Cartu Brothers and the other defendants through Greymountain. A considerable amount of documentation, which was part of the ordinary books and records of Greymountain was discovered by the Liquidator of Greymountain and examined by Mr. Jennings. Various of these business records obtained from the Liquidator (and in particular emails from Greymountain's servers) were opened to the Court. For the purposes of s. 16 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act, 2020, this Court concludes that, there is no reason, in the interests of justice, that these business records ought not be admitted as evidence. In particular, and as required by s. 16, this Court concludes that there is no reason to suspect that the information was not reliable or that the documents are not authentic or that there is any unfairness in so admitting the evidence to any other party who did not attend to give oral evidence at the hearing.

52. As previously noted, none of the following conclusions contained in the Report (and the other evidence referred to below) have been challenged by any of the defendants.

The conclusions of the expert forensic accountant and the supporting evidence

53. In reliance on, *inter alia*, the business records of Greymountain, Mr. Jennings concluded that the Cartu Brothers played key roles in the day-to-day running of Greymountain.

54. As regards Mr. David Cartu, support for this conclusion is to be found in the fact that in answers to interrogatories, Mr. David Cartu confirmed that he was a shadow director of Greymountain for the purpose of s. 221 of the Companies Act, 2014.

55. As regards Mr. Jonathan Cartu, evidence was provided to this Court of him making significant decisions on behalf of the company e.g. by email dated 24th June, 2016 to Martina Hennell ("Ms. Hennell") of Greymountain, he approved payments from Greymountain in the

sum of €406,509.50 to Bee Options, a binary options business (which as noted in the Legal Opinion of the Irish law firm, McCartan & Burke, referenced below, was owned by Greymountain). In the same email, Mr. Jonathan Cartu instructed Ms. Hennell to make transfers of very considerable sums of money (totalling €2,147,746) from Greymountain to accounts, such as Blue Moon and All Out Marketing. It is important to note that evidence was provided to this Court that Blue Moon is a company owned by Mr. Jonathan Cartu and that All Out Marketing is a company owned by Mr. David Cartu.

56. In replies to interrogatories dated 11th January, 2022, Mr. David Cartu confirmed that he is the beneficial owner of the entire shareholding in Greymountain. Evidence was also provided to the Court to show that Mr. David Cartu was the ultimate owner of the website www.glenridgecapital.com.

57. As a result of his examination of the business records of Greymountain, Mr. Jennings states that during the two-year period from July 2015 to June 2017, the total value of credit card payments made to Greymountain amounted to $103,800,655. Mr. Jennings does however note in his Report that for the full three-year period from incorporation in May 2014 to cessation of trade in April 2017, the Liquidator of Greymountain calculates that the total value of credit card payments to Greymountain amounted to $186,000,000.

58. Mr. Jennings provided evidence that the money which was received from 'investors' was then shared between Greymountain (as to approximately 10%) and the owner of the binary options brand/website (as to approximately 90%), which in the case of Glenridge, was Mr. David Cartu and in the case of other binary options brands, was the owner of that brand.

59. A significant amount of documentary evidence was provided to the Court, which was also relied upon by Mr. Jennings, to establish that a company called Tracy PAI operated a call centre in Israel from which calls were made to 'investors' encouraging them to transfer money to Greymountain for the purposes of trading binary options under the business name Glenridge.

60. One such email evidencing the role of the call centre operated by Tracy PAI is an email dated 27th April, 2016 from Ms. Sveta Bulshtein of Credorax (one of the Acquiring Banks, through which payments were made from credit card companies to Greymountain) to Mr. David Cartu and Mr. Jonathon Cartu regarding Greymountain's volume of sales. This email asks why there was *'a huge drop in processing'* volume, which clearly refers to the money being processed by Credorax to Greymounain from 'investors'' credit cards. Mr. David Cartu replies by email dated 27th April, 2016 that '*Passover holidays is one I can imagine. I was advised a lot of sales staff took time off.*'

Decision of the Ontario Securities Commission re Mr. Jonathan Cartu and Greymountain

61. Mr. Jennings in his affidavit exhibiting his Report also exhibits a decision (the "Decision") dated 7th April, 2022 by the Ontario Securities Commission in relation to allegations against Mr. Jonathan Cartu and Mr. David Cartu of unregistered trading and illegal distributions of binary options to 700 Ontario residents in the sum of CAN$1.4 million. According to this Decision, Mr. David Cartu entered into a settlement agreement with the Commission in respect of these allegations, but the matter proceeded against Mr. Jonathan Cartu. In its Decision, the Ontario Commission concluded at para. 23, on the balance of probabilities, that:

> "Beeoptions, **Glenridge Capital, Tracy PAI**, Call4All, UKTVM **and Greymountain** were an **interconnected business operation** based on, *inter alia*, the following evidence:
>
> […]
>
> - Jonathan sent an email to all Tracy PAI employees suggesting that UKTVM and Greymountain were Tracy PAI's only customers at the time.

- In response to a request from Credorax for Greymountain documentation, Jonathan, who had no apparent title or ownership interest in Greymountain, responded "We'll provide you with everything you need right away.[…]
- McCartan & Burke, a law firm in Dublin, Ireland, wrote a letter that it had been retained by Greymountain to express an opinion "about whether [Greymountain's] primary activity as a Binary Options broker under the name Bee Options using URL www.beeoptions.com requires a financial services licence or a gambling licence under the laws of Ireland."
- In an agreement between Greymountain and Wirecard Bank, David was listed as the Proprietor while Johnathan was listed as the "General Contact", […] Jonathan's contact information was listed as jonathan@tracypai.com [..]
- In a Credorax Merchant Application Form, **David signed on behalf of Greymountain, David described the "Business Model Overview" as "Binary Options"**, listed the domain name as www.beeoptions.com and **the merchant name as "Greymountain Management Ltd"**.
- Credorax wrote to the Malta Financial Services Authority and provided Credorax's understanding of Greymountain's operations. It described **Greymountain as a "binary options merchant" and noted that Greymountain owned the following URLs:**

  (i) Glenridge capital - glenridgecaptial.com

  (ii) Bee options - beeoptions.com

  […]
- AG [Adam Graves] who is shown as the 100% shareholder of Greymountain at the date of incorporation, declared in a Declaration of Trust that he held

those shares "for and on behalf of David Cartu (hereinafter called the Beneficial Owner.")

- In an affidavit relating to Greymountain's petition to the High Court of Ireland to wind up because it could not pay its debts, David swore that he was the sole beneficial owner of Greymountain, and that a large part of Greymountain's revenue was from offering 'IT solution services to binary options merchants.'" (Emphasis added)

62. This Decision also provides at para. 68 that the Ontario Securities Commission concluded that Mr. Jonathan Cartu:

"i. was directly or indirectly involved in the solicitation of transactions for Beeoptions and Glenridge Capital

ii. traded in binary options through Beeoptions and Glenridge Capital with repetition, regularity and continuity; and

iii. engaged in activities like a registrant by his involvement in the interconnected business operation that included establishing the Beeoptions and **Glenridge Capital Binary options trading brands, promoting the sale of binary options under those brands, operating the call centres to solicit investors in binary options and establishing UKTVM and Greymountain to process payments for the binary options trading activities**". (Emphasis added)

63. At para. 100 of the Decision it provides that '*Jonathan* ***engaged in the deceptive practices of using aliases and concealing the true location*** *of their operations*' (Emphasis added).

Press release of Commodity Futures Trading Commission regarding the Cartu Brothers

64. Mr. Jennings also exhibits a press release from the Commodity Futures Trading Commission in America ("CFTC") dated 2nd September, 2020 in which it is noted that the CFTC filed a civil enforcement action in the US District Court for the Western District of Texas charging, *inter alia,* Mr. David Cartu and Mr. Jonathan Cartu that they:

> "**[M]arketed, offered and sold illegal, off-exchange binary options to retail customers on websites under the Bee Options, Glenridge Capital** and Rumelia Capital binary options brands. As alleged in the complaint, the Cartu Brothers, along with a pair of Canadian brothers living in Israel – defendants Leeav Peretz and Nati Peretz - **operated call centres primarily located in Israel that targeted and victimised US residents by promising "quick" returns of between 60 – 85% by trading binary options.** The complaint further alleges that, at the direction of the Cartu and Peretz Brothers, the individual brokers soliciting US customers falsely represented their financial expertise, compensation structure, physical location and identity." (Emphasis added)

Conclusion of Mr. Jennings

65. Mr. Jennings concludes in his Report at para. 2.21 that:

> "[T]he Israeli call centre Tracy PAI and the binary options platform operated by Tracy PAI, including Glenridge, used Greymountain to legitimise and process customers card payments. The funds were then transferred from Greymountain to the binary options platforms, including Glenridge, which were controlled by the Cartu brothers.
>
> It is also my opinion that Greymountain provided this legitimate front to numerous other binary option platforms for a fee, with the funds raised from the commission ultimately being returned to the Cartu Brothers as evidenced by the email from Jonathan Cartu requesting the transfer of $406,509.50 in "processing revenues" from Greymountain to the Bee Options account."

The massive level of chargebacks and refunds made by Greymountain

66. It is relevant at this juncture to refer to chargebacks on credit card payments. Mr Jennings explained that a chargeback on a credit card payment arises where a customer contacts the credit card company to say that the transaction was fraudulent and/or the goods/services were never provided by the merchant and that the credit card should be charged back in favour of the customer.

67. In this regard, Mr. Jennings provided expert evidence that the industry standard for the maximum amount of chargeback for a merchant is 1%. However, the chargeback/fraud rate for Greymountain was 8.3% during the period examined by Mr. Jennings, which was therefore 830% greater than the industry maximum.

68. However, in addition to chargebacks, the other way in which a customer, who alleges fraud, receives her money back is by means of a refund from the recipient of the payment, in this case, Greymountain. As noted below, in relation to one 'investor' (Ms. Lyons), the evidence produced to the Court shows that in some instances it was decided by Greymountain that it was prudent for it, regarding certain 'investors', to refund their sums in order, it seems, not to attract unnecessary attention to the company. In this regard, during the period examined by Mr. Jennings, refunds of a further 15.7% of the payments from 'investors', such as Ms. Lyons, were made by Greymountain.

69. Thus, of the $103 million paid by credit card to Greymountain during the two-year period between 2015 - 2017 examined by Mr. Jennings, 24% of that amount (i.e. 8.3% plus 15.7%) was repaid to 'investors' who sought refunds/chargebacks on the basis of fraud/non-receipt of the services/goods. Thus, for every $100 which Greymountain managed to obtain from 'investors', some $24 was repaid because of fraud/non receipt of services/goods, but the rest it seems was not repaid to 'investors' such as Mr. Powers and, in this way, it was procured from 'investors' and retained by the company over the three-year period of the operation of the

'business' and converted to the use of the Cartu Brothers. This was done by the transfer of money from Greymoutain's bank account to the accounts of companies such as Blue Moon and All Out Marketing, to which reference has been made.

The lies told to the Central Bank by and on behalf of Greymountain

70. This Court has been provided with no evidence that Greymountain/Glenridge, after receiving 'investors'' money, ever used it to trade in binary options. Even if Greymountain/Glenridge had done so, there is no evidence that it had the necessary licenses to so act. The evidence establishes that Greymountain did accept payments from 'investors' for the ostensible purpose of binary options trading by Greymountain/Glenridge and also by other alleged binary option traders (such as Edgedale Finance, referenced below).

71. However, Greymountain was not authorised to accept and process payments on behalf of Glenridge (to the extent that Glenridge was a third party) or other third parties. This is clear from the Central Bank letter dated 7th January, 2016 to Greymountain, which highlights the connection between Greymountain and Glenridge. This letter also highlights the Central Bank's concerns regarding Greymountain appearing to process payments on behalf of Glenridge:

> "The Central Bank of Ireland ('Central Bank') has recently become aware of a firm called Glenridge Capital and its website www.glenridgecapital.com. It is noted that the footer of the www.glenridgecapital.com website advises, "*White Label Solutions provided by Greymountain Management Limited, 3rd floor, Ulysses House, Foley Street, Dublin 1…* " …" and in the *"Terms & Conditions* " page of the www.glenridgecapital.com website it advises "*16.3.7* ***All transactions will reflect Greymountain Management Limited… on bank statements".*** It is further noted that on the www.greymountainmanagement.com website it advises, "*Payment We offer*

rapid and hassle-free payment methods through credit cards, e-payments, and wire transfers". As such, the Central Bank has **concerns that Greymountain Management Limited may be operating as a money transmitting business and/or as a payment institution in the absence of the appropriate authorisation(s).** As you are aware, **Greymountain Management Limited holds no authorisation or licence from the Central Bank.**

In accordance with the provisions of Part V of the CBA 1997, the Central Bank is responsible for the authorisation and supervision of, inter alia, money transmission business in Ireland. The relevant definitions are set out in section 28 of the CBA 1997. It should further be noted that Section 29 of the CBA 1997 sets out the general prohibition against operating a money transmission business in the absence of an appropriate authorisation.

In addition Regulation 8(1) of the PSD Regulations sets out a general prohibition against providing "*payment services"* as defined in the PSD Regulations, in the absence of an appropriate authorisation to do so. Please note that Schedule 2 of the PSD Regulations sets out a list of payment services and Regulation 6 outlines the payment transactions to which the PSD Regulations do not apply." (Emphasis added)

72. With the benefit of hindsight, this letter pinpoints exactly what Greymountain was actually doing, as is clear from the evidence presented to this Court. It was operating as an unlicensed money transmitting business to facilitate a fraud which was being carried out under the business name Glenridge.

73. It is also relevant at this juncture to note that the fact that Glenridge and Greymountain were in reality one and the same business, is clear from the Central Bank's observation that on

the Glenridge website it is stated that all transactions with Glenridge will '*reflect Greymountain Management Ltd…on bank statements.'*

74. However, as will now become clear from its reply, Greymountain managed, by lying on its own behalf and by having a reputable law firm (Matheson) lie on its behalf in January/February 2016, to throw the Central Bank off the scent and avoid being closed down as an unauthorised money transmitting business (and to avoid being closed down as a firm misrepresenting that it was trading in binary options). As a result, Greymountain was able to continue to solicit money form unsuspecting 'investors' until it ceased carrying on business in mid-2017.The first reply from Greymountain to the Central Bank is its letter of 21st January, 2016 to the Central Bank, in which Mr. Adam Graves of Greymountain states that:

> **"**Thank you for your recent notice regarding concerns by the Central Bank of Ireland that Greymountain Management is **operating an unlicensed money transmission business**. Greymountain Management would like to confirm **that it does not conduct unauthorised money transmission or payment services, and that the company has never intentionally marketed itself as a payment service provider to its customers**.
>
> The suspect paragraph on the Greymountain Management website, "We offer rapid and hassle-free payment methods through credit cards, e-payments, and wire transfers" appeals to the wide range of businesses that Greymountain Management purchases services from. Customers of Greymountain who affiliate business to Greymountain can receive commission payments through any medium. Conversely, when other companies owe Greymountian Management they can also pay by any of the listed methods. It is in no way meant to imply that the company works in any capacity to facilitate unauthorized third party payment services.
>
> […]

It is in the opinion of Greymountain Management that all of its commercial transactions are in full accordance with Section B, Article 3, Title 1 of the Official Journal of the European Union regarding PSD [Payment Services Directive] Regulations, which negates the requirement of a money transmission licence for *"payment transactions from the payer to the payee* ***through a commercial agent*** *authorized to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee"*.

With regards to Glenridge Capital, it is a third party entity and Greymountain Management has requested the offending paragraph from the "Terms & Conditions" page of the www.glenridgecapital.com website removed by the site owner. Transactions on Glenridge Capital should not reflect Greymountain Management, and the payment processors have already been notified to ensure that such actions are not taking place and that all transactions have the descriptor, Glenridge Capital." (Emphasis added)

75. All the evidence produced to this Court shows that this letter from Greymountain was patently false and misleading, since Greymountain continued to act as a payment processor for Glenridge (to the extent that Glenridge is separate from Greymountain) and for third party binary option traders (such as Edgedale Finance). Despite Mr. Adams' claims, Greymountain continued to appear as the descriptor for payments made to Glenridge (and in particular in relation to Mr. Powers' payments to Glenridge/Greymountain, which post-dated this letter).

76. Not for the first time, Greymountain added a comment that can be regarded as hypocritical, with the benefit of hindsight, in light of the massive fraud being conducted by Greymountain, since Mr. Graves states in this letter:

"On that note, Greymountain Management would like to extend its appreciation to the Central Bank for bringing this issue to his attention."

77. In many ways, this letter did briefly let the cat out of the bag, since it baldly states that Greymountain does not provide payment processing services for third parties on the one hand, while on the other hand, it claims to be entitled to an exemption under the PSD Regulations for payment transactions (and so it implicitly accepts that it was processing payments) which are made from a payer to a payee through a 'commercial agent' (such as Greymountain). This inconsistency was noted by the Central Bank in its reply of 27th January, 2016:

> "However, the Central Bank of Ireland ("Central Bank") **remains concerned that Greymountain Management Limited may be providing a "*money transmission service*"** as defined in Part V of the CBA 1997 or may be providing one or more "payment services" as defined in the PSD Regulations; given the content of your website and given the content of your letter of 21 January 2016.
>
> Your letter of 21 January 2016 quotes a line from the www.greymountainmanagement.com website, which is "*We offer rapid and hassle–free payment methods through credit cards, e-payments, and wire transfers*" and you advised that this "*appeals to the wide range of businesses that Greymountain purchases services from*". Please advise as to what exactly you mean by this latter statement and please explain how such services (i.e "… rapid and hassle–free payment methods…") are provided to your customers and please provide a detailed example of how this works in practice.
>
> Your letter further advises "*Customers of Greymountain who affiliate business to Greymountain can receive payments through any medium*". With regard to this statement, please advise as to the services provided by Greymountain Management Limited in facilitating such payments and please provide a detailed example of how this service works in practice.

You further advise in your letter "*It is in the opinion of Greymountain Management that all of its commercial transactions are in full accordance with… the official Journal of the European Union regarding PSD Regulations, which negates the requirement of a money transmission licence…".* Your letter proceeds to quote Regulation 6(b) of the PSD Regulations which provides "*6. These regulations do not apply to – (b) payment transactions from a payer to a payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee…".* In this regard, I should be obliged **if you would explain why you believe the Greymountain Management Limited is in a position to avail of this exemption when you have advised in the first paragraph of your letter that "*Greymountain Management would… like to confirm that it does not conduct unauthorised money transmission or payment services*…"** (Emphasis added)

78. At this stage, when Greymountain appeared to have been caught out on its lies and inconsistencies provided to the Central Bank, it engaged the services of a reputable law firm, Matheson, to lie on its behalf. In its letter of reply of 17th February, 2016 to the Central Bank, Matheson stated that:

"[W]e are instructed that all services provided by Greymountain Management are technology services and **no financial services are provided.** Specifically we note that no payments are presented on behalf of third parties and no financial instruments are written by Greymountain Management." (Emphasis added)

79. However, all the evidence presented to this Court both before and after the date of this letter shows that this is a lie and payments were processed by Greymountain on behalf of third parties, namely binary option trading platforms (such as Edgedale Finance) as well as Glenridge (to the extent that it was separate from Greymountain).

80. By letter dated 19th February, 2016 in reply to Matheson, the Central Bank once again highlighted the fact that there was a blatant inconsistency between, on the one hand, the impression given in the letters to the Central Bank by, and on behalf of, Greymountain, that Greymountain and Glenridge were separate entities, and on the other hand, the fact that all transactions with Glenridge reflect Greymountain on the 'investors'' bank statements:

> "[…] The questions raised and explanations requested in my letter to your client of 27 January 2016 (copy attached) do not appear to have been addressed. In particular, I should be obliged if the following could be addressed:
>
> 1. The www.greymountainmanagement.com website advises "*We offer rapid and hassle-free payment methods through credit cards, e-payments, and wire transfers.*". Please advise as to how **such services are provided to Greymountain Management's customers** and please provide an example of how this works in practice.
>
> 2. Greymountain Management's letter of 21st January 2016 (copy attached) to the Central Bank of Ireland ('Central Bank') advised "*Customers of Greymountain who affiliate business to Greymountain can receive payments through any medium*". Please advise as to the services provided by Greymountain Management in **facilitating such payments** and please provide an example of how this works in practice.
>
> 3. Greymountain Management's letter of 21st January 2016 advised "*It is in the opinion of Greymountain Management that all of its commercial transactions are in full accordance with … the Official Journal of the European Union regarding PSD Regulations, which negates the requirement of a money transmission licence…*". This letter proceeded to quote Regulation 6(b) of the

PSD Regulations which provides "*6. These Regulations do not apply to – (b) payment transactions from a payer to a payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee…*" With regard to this statement, please provide an explanation as to **why Greymountain Management Limited believes it is in a position to avail of this exemption, if as it has advised, it "*does not provide any intermediary services whereby funds are paid… by a consumer via Greymountain Management to another entity*.**"

4. Given the statement on the Glenridge Capital website www.glenridgecapital.com which advises **"*All transactions will reflect Greymountain Management Ltd… on bank statements*"** please provide a detailed description of the services provided by Greymountain Management to Glenridge Capital and please explain what this statement refers to." (Emphasis added)

81. It seems clear, once again with the benefit of hindsight, that Greymountain would have been shut down by the Central Bank if the reply from Matheson had been honestly answered, in particular, question one (i.e. by stating the truth - that Greymountain was in fact providing payment methods through third party credit cards) and question four (i.e. by stating the truth - that Greymountain and Glenridge operated as one enterprise whereby 'investors' were being induced to pay money to Greymountain/Glenridge for so-called binary option trading). It is important to emphasise that there is no suggestion that Matheson knew that its instructions from Greymountain/the Cartu Brothers were dishonest.

82. Instead, what the Central Bank got in reply from Matheson (it must be assumed on the instruction of Greymountian/the Cartu Brothers) was obfuscation and lies in a letter dated 29th February, 2016, which stated that:

"1 […] Greymountain Management Limited ("Greymountain") has amended the text on the website to reflect the fact that they accept payment for services provided through various methods.

[..]

2. The text used has now been updated to reflect the fact that no payment services are provided by Greymountain.

We are instructed that the use of the legislative references was not an effort to rely on an exemption. **Text was included in error** in an attempt to demonstrate that no such services were provided. As set out in previous correspondence, **we are instructed that no payment services are provided by Greymountian Management Limited**.

3. The Glenridge Capital website, www.glenridgecapital.com, has been updated to reflect the fact that Greymountain Management Limited only provides technology services to Glenridge Capital. There are no further references to Greymountain Management Limited on the website." (Emphasis added)

83. It is relevant to note that in relation to the fourth and crucial point raised by the Central Bank, regarding the fact that transactions and bank statements reflected Greymountain as the beneficiary, that Matheson provide no explanation for this fact. If this had been truthfully explained, this would have likely led to the closure of Greymountain, since it would have led to the admission that Greymountain was operating as an unauthorised payment processor for third parties.

84. It is unfortunate for Mr. Powers that the Central Bank's claims in these letters in January/February 2016, which was before Mr. Powers had transferred any money to Greymountain, were completely accurate and should have led to the closure of Greymountain,

if the Central Bank had not been thrown off the scent by the lies issued by Greymountain, on its own behalf, and by Matheson, on its behalf.

85. It is important however to note that it is not being suggested that either the Central Bank or Matheson were aware of the fraud or have any moral or legal responsibility for the losses suffered by Mr. Powers. It does however highlight the need for regulatory authorities to be extra vigilant to the use by fraudsters of reputable law firms and counsel (in the vigorous defence of these proceedings which continued up to two weeks prior to trial) to add a veneer of legitimacy to unlawful activities, with the apparent intention of putting off the fateful day when their fraudulent operations will be shut down.

86. Finally, in this context, it is to be noted that the Central Bank letter dated 7th January, 2016 claiming that Greymountain was an unauthorised money transmission business was addressed to '*The Managing Director, Greymountain Management Limited, 3rd Floor Ulysses House, Foley Street, Dublin 1'*. However, as previously noted, there were only two directors (Mr. Coates and Mr. Grainger). As noted hereunder, Mr. Coates, who was a student at the time, had no role in the Company (save for the execution of a power of attorney). In contrast, and as noted hereunder, Mr. Grainger did have a role since he signed agreements, made bank transfers and was involved in helping resolve complaints with members of the public and An Garda Síochána. It is therefore possible that Mr. Grainger received this letter from the Central Bank and Mr. Powers claims that it is likely that Mr. Grainger did receive this Central Bank letter raising regulatory issues, as:

- Mr. Grainger accepts that he acted as a 'consultant/sub-contractor' for the company secretarial arm of Moore Stephens, which worked from that address in Foley Street to which this letter was sent.
- In Mr. Grainger's email of 10th October, 2016 to Mr. David Cartu and Ms. Hennell, after being asked for the address to send the Maxpay Agreement for his

signature, he states that it should be addressed to "Liam Grainger, Greymountain Management Limited, 3rd Floor, Ulysses House, Foley Street, Dublin 1."

- In his witness statement, Mr. Grainger stated that one of his roles was to pass on, *via* email, any correspondence received at Greymountain's registered office, to Ms. Earle and/or Mr. David Cartu. An example of this is provided by the email dated 17th February, 2016, from Mr. Grainger to Ms. Earle, copying Mr. David Cartu, enclosing a letter of complaint from the law firm, Carlton Huxley, about an Edgedale transaction.

The complaint by Ms. Lyons that Greymountain facilitated fraud

87. While none of the 35 plaintiffs are resident in Ireland, it appears that one 'investor' who interacted with Greymountain, a Ms. Nuala Lyons ("Ms. Lyons") was resident in Ireland (as she gives an Irish mobile number in her emails). Her emails also indicate that she has a financial qualification (i.e. a QFA MIIPM). She managed to have her money returned to her after she made direct contact, with Moore Stephens, which provided company secretarial services and a registered office to Greymountain. She claimed that she had been defrauded by a company called *Fast Cash* using the payment processing services of Greymountain. Since her concerns were raised with Mr. Grainger, it is clear that issues regarding Greymountain's activities were raised with Mr. Grainger as early as the date of these emails in November 2015.

88. In an email, which is undated, but appears to be from early November 2015, Ms. Louise Kennedy of Moore Stephens writes to Mr. Grainger to state:

> "Hi Liam,
>
> A Ms [...] Lyons called the office and explained to me that **Greymountain Management had debited her account with €500 on behalf of Fast Cash on 23rd October 2015**. Her bank is claiming that **this transaction did not occur** and now for some reason, she is unable to collect $10,000.

[Ms. Lyon's] email address is [ ] and her phone number is [087 -]

[Ms. Lyons] also explained that she was unable to find any phone number for Greymountain management. She also said that their fax number is not working. The only contact details she could find for this company was for our address here at Foley Street.

Kind regards". (Emphasis added)

89. On the 5th November, 2015, Ms. Kennedy followed up:

"Hi Liam

[…] Lyons rang again this afternoon. She is still waiting to hear from Greymountain and is quite upset. She said that **she has contacted the ombudsman** and it has been confirmed that Greymountain **are not registered with the central bank and therefore are not legally permitted to deal with bank transactions.** She said that she wants to speak with someone in Greymountain before she contacts the **AIB Fraud Squad**.

Her phone number is [087]. Hopefully someone from Greymountain will get a hold of her soon.

She is also sending me an email which she wants me to forward onto yourself. I didn't feel comfortable giving her your own email address." (Emphasis added).

90. Once again, with the benefit of hindsight, this email, which was sent many months before Mr. Powers paid any money to Greymountain, clearly spells out what was actually happening in Greymountain. Ms. Lyons was a member of the public (*albei*t a financially qualified one) who appears to have had a fleeting contact with Greymountain. Yet it was obvious to her that Greymountain was not authorised to process payments on behalf of third parties (in this case a business called *Fast Cash*) but continued to do so. Yet, as noted

hereunder, the directors who were entrusted as a matter of law with the management of the company, were not aware that the company of which they were directors was being used in this way (as part of a massive international fraud).

91. It is also important to note the fact, that Greymountain was acting as an unlawful money transmission business, was specifically brought to the attention of Mr. Grainger at this early stage of Greymountain's operations in Ireland in the foregoing emails.

92. Mr. Grainger's immediate response on 5th November, 2015 was to copy the two emails to Mr. Jonathan Cartu at Tracy PAI (jonathan@tracypai.com) with the suggestion that:

> "We may have to issue a formal response".

93. Mr. Jonathan Cartu replied immediately on 5th November, 2015 stating:

> "Please pass on to Danielle [Earle], she should handle this immediately."

94. Accordingly, on that same day, Mr. Grainger forwarded the emails to Ms. Earle, the Administrative Manager in Greymountain. In Mr. Grainger's covering email to her, he states:

> "Danielle,
>
> See below regarding a […] Lyons, can you follow up at Jonathan's request and ring her to find out exactly what Greymountain has to do with her. […]
>
> FYI, I checked in the companies office here in Ireland and there is a business name registered called Fast Cash with an address; 6 The Willows, Thurles, Co Tipperary (private house). The business is Money Lending and it is owned by a Anna Barnaville. I also checked the register of Money Lenders in the Central Bank and not registered.
>
> Let me know how you get on."

95. On the same day, Ms. Earle sends an email to Mr. Grainger and Mr. Jonathan Cartu, which states:

"Hi Guys,

I have just spoken to [Ms. Lyons] there now and informed her that **we have refunded a total of €1201 back to her CC's today**.

She seemed very confused by the whole matter and was relieved with the outcome.

She said she would contact the fraud section of her bank immediately to stop any proceedings.

Hopefully this will be the end of this matter." (Emphasis added)

96. As Ms. Lyons had received her money back promptly, it appears that she did not pursue matters further. However, on 3rd February, 2016, Ms. Lyons did follow up with an email to Ms. Earle in which she observed that:

"I will however warn you that this Company **[Fast Cash] is pretending to sending investors cash to the platform Greymountain management**, what you can do about this I do not know […]". (Emphasis added)

97. Thus, it was obvious to a third party, such as Ms. Lyons, what was happening. However, what she was not aware of was the fact that the third party binary options traders were not in fact *'pretending'* to be sending money to Greymountain. Instead, Greymountain was actually operating as an unauthorised money transmission business to give fraudulent binary options traders a veneer of legitimacy in order to obtain money from unsuspecting 'investors'.

98. Ms. Earle forwarded this email on 3rd February, 2016, with this important observation regarding the manner in which Ms. Lyons believed that Greymountain was being used by fraudulent companies, to Mr. Jonathan Cartu. Mr. Jonathan Cartu replied to Ms. Earle to thank her very much for her help and he copied this reply and the emails to Mr. David Cartu, Mr. Grainger and Mr. Andy Quinn (of Moore Stephens). Mr. Quinn replies to Mr. Jonahtan Cartu

and the other recipients of this email by saying '*well done on the [emails] below – tks'*. It seems clear from Mr. David Cartu's one sentence reply to Mr. Jonathon Cartu (and also Mr. Grainger, Mr. Quinn and Ms. Earle) that he was relieved that the matter was resolved without the involvement of the AIB fraud squad/ Financial Ombudsman (initially threatened by Ms. Lyons), as evidenced by his comment:

"That was all Jonnyboy!"

99. It is also to be noted that Mr. Grainger replied to this email from Ms. Earle on 5th November, 2015, asking:

"Thanks, Danielle.

Can u explain how Greymountain ended up deducting monies from her account in the first place". (Emphasis added)

100. Danielle replied on the same day

"Hi Liam.

No problem at all.

All monies taken by merchants shows on their bank and CC accounts as Greymountain Management.

The merchant's name doesn't appear anywhere.

Hope this helps." (Emphasis added)

101. In summary therefore, on 3rd February, 2016 Mr. Grainger is told that a member of the public (Ms. Lyons) claims that a company allegedly involved in fraud (*Fast Cash*) is pretending to be sending investors' cash to Greymountain (or more accurately is using Greymountain as a front to which investors' cash is sent). Also Mr. Grainger knows from Ms. Earle's email of 5th

November, 2015 that it is in fact the '*business'* of Greymountain to be listed on the bank statements of clients and the names of merchants (such as *Fast Cash*) do not appear anywhere.

102. At this early stage therefore, Mr. Grainger was aware that allegations of fraud were made against Greymountain by an 'investor' and that Greymountain was in fact acting as a payments processor for third party merchants and that Greymountain appeared on the bank statements of those 'investors' as the descriptor.

103. Despite this, there is no evidence that Mr. Grainger made any further enquiries or that he acquired a sufficient knowledge of the company's business to discharge his duty as a director. It is also relevant to note that the letter from the Central Bank dated 7th January, 2016 expressing concerns that Greymountain was operating as an unauthorised money transmission business, was addressed to the Managing Director at Foley Street and it was Mr. Grainger's job to forward correspondence to this address to Ms. Earle or Mr. David Cartu and he may have seen this letter from the Central Bank.

104. However, as is clear from the evidence hereunder, Greymountain continued to operate as an unauthorised payment processor and an alleged binary options trader from that date in November 2015 until it ceased operations on the 25th April, 2017.

Different approach to Irish resident 'investors' from that to foreign based 'investors'

105. It is also relevant to note that Greymountain adopted a different approach to 'investors' based outside Ireland to that taken with 'investors' resident in Ireland. The latter could, it seems, more easily create significant issues, with the Financial Ombudsman and with AIB. This is highlighted by the fact that the company did not engage Matheson to write to Ms. Lyons denying any role in the transaction with *Fast Cash* as was done with 'investors' outside Ireland - see for example the case of Ms. Grace L. Khoury, who engaged the English law firm of Carlton Huxley to write to Greymountain regarding the money paid by her to Edgedale Finance through Greymountain. In contrast to the approach with Ms. Lyons, where the matter was

resolved within a very short time by a refund, Greymountain instructed Matheson to deny, by letter dated 27th February, 2017, any connection between Edgedale and Greymountain and it refused to refund the money.

Conflicting letters from two firms of solicitors on behalf of Greymountain

106. The web of lies being told by, and on behalf of, Greymountain is further highlighted when one considers that a letter from one firm of solicitors (Matheson) engaged by Greymountain in February 2016 (to which reference has been made) stated that *'no financial services are provided'* by Greymountain. However, this completely contradicts a Legal Opinion from another firm of solicitors, (McCartan & Burke) engaged by Greymountain some months previously. This is because the McCartan & Burke Opinion, dated 25th June, 2015, states that Greymountain was in fact a binary options broker. In this Opinion, McCartan & Burke states that the law firm was retained by Greymountain to express an opinion:

> "[A]bout whether [Greymountain's] **primary activity as a Binary Options broker** under the name Bee Options using URL: www.beeoptions.com requires a financial services licence or a gambling licence under the laws of Ireland (the Opinion)." (Emphasis added)

107. It seems to this Court that, when one considers all the evidence set out in this judgment, this statement by McCartan & Burke of the actual business of Greymountain (i.e. as a binary options broker or, more accurately, misrepresenting itself to be a binary option broker - since no evidence has been produced of any trades ever having been conducted) may be one of the few truthful and accurate statements made concerning Greymountain. This is because it seems clear to this Court, on the balance of probabilities, that, in relation to certain brands/websites (such as Bee Options, Glenridge and others brands owned by one of the Cartu Brothers), there was in fact no distinction between Greymountain and the binary option trading brand/website,

such that Greymountain's primary activity was in fact fraudulently representing that it was a trader in binary options.

Greymountain's concealment of its role as an unauthorised provider of payment services

108. Mr. Jennings provided expert evidence that Greymountain operated as a payment processor for credit card payments using Acquiring Banks. Thus, instead of Greymountain liaising with individual credit card companies such as Visa or Mastercard, it did so through what are known as Acquiring Banks, namely Transact Pro, Credorax, Max Pay and Wirecard. The Acquiring Banks received funds from the credit card companies and then passed those funds on to Greymountain. He also noted that the payment processing agreements between the Acquiring Banks and Greymountain provided that Greymountain '*should not accept a card for sales by third parties'*. It was on this basis that the Acquiring Banks entered into payment processing agreements with Greymountain. Thus, Greymountain was only entitled to enter a payment processing agreement with an Acquiring Bank if Greymountain was the 'merchant' and it was not processing payments on behalf of third parties.

109. However, it is also clear that this is exactly what Greymountain did, contrary to the express terms of the payment processing agreements. This is because it processed payments on behalf of third-party binary option traders. It also processed payments on its own behalf, i.e. as the 'merchant', as an alleged binary option trader, under the business name Glenridge (which, as noted below, was beneficially owned by Mr. David Cartu). It also carried on business as a 'merchant' for other business names owned by Mr. David Cartu, such as Bee Options. However, Greymountain was always keen to ensure that there was no mention of third-party binary options traders in documentation that went to the Acquiring Banks, with which it had agreements, since it was prohibited by those agreements from acting for third parties.

110. When it came to processing chargebacks, Greymountain went to strenuous efforts to ensure that any reference to third party merchants was removed from the chargeback form,

which was forwarded to the Acquiring Bank. This was done so as not to alert the Acquiring Bank that Greymountain was in fact processing payments for third parties (contrary to the terms of the payment processing agreements and without a licence from the Central Bank).

111. This practice by Greymountain of hiding the reality of what it was doing from Acquiring Banks is evident from the email from Ms. Rachel Porter ("Ms. Porter") of Greymountain to Ms. Anna Sevastiyanova of a third party binary options trader called Wise Group Media Ltd, dated 2nd August, 2016. In this email, it is blatantly stated that in relation to any chargeback forms to be sent to one of the Acquiring Banks (in that instance, Transact Pro), that:

> "Any disputes for transactpro can't have any mention of your company name or website [i.e. the name Wise Group Media]."

112. Similarly, in relation to the chargeback forms done by a third-party trader called Binary Book, Ms. Porter writes in her email of 29th August, 2016 to Alex Robinson of Binary Book that the chargeback forms need to be amended. This amendment was, not just to remove the name Binary Book, but to reduce the gaps in the documentation caused by the removal of the name, so as not to highlight that change to the form. She states:

> "Can you also take out any mention of Binarybook and **remove the gaps as they are too obvious to send to the bank**". (Emphasis added)

<u>Greymountain, Glenridge, Cartu brands and Tracy PAI as one fraudulent enterprise?</u>

113. In contrast, when Greymountain was processing payments under the name of a brand owned by Mr. David Cartu, such as Bee Options, there was no such dilemma, since brands such as Bee Options (and Glenridge), which were owned by Mr. David Cartu, and companies owned by Mr. David Cartu (such as Tracy PAI), were treated as all being part of the one enterprise.

114. This treatment of Greymountain and Glenridge and Tracy PAI as the one enterprise is illustrated by the email dated 27th October, 2015 from Ms. Ana Schmitman (with the ironic title of 'Manager of Risk and Fraud Department' in Tracy PAI) to Ms. Earle in Greymountain, which states:

> "I want to introduce my colleague Dave Clifford; he is CC'd on this email. He is the person who deals with all charge back notifications and disputes here at Tracy PAI for **our brands (Glenridge, beeoptions and Rumelia**)." (Emphasis added)

115. Then in relation to one of these brands, www.beeoptions.com, it is listed as belonging to Greymountain in the payment processing agreement between Greymountain and Credorax, dated 3rd December, 2014. This agreement also states that Mr. David Cartu is the principle contact on behalf of Greymountain in relation to this agreement. This provides further support for the conclusion that Greymountain was in the alleged business of binary option trading as a merchant in its own right and was not processing payments on behalf of a third party, when processing payments for Bee Options (or Glenridge).

116. The distinction between binary options trading by *'our brands'*, which were operated/facilitated by Greymountain on the one hand, and third-party binary options trading facilitated by Greymountain on the other hand, is also clear from the business records of Greymountain. For example, as noted in Mr. Jennings' Report at p. 14, from para. 5.5 of the Greymountain Chargeback Procedure Manual, it is clear that Glenridge, Greymountain and Tracy PAI (owned by Mr. David Cartu) are treated as the one enterprise. This is because page 3 of the Manual provides that in relation to any Tracy PAI brands, by which is clearly meant a brand owned by Mr. David Cartu (and it lists Glenridge as one such brand), that Tracy PAI should be asked what it wishes to do in relation to pre-arbitration for Credorax chargebacks for such brands (but there is no such requirement for third party brands).

117. In addition, as noted in Mr. Jennings' Report at para 4.10 and 5.6, the Tracy PAI merchants (i.e. those binary option brands owned by Mr. David Cartu) are treated differently from other third-party merchants in relation to the rolling reserve held by an Acquiring Bank in the name of Greymountain. The rolling reserve is the single reserve held by the Acquiring Bank in the name of Greymountain to deal with chargebacks, with Greymountain applying transactions from various merchants to this single account. However, Mr. Jennings notes that Tracy PAI merchants, unlike third party merchants, are not included in the rolling reserve calculations conducted by Greymountain, which supports the view that Greymountain, Tracy PAI, Glenridge and other websites owned by Mr. David Cartu were all treated as part of the one enterprise.

118. Further evidence that Tracy PAI was treated as part of the Greymountain enterprise is provided by the fact that Greymountain paid Tracy PAI's call centre operation expenses (as evidence by an email dated 20th June, 2017, from Mr. Padraig O'Donoghue of Moore Stephens to Ms. Hennell of Greymountain raising this issue).

119. Perhaps the most blatant evidence of the fact that Tracy PAI and Greymountain/Glenridge were the one enterprise is provided by an email dated 19th July, 2016 from Leeav Peretz of Tracy PAI to Mr. David Cartu in which reference is made to the fact that personnel in Tracy PAI were drafting a letter on Greymountain letterhead in response to a letter from an Acqiuring Bank (Credorax), which claimed that Greymountain/Glenridge had breached Cerdorax's fraud thresholds. This letter, duly drafted by Tracy PAI, was sent from Tracy PAI to Ms. Earle of Greymountain in Gorey to be signed on behalf of Greymountain. This illustrates clearly the involvement of Tracy PAI, Greymountain and Mr. David Cartu in this one fraudulent enterprise.

Matheson's invoice for work done for Greymountain was issued to Mr. David Cartu

120. To further support the conclusion that Greymountain/Glenridge was one enterprise operated by Mr. David Cartu, counsel for Mr. Powers relied on the fact that, when Matheson issued a bill dated 6th February, 2017 for its legal services to Greymountain, it did not issue that bill to Greymountain, which would have led to Greymountain paying VAT, as it was resident in Ireland.

121. This bill was for, *inter alia*, advice given regarding letters Matheson wrote on behalf of Greymountain to 'investors' denying that they had been defrauded, such as the one to Carlton Huxley to which reference has been made previously. Nonetheless, Matheson issued the bill, not in the name of Greymountain, but in the name of Mr. David Cartu. Since Mr. David Cartu was not resident in Ireland, he was not subject to VAT. This amounts to a loss to the Revenue of VAT (of €3,717 on a bill of €16,610.50), unless of course there was a valid basis for this bill being addressed to, and paid for by, Mr. David Cartu.

122. This Court is unaware of what representations Mr. David Cartu may have made to Matheson which led to the issue of this invoice in his name, rather than Greymountain's name. However, this Court can conclude that the payment of this invoice, not by the company (although for work done for the company), but by Mr. David Cartu, provides further evidence that Greymountain was not a normal company trading in Ireland that pays for legal services itself (inclusive of VAT). Rather this is further evidence that Greymountain/Glenridge and Mr. David Cartu were all part of the one enterprise, which, as noted hereunder, was involved in an international fraud.

Third parties led to believe that Greymountain was a binary options trader

123. Certain third parties had dealings with Greymountain and it seems likely that their understanding of what Greymountain was actually doing was obtained from Greymountain. One such third party was the Dublin law firm of McCartan & Burke, from which firm Greymountain obtained a legal opinion. As noted earlier, this opinion described

Greymountain's primary activity as that of a binary options broker. It seems clear that McCartan & Burke would have obtained this view of Greymounain from its instructions obtained from that company.

124. Another third party with which Greymountain had dealings was the Acquiring Bank Credorax, since Greymountain entered into a payment processing agreement with that company. Once again it seems likely that Credorax's understanding of what Greymountain was actually doing was obtained from Greymountain itself. In this regard, Credorax wrote to the Malta Financial Services Authority and it described Greymountain as a 'Binary Options Merchant' and it stated that Greymountain owned the URLs www.glenridgecapital.com and www.beeoptions.com (and reference has already been made to this issue in the context of the Ontario Security Commission's Decision).

125. It seems to this Court that this statement that Greymountain actually owned Glenridge (or that Mr. David Cartu owned and operated both together as one enterprise) and that Greymountain traded as a binary options merchant (or more accurately purported to so trade) is an accurate description of what Greymountain was doing during its three years of operations.

CONCLUSIONS REGARDING THE ACTIVITIES OF GREYMOUNTAIN

126. In light of all of this uncontroverted factual and expert evidence regarding the activities of Greymountain, this Court makes the following conclusions.

127. Mr. Coates and Mr. Grainger were directors of Greymountain during the relevant time.

128. Mr. David Cartu and Mr. Jonathan Cartu were shadow directors of Greymountain during the relevant time.

129. Mr. David Cartu was the beneficial owner of Greymountain, since the legal shareholder, Mr. Adam Graves, executed a declaration of trust in favour of Mr. David Cartu, which Mr. David Cartu confirmed in his answer to interrogatories.

130. Mr. David Cartu was the beneficial owner of the website Glenridge.

131. All the evidence supports the conclusion that Greymountain (a company incorporated in Ireland) and Glenridge (a website address) was in fact one enterprise, which was represented as being based in Dublin, and was controlled primarily by Mr. David Cartu, but also Mr. Jonathan Cartu.

132. Greymountain was involved in binary options trading (or more accurately representing to 'investors' that it was involved in binary option trading) for itself under the name Glenridge with the assistance of 'brokers' from a call centre in Israel, operated by Tracy PAI.

133. The foregoing evidence also supports the conclusion that Tracy PAI and Greymountain/Glenridge operated as one enterprise. It is to be noted that this Court's conclusion is consistent with the Decision of the Ontario Securities Commission, to which reference has already been made, that:

> '*Glenridge Capital, Tracy PAI […] and Greymountain were an interconnected business operation'*.

In this way, an Irish company, Greymountain, played a key role in giving a veneer of legitimacy to the call centre in Israel operated by Tracy PAI which targeted 'investors' primarily resident in America, such as Mr. Powers. This was because Greymountain, as an Irish incorporated and regulated company, was able to enter payment processing agreements with Acquiring Banks and thereby receive payments from 'investors'' credit cards. It was this apparently legitimate and regulated Irish company which was the 'descriptor' entered on their bank statements.

134. In relation to one part of its business (third party binary option traders), Greymountain achieved this veneer of legitimacy by pretending to Acquiring Banks that it was not a payment processor, but was receiving these payments from 'investors' as a merchant in its own right, when it was in fact collecting money and transmitting it onwards to third party binary options traders. In fact, Greymountain was, in this regard, acting as an unauthorised money

transmission business for third party binary option traders. Thus, Greymountain, in return for circa 10% of the money it processed, provided an unauthorised money transmission business, in an EU regulated country, which passed on credit card payments to third party binary options traders. However, there is no evidence that there was any trading actually done by these third parties and all the evidence (and, in particular, the fact that the level of chargeback for fraud on payments processed by Greymountain was so high) supports the conclusion that these third party traders, like Glenridge/Greymountain, were also involved in a fraud to deprive 'investors' of their money.

135. In relation to the other part of its business (i.e. binary option websites owned by Mr. David Cartu), Greymountain achieved its veneer of legitimacy by claiming to the Acquiring Banks that Greymountain/Glenridge was not a payment processor, but that it was the merchant, even though there is no evidence to support the view that any binary option trading was ever undertaken by Greymountain/Glenridge or indeed that Greymountain/Glenridge was authorised to trade in binary options.

136. The legal entity which operated this scheme was Greymountain, an Irish incorporated company. Money was collected by Greymountain from Mr. Powers for the ostensible purpose of trading in binary options through Glenridge, which he was told was based in Dublin. This Court concludes that the representation of trading in binary options was fraudulent as there is no evidence of any such trading.

137. All the evidence supports the conclusion that there was never any binary options trading or indeed any prospect of a return on Mr. Powers' 'investment' and that Greymountain/Glenridge was part of fraudulent scheme operated primarily by the Cartu Brothers to deprive 'investors' of their money. It is to be noted that none of the four directors/shadow directors produced any evidence to contradict the extensive allegations and evidence of fraud produced by Mr. Powers.

138. 'Investors' were fraudulently persuaded to part with their money by individuals at the Israeli call centre operating under the name Glenridge. The 'investors'' funds then ended up being transferred to Greymountain's account. It is clear from the expert and other evidence that, after Greymountain took its commission of *circa* 10% from the 'investors'' funds, as payment for its key role in the fraudulent enterprise, it passed on the balance to the Cartu Brothers (in relation to binary option websites, such as Glenridge, owned by Mr. David Cartu) and to other third party binary options platforms (in relation to those binary option websites, such as Edgedale Finance). This is evidenced by the email dated 20th August, 2015 from Mr. David Cartu to Ms. Hennell, and subsequently forwarded to Mr. Grainger, asking for transfers of €273,607.71 to be made to Cherrytrade, €208,642.20 to be made to Porter Finance and €190,901.13 to Bloombex. This is also clear from Ms. Hennell's reply, also dated 20th August, 2015, to Mr. Grainger and Mr. David Cartu, in which she states:

> *"Hi Liam, There are a number of transfers that need to be taken on the instruction of David, as they are all over our daily limit I will need to make fax requests for them, could you please forward me the details for doing this."*

139. Money was collected by Greymountain from 'investors' and after Greymountain took its share of *circa* 10%, the balance was passed onto bank accounts for the benefit of the Cartu Brothers, as evidenced by the email dated 20th June, 2017 from Mr. Padraig O'Donoghue of Moore Stephens to Ms. Hennell. In this email, he outlines a payment of €440,000 paid in 2015 to Tracy PAI which was approved by Mr. David Cartu.

140. Evidence was also provided to this Court that Mr. Powers did not receive any of his money back (save for $6,000) and so has suffered a loss of $124,027.

141. Greymountain achieved a veneer of legitimacy by lying on its own behalf, and through Matheson (but it is important to emphasise that there is no reason to believe that Matheson had any knowledge that its instructions were lies), to the Central Bank of Ireland that it was not

involved in processing payments for third parties. In this way its illegal activities were not closed down at the earliest opportunity and it continued to misappropriate 'investors'' funds for fraudulent purposes.

142. In its dealings with the Acquiring Banks, the veneer of legitimacy was also achieved by Greymountain pretending, when chargebacks were being processed by Acquiring Banks for credit card companies such as Visa/Mastercard, that Greymountain was the 'merchant'. For this purpose, there was a concerted practice adopted by Greymountain of deleting any reference to third party binary option traders from the chargeback forms before they were sent to the Acquiring Banks.

143. The key to the fraud lasting for as long as it did was that Greymountain continued to give the impression to Acquiring Banks that it was solely a payment processing company (even though it did not have the requisite authorisation from the Central Bank) and that any complaints of fraud by customers was an issue to be dealt with by the binary option platforms. For example, in relation to one 'investor' who sought to recover her money from one third party binary options trader (Edgedale Finance), Greymountain arranged for Matheson to write to the law firm representing her, Carlton Huxley, to claim that there was no cause of action against Greymountain for her claim that their client had been defrauded, since Greymountain only providing 'technical services' to Edgedale:

> *'[Greymountain] is a third party service provider which provided limited technical services to Edgedale and is in no way affiliated with Edgedale.'*

However, the facts show that Greymountain shared in the profits of the fraudulent enterprise with Edgedale Finance (as to 10%).

LAW ON PIERCING THE CORPORATE VEIL

144. Based on the foregoing evidence, this Court has little hesitation in concluding, on the balance of probabilities, that Greymountain was used as an instrument of fraud in order to deprive Mr. Powers of $124,027.

145. This Court concludes that the sole purpose of Greymountain was to defraud unsuspecting individuals of their money, such as Mr. Powers, who were resident in America and other countries outside Ireland.

146. Furthermore, it seems that a key factor in Greymountain being able to operate as an instrument of fraud in Ireland for three years was the fact that Greymountain did not target individuals who were resident in Ireland. If it had, it seems likely that the fraud would have come to the attention of the appropriate authorities in Ireland and Greymountain would have had to cease its operations at a much earlier stage.

The instrument of fraud was based in Ireland targeting individuals resident abroad

147. Indeed, the very rapid resolution of Ms. Lyons' complaint illustrates that Greymountain was alert to this fact. It is easy to imagine that if Greymountain had been used to defraud Irish resident 'investors' that radio call-in shows would be alive with the details of the scam at a very early stage. Thus, it seems that another key factor in the success of the fraud was that the instrument of the fraud, Greymountain, was incorporated in and trading from Ireland, but that it did not target individuals resident in Ireland. Thus, the distance between the victims of the fraud (outside Ireland) and the engine of the fraud (in Ireland), was undoubtedly a factor in the success of the fraud. This has led to $186 million flowing through the accounts of an Irish company for the benefit of the masterminds of the fraud (the Cartu Brothers). Regretfully therefore, Ireland as a jurisdiction within the EU, and so subject to EU/Irish regulation, was being used to perpetuate a fraud on unsuspecting individuals outside Ireland.

148. While Mr. Powers is one of the 35 plaintiffs who allegedly lost over $4 million, it seems clear that during Greymountain's three years of operations, it defrauded many other

unsuspecting individuals, since as previously noted, the sum of over $186 million is the total amount of credit card payment which the Liquidator of Greymountain says was paid to Greymountain during its three years of trading.

149. What the foregoing evidence shows is that the moral responsibility for the use of Greymountain as an instrument of fraud rests squarely on the shoulders of Mr. David Cartu and Mr. Jonathan Cartu.

150. As regards legal responsibility, it is a well-established principle of company law, since *Salomon's* case (*Salomon v. Salomon* [1897] A.C 22), that a company has a separate legal personality to its members and so, save in exceptional cases, the directors and shadow directors are not liable for the actions of a company. Counsel for Mr. Powers, who urged this Court to find the four directors/shadow directors personally liable for this fraud, was not able to point to any cases in the Irish courts in which the corporate veil was pierced in this type of case.

151. The closest that the Irish courts have come to piercing the corporate veil in circumstances, similar to those in this case, are to be found in *obiter dicta* comments in a number of High Court cases.

152. The first is the case of *Dublin County Council v. Elton Homes Ltd* [1984] ILRM 297. This case concerned the question of whether the controllers of a company, who had been guilty of mismanagement of that company, should be held personally liable for the company's obligations. In that case, the company had been granted planning permission for a housing development. However, the company went into liquidation before it was able to comply with the conditions of the planning permission. Dublin County Council sought an injunction to compel not only the company, but also its directors, to carry out the necessary works. This application was refused by Barrington J. who stated at p. 300 that:

> "What is suggested is that because they were directors of the company at the time when the company obtained planning permission that they should be ordered to complete the

development at their own expense. **I am not saying that there might not be cases where the Court would be justified in making such an order. If the case were one of fraud, or if the directors had syphoned off large sums of money out of the company, so as to leave it unable to fulfil its obligations, the court might be justified in lifting the veil of incorporation and fixing the directors with personal responsibility.** But that is not this case. The second and third named respondents appear to be fairly small men who, having failed in this particular enterprise, are now back working for others. The worst that can be imputed against them is mismanagement.

They gave personal guarantees to the insurance company which supplied the bond for £10,000.00 and to the company's bankers. **They therefore stand to lose heavily arising out of the transaction.** Moreover Mr. Noel Daly of the liquidator's office who gave evidence before me said that the liquidator and his officials entertain no suspicion that there has been any impropriety on the part of the directors in dealing with the assets of the company.

It appears to me that [the directors] traded with the benefit of limited liability in this case and that, **in the absence of any evidence of impropriety on their part, I would not be justified in attempting to make them personally responsible for the default of the company**." (Emphasis added)

153. The second case is *Dublin County Council v. O'Riordan* [1985] I.R 159 at p. 163, in which the affairs of the company had been carried out with '*scant regard for the requirements of the Companies Acts'.* In that case, Murphy J. refused to grant an injunction against the company's directors, which injunction sought to require them to personally fulfil the planning obligations of the company. He did so on the basis that no evidence of *'fraud or the misapplication of monies'* had been established (at p. 166), since he states:

"Section 27 of the 1976 Act [Planning and Development Act 1976] is a valuable summary remedy available to a wide range of interested parties to ensure compliance with the terms on which planning permissions are granted. This is a very desirable goal but **justice certainly requires that if and insofar as it is to be alleged that the party against whom such an order is sought has been guilty of fraud or the misapplication of monies,** some form of plenary proceedings should be instituted, in which the **party charged with such misconduct would have the opportunities which the legal system provides for knowing the full extent of the case being made against him, and have a proper opportunity to defend** himself against it. Similarly, where the application turns upon the relationship between a director or shareholder and a company in which he is interested I would anticipate that in most cases it would be necessary that the relationship would be investigated in the first instance by a liquidator, in accordance with the procedures provided in the Companies Act for that purpose, **rather than seeking to establish all of the relevant facts on proceedings designed to be heard on affidavit**." (Emphasis added)

154. In the third case, *Dun Laoghaire Corporation v. Parkhill Developments* [1989] I.R 447, Hamilton P. refused to grant an injunction against a director of a company where the director was in total control of the company and managed the company without regard to the requirements of the Companies Act. At p. 450 *et seq*, Hamilton P. stated that:

"I have no doubt, having heard the evidence of [the director], that he was in effective control of the [Company] and that he failed to comply with the requirements of the Companies Act 1963, **but I have found no evidence of any fraud or misrepresentation on his part; any siphoning off or misapplication of the funds of the said company; nor of negligence in the carrying out of the affairs of the said company**.

[….]

In the course of his judgment in *Dublin County Council v. O'Riordan* [1985] I.R. 159, Murphy J. referred to this judgment of Barrington J. and to a judgment of McWilliam J. in *Ellis v. Nolan* (Unreported, High Court, 6th May, 1983). In the last-mentioned case, where an effort was made to obtain an order under s. 27 of the [Local Government (Planning and Development) Act 1963] against directors of a private company, McWilliam J. commenced (at pp. 10 and 11 of his judgment) as follows:

> "I was informed by counsel that some orders had been made making directors amenable in certain cases, but I was also informed there were no reported cases or written judgments available so that I have no idea what was the form of proceedings in which such orders were made. A conglomeration of associated companies such as appears from the present proceedings deserves very close investigation and **directors may well be made responsible for fraud, misrepresentation, improper application of money or negligence**, but this would normally be done in a different form of proceeding and with a great deal more evidence than has been placed before me and I do not see how I could hold Sean Nolan responsible on this application merely because he made the application for planning permission in his own name."

In *Dublin County Council v. O'Riordan* [1985] I.R. 159 at p. 166, Murphy J. went on to say:

> "I would respectfully agree with the views expressed by Mr. Justice McWilliam. Section 27 of the [Local Government (Planning and Development Act 1976] is a valuable summary remedy available to a wide range of interested parties to ensure compliance with the terms on which planning permissions are granted.

This is a very desirable goal but justice certainly requires that if and in so far as it is to be alleged that the party against whom such an order is **sought has been guilty of fraud or the misapplication** of monies, some form of plenary proceedings should be instituted, in which the **party charged with such misconduct would have the opportunities which the legal system provides for knowing the full extent of the case being made against him, and to have a proper opportunity to defend himself against it.** Similarly, where the application turns upon the relationship between a director or shareholder and a company in which he is interested, I would anticipate that in most cases it would be necessary that the relationship should be investigated in the first instance by a liquidator, in accordance with the procedures provided in the Companies Act for that purpose, rather than seeking to establish all the relevant facts on proceedings designed to be heard on affidavit."

As I have found no evidence of impropriety by [the director] in the conduct of the affairs of the [Company], I am satisfied that he traded with the benefit of limited liability in this case and I would not be justified in attempting to make him personally responsible for the admitted default of the [Company]." (Emphasis added)

155. On the basis of the foregoing *obiter dicta* comments from *Elton Homes, O'Riordan, Parkhill* and *Ellis*, it seems clear that the Irish courts will contemplate piercing the corporate veil and affixing directors with personal liability for the acts or omissions of a company, if:

- it is a case of fraud or the misapplication of monies or misrepresentation, on the part of the directors, or
- a case of the directors syphoning off large sums of money out of the company so as to leave the company unable to fulfil its obligations, or

- there is negligence or impropriety on the part of the directors in the conduct of the affairs of the company,

provided that the facts are established in a plenary hearing, and not merely on affidavit, and that the parties charged have had the opportunity to know the full extent of the case against them and a proper opportunity to defend themselves.

156. Since the facts have been established in a plenary hearing before this Court and the directors and shadow directors in this case have had the opportunity to know the full extent of the case against them and an opportunity to defend themselves, the foregoing proviso has been satisfied in this case. Accordingly, consideration will now be given as to whether this Court would be justified in affixing the directors and shadow directors with personal liability for the loss caused by their company to Mr. Powers.

157. Finally, in this regard, it should also be noted that in *The State (McInerney Company Ltd) v. Dublin County Council* [1985] IR 1, Carroll J. refused an application to lift the corporate veil in a case involving a group of companies. The order was sought by one of the group companies in order to deem, the service of a purchase notice by one company in a group, as being service by another the company in the group. At p. 7, she states:

> "In my opinion the corporate veil is not a device to be raised and lowered at the option of the parent company or group. **The arm which lifts the corporate veil must always be that of justice.** If justice requires (as it did in the D.H.N. Case) the Courts will not be slow to treat a group of subsidiary companies and their parent company as one. But can it be said that the justice requires it in this case?" (Emphasis added)

Thus, it seems to this Court that, in addition to the foregoing considerations, before a court will lift the corporate veil, the interests of justice must demand or require it.

LIABILITY OF THE SHADOW DIRECTORS FOR THE LOSS TO MR. POWERS?

158. Mr. David Cartu and Mr. Jonathan Cartu were shadow directors of Greymountain. The evidence shows on the balance of probabilities that they were the controlling minds behind the use of Greymountain as an instrument of fraud and in using Greymountain to misrepresent that it was trading in binary options in the name of Glenridge (when there was no evidence of such trading) and in using Greymountain to convert Mr. Powers' money to their own use.

159. On the balance of probabilities, this Court concludes that they syphoned off considerable sums of money from Greymountain, which has left the Liquidator with insufficient funds to repay the millions of dollars in credit card payments made to Greymountain by unsuspecting individuals who 'invested' in binary options. This has left the company unable to meet its obligations, and in particular its obligations to Mr. Powers.

160. While the foregoing case law deals with directors, rather than shadow directors, this Court sees no reason in principle to distinguish between shadow directors and directors when applying those principles to the question of whether the corporate veil should be pierced. In support of this conclusion, it is to be noted that s. 221(1) of the Companies Act 2014 states that shadow directors shall be treated as a director of the company for the purposes of Part V of the Act – which Part deals, *inter alia*, with the duties and personal liability of directors.

161. On this basis, this Court concludes that not only are Mr. David Cartu and Mr. Jonathan Cartu morally liable for the loss caused to Mr. Powers by Greymountain (since they controlled its fraudulent operations and financially benefited from its activities), but also that they cannot evade legal liability for Mr. Powers' loss, by hiding behind the veil of incorporation of

Greymountain and claiming that, as shadow directors, they have no liability for the company's acts or omissions, on the basis that Greymountain has a separate legal personality.

162. While this Court does not believe that it should lift the corporate veil lightly, in view of the importance of this principle in company law, it seems to this Court that if it were to fail to do so in the circumstances of this case this would be an affront to justice. It would also send out a message that individuals, whether resident in Ireland or abroad, whether directors or shadow directors, can use an Irish company to carry out wholescale and massive international fraud and then evade personal liability on the basis that it was the company, and not them, that as a matter of law carried out the fraud.

163. This cannot be correct in this Court's view and it cannot amount to justice in the Irish courts. Accordingly, this Court finds that Mr. David Cartu and Mr. Jonathan Cartu are personally liable to Mr. Powers for the loss of $124,027 which he has suffered as a result of the fraud, misrepresentation and syphoning-off of funds, which the company, that they controlled and managed, undertook.

164. This Court emphasises that it is cognisant of the fact that it is a core principle of company law since *Salomon's case* that a company is a separate legal entity, and that persons owning or controlling a company are not liable for its actions. It is not raising the corporate veil lightly and it is not being suggested that it will be, or should be, a regular occurrence for directors to be made personally liable for the acts or omissions of a company.

165. However, as is clear from the foregoing Irish cases, in this jurisdiction there are exceptions to the principle that directors are not liable for the acts or omissions of a company. It seems to this Court that if this case, where the only purpose of the company was to act as an instrument of a massive international fraud, is not one such exceptional case, in which the corporate veil should be pierced, then it is hard to think of a more extreme case in which piercing the corporate veil would be justified.

166. Therefore, on the basis that Mr. David Cartu and Mr. Jonathan Cartu, as shadow directors, syphoned off considerable sums of money from Greymountain, which has left it unable to fulfil its obligations, this Court has little hesitation in piercing the corporate veil to find that they are personally liable to Mr. Powers for the loss he suffered. Furthermore, there can be no doubt that in all these circumstances that justice demands that the veil be lifted to make Mr. David Cartu and Mr. Jonathan Cartu personally liable to Mr. Powers.

LIABILITY OF THE DIRECTORS FOR THE LOSS TO MR. POWERS

167. The situation in relation to Mr. Coates and Mr. Grainger, the actual directors of Greymountain, is significantly different from the situation of the Cartu Brothers, the shadow directors.

168. As a preliminary point, it is important to emphasise that this Court cannot conclude on the evidence before it that Mr. Coates or Mr. Grainger (unlike the Cartu Brothers) were aware of the fraud or indeed the massive extent of that fraud or that they directly benefited from the fraud.

169. Their acts and omissions are therefore of a completely different character to the fraudulent acts of the Cartu Brothers. Indeed, it could be said that they were unfortunate that the people, to whom they abrogated their duties as directors, were the Cartu Brothers, who then used their position to defraud investors. However, it could also be said that Mr. Powers was even more unfortunate that he invested in a company in which Mr. Coates and Mr. Grainger were directors, as they exercised no control or oversight of the activities of Greymountain.

170. Accordingly, while this Court has some sympathy for the positions they find themselves in, it has even greater sympathy for Mr. Powers. However, it should be observed that legal

principles, rather than sympathy, must decide the outcome of this case. Their positions will be considered in turn.

Mr. Grainger

171. Mr. Grainger had a more active role in the operations of Greymountain than Mr. Coates, although this would not be hard in view of the non-existent role of Mr. Coates, a full-time student, who took on the directorship in name only. The fact that Mr. Grainger's role was more extensive than Mr. Coates' role is perhaps reflected in the fact that while he was paid a similar monthly sum to the €1,200 paid to Mr. Coates (in fact €1,170), Mr. Grainger's company was also paid €10,000 for his services as a director.

172. Reference has already been made to Mr. Grainger's involvement in resolving the complaint made by Ms. Lyons against Greymountain, which illustrates the failure by Mr. Grainger to investigate the allegations by Ms. Lyons that Greymountain was being used to perpetuate a fraud. However, there are a number of other examples of the role of Mr. Grainger, which show that his role goes beyond a role akin to that of a company secretary, as claimed by him.

Signing of payment processing agreements on behalf of Greymountain

173. As previously noted, a key component of the fraud was the fact that Greymountain, as an EU-based company, entered payment processing agreements with Acquiring Banks.

174. In this regard, Mr. Grainger signed payment processing agreements with Acquiring Banks such as the one with Maxpay (as evidenced by the email of 10th October, 2016). In his witness statement, Mr. Grainger said he did this to enable Greymountain to provide *'services to binary options merchants'*. However, as the evidence shows, the reality was that these *'services'* were money transmission services on behalf of the so-called binary options traders.

Yet, these money transmission services were being done unlawfully by Greymountain as they were not authorised by the Central Bank

175. These 'services' involved Greymountain, an ostensibly legitimate EU regulated company, appearing on the bank statements of the 'investors' as the descriptor, rather than the company which was defrauding the 'investor', and which was based in ostensibly less regulated jurisdictions. In this regard, evidence was produced to this Court of the jurisdictions in which the binary options merchants were based, i.e. Marshall Island, Dominica, St. Vincent & the Grenadines, Georgia, British Virgin Islands, Vanatu, Seychelles and Belize.

176. It seems clear therefore that the real benefit to the fraudulent scheme, of Mr. Grainger signing payment processing agreements on behalf of Greymountain with Acquiring Banks (to enable Greymountain receive payments through those Acquiring Banks from credit card companies), is that the defrauding 'binary options merchants' then had a company from a western European and EU regulated country appearing on an investor's bank statement as the 'descriptor'/recipient of the payment.

177. This appears to have been of considerable value to the fraudulent scheme since it was less likely to cause concern to the investor that a company based in Ireland/EU (than say a company in Belize) was appearing on their bank statement as the recipient of the payment. This would be likely to increase the amount of time that the so-called 'binary options merchants' would be able to string investors along and encourage them to 'invest' more money before the operations came to an end.

178. It has been noted in the context of Ms. Lyons' complaint, that Mr. Grainger was aware that an alleged fraudster was using Greymountain as a front to which investors cash is sent and, at the same time, that he was aware from Ms. Earle that the '*business'* of Greymountain was to operate as a front for a third party merchant.

179. Yet, despite the fact that he was signing payment processing agreements with Acquiring Banks, which by their very terms prohibited Greymountain doing what Mr. Grainger was advised Greymountain was doing (i.e. processing payments on behalf of third party merchants), there is no evidence that this was a cause of concern for him.

180. In particular, there is no evidence that he discharged his duty as a director to investigate this issue further. Instead, he continued to facilitate the business of the company by signing payment processing agreements and co-signing payment instructions for money to be transferred from Greymountain's bank account. See for example the transfer of funds to, what appears to be a binary options trader, Memox Services Limited, of €596,000, which was signed by Mr. Grainger and evidence was provided to this Court that the ultimate owner of this company was Mr. David Cartu.

Power of attorney

181. Evidence was also provided of a power of attorney having been granted by Greymountain in favour of Mr. David Cartu, which he used to sign, *inter alia*, an agreement with one of the Acquiring Banks (Credorax) to facilitate the fraud.

182. Mr. Coates stated that he gave a power of attorney to the owner of the company *'as it was common practice for a nominee director to give [a power of attorney] to the actual owner'.* In his closing submissions to this Court, Mr. Grainger suggests a similar defence as Mr. Coates, to the claim that he derogated his duties as a director by granting a power of attorney to Mr. David Cartu. This is because he stated that it is '*standard practice'* for such powers of attorney to be granted and that there is a power for them to be granted under the Companies Acts.

183. However, the fact that a director is legally empowered to grant a power of attorney to a third party does not mean that it is appropriate for that to be done in a particular case. Furthermore, it is not a defence, where in addition to granting the power of attorney, both directors do not oversee, to any degree, the purpose for which the power of attorney was used.

Signing of bank withdrawals and company accounts

184. In his Witness Statement, Mr. Grainger accepts that he was a co-signatory with Ms. Hennell, Greymountain's financial controller, on Greymountain's bank account and that he prepared and filed Companies' Office documentation (including the company's audited accounts). Yet, even though $186 million went through the company, Mr. Grainger chose not to discharge his duty as a director to acquire a sufficient knowledge of Greymountain's business to enable him discharge his duties as a director. If he had done so, it is possible that the fraud might not have gone undetected until the company ceased operations in April 2017.

Mr. Coates

185. In relation to Mr. Coates, no evidence was produced to the Court that, although a director of the company, he exercised any role in the company, although he does accept that he signed a power of attorney in favour of Mr. David Cartu.

186. His role seems to have been that of a director in name only and in his Witness Statement he states that he was asked to be a director by the owners of the company as they *'needed a local person'.*

187. In his closing submission, by email, he states that he was asked in 2014 to be a director of Greymountain when he was in college, undertaking a B.Sc. in Business Management. It appears therefore that during, at least part of, the relevant three-year period of the company's operations, he was studying business management. He is now in full time employment as a project manager.

188. In his closing submission he also states that his mother, Ms. Molloy:

> '[*W]orked for Wirecard UK & Ireland, which was a branch of WireCard Munich. [She] was the Head of Sales and Operations for Wirecard UK & Ireland'.*

189. Evidence was provided to the Court that she was a director of Wirecard UK and Ireland Limited and Wirecard Payment Solutions Holdings Limited.

190. It is clear from these submissions that Mr. Coates became a director because his mother, an experienced director, had suggested it and also because his directors' fees would cover his '*college fees and costs'* of moving to Dublin as a student.

191. Mr. Coates submits that his mother explained to him that a key part of the structure (which we now know was a fraudulent structure) is that Acquiring Banks dealt with 'investors' who were based outside the EU, like Mr. Powers, and that for the structure to operate, there needed to be an EU company, such as Greymountain in the structure. This is why Greymountain, rather than a binary options trader based in, say, Belize, entered into payment processing agreements with Acquiring Banks.

192. As noted above, Greymountain then transferred 90% of the payment received from 'investors' (which it had received from credit card companies via Acquiring Banks) to the binary options trader in jurisdictions such as Belize and kept 10% for itself as its fee for its 'services'.

193. It is clear that Mr. Coates did not acquire a sufficient knowledge of Greymountain's business to enable him properly discharge his duties as a director. Like Mr. Grainger, he abrogated entirely the running of the company to the Cartu Brothers, with a total lack of oversight of what the company, of which he was a director, was doing.

194. If Greymountain was importing illegal drugs into Ireland it seems Mr. Coates would not have known, since although he was a director, and paid to be a director, he states in his Witness Statement that *'I never had any involvement whatsoever in the operations of the Company'*. He accepts that he authorised Mr. David Cartu to act on behalf of Greymountain by executing a power of attorney on behalf of Greymounyain in favour of Mr. David Cartu without any enquiry as to what was being done by Mr. David Cartu in the company name.

195. By any standard, this amounts to a complete dereliction of the duty of a director on the part of Mr. Coates. His submissions make clear that he became involved as a director in name only because of his mother and in particular because:

> '[*M]y mam felt there was no issue with me being a director as David Cartu had disclosed himself as the owner of Greymountain'.*

196. Yet, as the evidence shows, Mr. David Cartu's involvement was the very reason why someone should avoid having any involvement in this company.

No evidence of knowledge of the fraud on the part of Mr. Coates or Mr. Grainger

197. It is important to emphasise that there is a significant difference between the position of the Cartu Brothers, who orchestrated and benefited from using Greymountain as an instrument of fraud, on the one hand, and the position of Mr. Coates and Mr. Grainger, on the other hand. This is because, unlike the position regarding the Cartu Brothers, no evidence was produced to the Court to indicate that Mr. Coates or Mr. Grainger *knew* that Greymountain was being used as an instrument of fraud and as a key component in a multi-million-dollar international fraud.

198. On the balance of probabilities, it seems to this Court that Mr. Coates and Mr. Grainger were unwittingly involved in facilitating this fraud, by becoming directors of an Irish company, which played a central role in collecting credit card payments from unsuspecting individuals mostly in America (although some were resident in South Africa, Canada, the UK and Saudi Arabia).

Key role of having an Irish company as part of the fraudulent structure

199. However, it also seems to this Court that having an Irish company trading out of Ireland dealing with 'investors' who were not resident in Ireland, was a key component of the fraud and in its longevity. It seems likely that this fraud, using an Irish company in this manner,

would not have occurred without the assistance (*albeit* unwitting) of persons resident in Ireland willing to act as directors, and be paid for so doing, who took no steps to find out what the company was actually doing. This assistance was provided by Mr. Coates and Mr. Grainger because they failed to observe the basic duties of a director, as:

- they failed to inform themselves about the nature of their duties as director (or if they did, they ignored those duties)
- they failed to acquaint themselves with the affairs generally of Greymountain and
- they failed to exercise appropriate supervision or oversight at a board level in respect of the execution or discharge of whatever tasks or functions have been properly and appropriately delegated to others**.**

This raises the question of whether the corporate veil should be pierced in the case of Mr. Coates and Mr. Grainger.

Should the corporate veil be pierced in the case of Mr. Coates?

200. While Mr. Coates must legally face the consequences of what the company, of which he was a director, did, he was not to blame in a moral sense for the loss caused to Mr. Powers and there is no suggestion that he (or Mr. Grainger) directly benefited from Mr. Powers' money in the same way as the Cartu Brothers did.

201. Mr. Coates (and Mr. Grainger) did however facilitate the fraud (*albeit* unwittingly) by providing the engine for the fraud and the key to its longevity, namely an Irish incorporated company, for which he was paid a monthly fee over a period of approximately three years. In this way, while he did not directly benefit from the money taken from Mr. Powers, he (and Mr. Grainger) *indirectly* benefited from Mr. Powers' money and the money of other 'investors'.

202. This Court does have considerable sympathy for the position in which Mr. Coates now finds himself. However, it is important to bear in mind that Mr. Powers is a completely innocent

victim of this fraud which was facilitated by Mr. Coates (unwittingly) providing the key component of the fraud, being an Irish company, to Mr. David Cartu. Furthermore, Mr. Coates completely abrogated his duties as a director which allowed Mr. David Cartu to use Greymountain, without any oversight from Mr. Coates, as an instrument of fraud and for which Mr. Coates was paid a monthly income. Mr. Coates therefore had a role in facilitating the defrauding of Mr. Powers (and it seems a significant number of other individuals over a three-year period which could well amount to over $100 million).

203. In these circumstances, can Mr. Coates evade personal liability to Mr. Powers for his financial loss by relying on *Salomon's* principle, namely that a company is separate from its directors?

204. As previously noted, the case law indicates that the Irish courts are of the *obiter* view, that if there is impropriety in the conduct of the affairs of the company, the corporate veil may be lifted.

205. It seems to this Court that in this case the complete and total disregard by Mr. Coates of his duties as a director was of an extreme nature, since he had no idea what the company of which he was director was actually doing. No matter what legal or illegal activity was being pursued by the company, whether drug smuggling or international fraud or selling confectionary, it seems Mr. Coates would not have known or indeed cared, even though he was facilitating that activity and was being paid to do so.

206. In this regard, it is to be noted that his position (and Mr. Grainger's position) is different from the position of the directors in *Elton Homes* where they had given personal guarantees and stood to lose heavily as a result of the company's failure (and this was a factor in personal liability not being affixed to the directors in that case).

207. In contrast, in this case, if personal liability is not affixed to Mr. Coates, he is in a position where he has benefited to the tune of €1,200 per month for three years in return for his

allowing the Cartu Brothers use the company, of which Mr. Coates was a director, to defraud Mr. Powers. Others might ask, if personal liability is not affixed in this case, is there not a financial incentive for other individuals in Ireland to provide their services as directors in return for directors' fees without knowing or caring what the company does? Would such directors not be able to do so, safe in the knowledge that it will never impact upon them financially regardless of the losses and misery caused by 'their' company because they can hide behind the 'corporate veil'? However, in determining whether Mr. Coates (or Mr. Grainger) should be held personally liable, this Court must consider solely the facts of their case and not the effect on the conduct of other directors.

208. While Mr. Coates seeks to explain that he became a director (in name only) because of his mother's suggestion, it must be remembered, although a student at the time, he was an adult (and indeed was a student of 'business management') and so must accept responsibility for his own actions. He must accept responsibility for those actions, even if they were pursued on the advice of his mother, who, as a director herself of Wirecard UK and Ireland Limited, should be familiar with the duties of director to which Mr. Coates was subject. He is just as responsible for his own actions, as a person who gets paid to unwittingly take a suitcase (with drugs) on a flight, in return for payment from strangers. Such a person cannot rely, in his defence, on the fact that he was told by someone, whether his mother or anyone else, that it was not '*an issue'* to take the suitcase. Similarly, a person who agrees to become a director of a company for strangers, but then, in effect, 'hands over the keys' of the company to enable those strangers to carry on whatever business they like, must face the consequences. In this case, the consequences are the loss suffered by an innocent third party, Mr. Powers.

209. Mr. Coates may not have appreciated that he was breaching his duties as a director by effectively abrogating the running of the company to the Cartu Brothers, but ignorance of the law is not a defence. He may feel aggrieved that he is being made liable when his mother, an

experienced director of a well know financial services company, Wirecard, did not advise him of his duties as a director. He may also feel aggrieved that he is being made liable when his mother told him that there was '*no issue'* with him being a director of a company which was owned by Mr. David Cartu, in light of what we now knows about Mr. David Cartu. However, none of this can be laid at the table of Mr. Powers.

210. In all the circumstances, this Court concludes that this is a case where a director has been guilty of a massive dereliction of duty regarding the operations of a company of which he was a director. It is this Court's view that the extent of the dereliction of duty and the impropriety on the part of Mr. Coates as a director, where he handed over the running of a company, without knowing whether it was being used for good or evil and not apparently caring, is such that it merits him being affixed with personal liability to Mr. Powers for the loss which was caused to him, arising from the operations of that company.

211. While one can easily feel sympathy for the plight in which a student such as Mr. Coates, as a result of his mother's advice, has found himself, it is important to bear in mind that his actions have played a part in Mr. Powers being out of pocket. Indeed, one might ask why should Mr. Powers, who was not guilty of any dereliction of duty, be out of pocket and have no recourse for his loss from the person whose impropriety contributed to it? For this and the other reasons set out herein, it seems to this Court, on balance, that justice requires that the veil be lifted to make Mr. Coates personally liable to Mr. Powers.

212. In this instance, it is also a relevant factor that the dereliction of duty led not to an accidental or negligent loss to Mr. Powers (which would be the case if he had been negligently advised to invest in a product by Greymountain). Rather it has led to a loss which was caused by a fraud perpetuated by Greymountain, since his money was simply taken from him and never returned or invested in any products.

213. It is for these reasons that this Court, while sympathetic to the position in which Mr. Coates has found himself, concludes that this is an exceptional case in which the corporate veil should be lifted.

214. Although it is not directly applicable, since it relates to disqualification of directors under the Companies Acts for failure to file annual returns, rather than personal liability arising from piercing the corporate veil, it is nonetheless relevant to note that the Court of Appeal in *Director of Corporate Enforcement v. Walsh* [2016] IECA 2 did not accept that a director could escape the consequence of her actions on the basis of the passive role she undertook. Nor could she escape liability under that section even where, as here, she had no *'real moral blame'* for the company's failings. Instead, the Court of Appeal held that it would be contrary to the whole notion of proper corporate regulation that passive directors would be exonerated from liability or relieved from disqualification or restriction on the basis of the passive nature of their role (at paras. 70 and 72).

215. Similarly, in this case, it seems to this Court that a director such as Mr. Coates (and Mr. Grainger) cannot, without any consequence, become a director of a company in return for financial reward, when they effectively 'hand over the keys' of the company to a fraudster to use that company as an instrument of a multi-million dollar fraud. If he or they could escape any consequence, then there would be nothing to stop this happening again and again. This would, as was the case in *Walsh*, run completely contrary to the notion of proper corporate regulation.

Should the corporate veil be pierced in the case of Mr. Grainger?

216. While Greymountain appears to have been Mr. Coates' one and only directorship, in contrast, Mr. Grainger was a very experienced company director. In choosing not to acquire a sufficient knowledge of Greymountain to enable him to discharge his duties as a director, he

should have known that he was in clear breach of his duties as a director, for which he and his company were being paid.

217. Furthermore, unlike Mr. Coates, there is evidence that he did in fact have a role in facilitating certain of the moving parts of the fraud, e.g. he signed the agreement with Maxpay, one of the Acquiring Banks, which was a crucial step in ensuring that 'investors'' money could flow from credit card companies to Greymountain, before being transferred onto the fraudsters operating the binary options brands.

Mr. Grainger claims his role was purely 'administrative'

218. It is also relevant to note that Mr. Grainger, when it suits his purpose, claims, as he did in his closing submissions, that he knew nothing about the operations of Greymountain since, although a director, he had a '*a purely administrative role'* and was '*more like a company secretary'.* This is despite the evidence of his role in signing agreements, transferring money, signing accounts and being involved in resolving complaints against Greymountain.

219. However, it is relevant to note that, when it suited his purpose, Mr. Grainger was happy to convey the contrary impression to others, i.e. that he was in fact fully aware of Greymountain's operations. This is because he gave the impression to An Garda Síochána, when it was investigating issues about Greymountain regarding consumer protection in relation to one of the binary options merchants (Edgedale Finance), that he did in fact know what was going on in Greymountain and furthermore that it was a perfectly legitimate business. This is because in an email dated 10th January, 2017 to Ms. Earle, he sets out a copy of an email he sent to Detective Sergeant McLoughlin regarding '*consumer/protection/issues'*. This email to Detective Sergeant McLoughlin states:

> "Dear Detective Sergeant McLoughlin

Thank you for ringing me back, I was eager to talk to you about the above company. **The company provides Edgedale Finance with technology and anti-fraud services and is the owner of the technology hence the name appearing on the website Edgedale.** The Company has its business address at Block B, The Palms, The Avenue, Gorey, Co Wexford and the phone number is 053 – 9480269. The administrative manager in the office is Danielle Earle and she can also assist you with your queries.

We would be eager to find out if this matter is a concern for the company in relation to the ongoing services and possible termination of the services." (Emphasis added)

220. Thus, Mr. Grainger is, at the time of this complaint, representing himself to be sufficiently aware of what was going on in Greymountain to give assurances to An Garda Síochána, regarding the precise business of Greymountain, which appears to have had the effect of throwing An Garda Síochána off the scent. So while in his Witness Statement he claims that he '*was neither privy to nor consulted in any manner about the Company's affairs'*, in this example he was able to tell a Detective about the company's affairs to set his mind at ease.

221. Of course, there was no evidence produced to this Court by Mr. Grainger or anyone else that the company ever had a legitimate business of '*technology and anti-fraud services'* or in fact any business other than defrauding customers. Accordingly, this email simply serves to highlight the failure of Mr. Grainger to acquire sufficient knowledge of Greymountain's business to discharge his duties as a director.

222. Like the position of Mr. Coates, this Court does have sympathy for the position in which Mr. Grainger finds himself and in particular that he was unfortunate to have abrogated his duties as a director to two people engaged in fraud, the Cartu Brothers. However, when one considers all of the foregoing evidence, it seems to this Court that Mr Grainger was guilty of a dereliction of duty regarding the operations of a company of which he was a director. It is this Court's view that the extent of the dereliction of duty and this impropriety (whereby he handed

over the running of a company without knowing whether it was being used for good or evil and not apparently caring) is such that it merits the corporate veil being pierced and him being made personally liable to Mr. Powers for the loss which was caused to him, arising from the operations of Greymountain. Accordingly, for the reasons set out herein, it seems to this Court, on balance, that justice requires that the veil be lifted to make Mr. Grainger personally liable to Mr. Powers.

CONCLUSION

223. This Court orders that Mr. David Cartu and Mr. Jonathan Cartu are personally liable to Mr. Powers for the return to him of the sum of $124,027 for the foregoing reasons and in particular because of their role in knowingly syphoning-off the funds of Greymountain, which has led to Greymountain not being able to discharge its liabilities to Mr. Powers.

224. This Court has found no evidence to suggest that that Mr. Coates and Mr. Grainger were aware that the Cartu Brothers were syphoning off Greymountain's funds.

225. It is also true to say that Mr. Coates and Mr. Grainger were unlucky that the persons to whom they 'handed over the keys' of the company, the Cartu Brothers, happened to be the controllers and beneficiaries of an international fraud. For this reason, this Court does feel considerable sympathy for both Mr. Coates and Mr. Grainger, since there will be many cases where a director hands over the management and control of a company to honest and responsible third parties and so their dereliction of duty will not facilitate a massive international fraud.

226. However, it is also true to say that Mr. Powers was *even more unlucky* than Mr. Coates and Mr. Grainger, that he sent his money to a company, which Mr. Coates and Mr. Grainger

were supposed to control and manage. This is because Mr. Powers, unlike Mr. Coates and Mr. Grainger, was completely blameless in the loss of his money.

227. It is clear that Mr. Coates and Mr. Grainger were both in complete dereliction of their duty to be aware of what the company, of which they were directors, was doing (whether that was something that was legal or illegal). They abrogated their responsibility as directors to the Cartu Brothers who used that opportunity to defraud investors. Despite the sympathy this Court feels for the positions in which Mr. Coates and Mr. Grainger have found themselves, this Court is forced to conclude that this impropriety and dereliction of duty on their part was of such a degree as to justify both Mr. Coates and Mr. Grainger being held personally liable to Mr. Powers for the return of the sum of $124,027.

228. This matter will be provisionally put in for mention one week from the date of delivery of this judgment, at 10.30 am (with liberty to the parties to notify the Registrar, in the event of such listing being unnecessary) to finalise the terms of the orders which Mr. Powers seeks.