



Neutral Citation Number: [2020] EWHC 1938 (Ch)

Case No: CR-2018-006031

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST**

The Rolls Building  
London EC4A 1NL

Date: 24/07/2020

**Before:**

**CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS**

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**Between:**

**NOSNEHPETSJ LIMITED (in Liquidation)**

**Claimant**

**- and -**

**(1) WATERSHEDS CAPITAL PARTNERS  
LIMITED**

**Defendants**

**(2) RICHARD BUZZONI**

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**STEVEN FENNELL (instructed by OURY CLARK) for the CLAIMANT**  
**DAVID LORD QC (instructed by RICHARD SLADE & COMPANY) for the**  
**DEFENDANTS**

Hearing dates: 29 and 30 June and 1 July 2020  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 12.00 on 23 July 2020

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**CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS**

### **Chief Insolvency and Companies Court Judge Briggs:**

1. Although the matters before the court arise in the context of a liquidation, the issues the court is asked to decide are based in company law. The first concerns the ownership of ordinary shares. This is a mixed question of fact and law. The second relates to the redemption of preference shares. This is a question of fact. The last matter is about a capital reduction and is a mixed question of law and fact. For reasons that I shall come to below the third issue shall be dealt with in brief only as, by the end of the trial, the parties had reached agreement.

### **Background**

2. Nosnephetsj Limited (“the Company”) was incorporated in February 1998. Mr Buzzoni was its founder, principal director, and shareholder. The Company had other directors and shareholders from time to time. It was wound up by an order of the County Court at Northampton on a petition presented by a former employee, Mr Stephen Roy Smart. The petition was presented in February 2015 with the order made in May of that year. Mr Green was appointed liquidator of the Company in October 2015.
3. The Company carried on business as a specialist corporate finance advisory practice under the name Watersheds Limited. Mr Buzzoni is a chartered accountant and had previously been a corporate finance specialist with KPMG and Grant Thornton.
4. Watersheds Capital Partners Limited (“Capital”) is another company controlled by Mr Buzzoni. Between about 2009 and 2012, Mr Buzzoni caused the Company to wind down its business, with the “Watersheds” business being undertaken by Capital. The Company changed its name from Watersheds Limited to its current name in October 2012. That name is “J Stephenson” written backwards, Mr Stephenson being the Company’s accountant and one of the Defendants’ two witnesses at trial, the other being Mr Buzzoni. Mr Green was the sole witness for the Claimant.
5. An application was made in January 2013 to strike the Company off the register of companies. It was dissolved on 4 February 2014. Mr Smart was an employee of the Company. He applied to have the Company restored to the Register to pursue a claim in the Employment Tribunal. It was restored for that purpose in August 2014 and a further application to strike off was made in March 2015. In the meantime, Mr Smart presented the petition I have mentioned.

### **Provision of information to the liquidator**

6. A running theme through the liquidation and this litigation is Mr Buzzoni’s failure to produce books and records of the Company of the type and scale expected by Mr Green. Mr Buzzoni’s account of the whereabouts and existence of records has altered over time.
7. Mr Green met with Mr Buzzoni in November 2015. There is a transcript of the interview. Mr Buzzoni sought to resile from some aspects of what he said during the 2015 interview in cross-examination. He said that he felt intimidated at the interview and under pressure. That he had approached the interview in the spirit of mutual cooperation in the hope that he would identify debtors for the liquidator to pursue. Mr

Green denies intimidation. The transcript does not read as if intimidation was intended or achieved. Mr Buzzoni said in oral evidence that it was a “feeling” and admitted that he did not have any debtors to identify and discuss with Mr Green.

8. Mr Buzzoni initially informed Mr Green that Mr Stephenson held all the books and records. Accordingly, Mr Green asked Mr Stephenson to deliver them up. There was little cooperation which led to Mr Green making an application to court in April 2016. His statement in support of the application explains:

“I reminded the Respondent that I had a duty pursuant to S.144 of the IA 1986 to take custody and control of the Company's property, including its books, papers and records. In the circumstances, I once again requested that the Respondent deliver up his complete files created, received and maintained relating to the Company, including but not limited to those held on paper or electronically. It was my position that that the file(s) the Respondent created as agent and as officer of the Company would include inter alia working papers, ‘accounting records’ within the meaning of S.386 of the Companies Act 2006 (“CA 2006”), ‘records’ and ‘supporting documents’ within the meaning of Paragraph 21 of Schedule 18 of the Finance Act 1998, records relating to Schedule 11 Paragraph 6 of the Value Added Tax Act 1994, records relating to Regulation 97 of The Income Tax (Pay As You Earn) Regulations 2003, records relating to Part 13 Chapter 6 of the CA 2006 concerning resolutions and meetings of the Company, correspondence, statutory, tax and payroll.”

9. Mr Green did not receive adequate books and records to enable him to fully understand the dealings of the Company and in particular the transfer and re-transfer of the ordinary shares of Capital.

### **The pleaded case**

10. The pleaded case is that the Company was insolvent and unable to pay its debts, alternatively was of doubtful solvency by no later than 1 March 2012. It remained insolvent thereafter.
11. The share capital of Capital consisted of 100 ordinary shares of £1:00 each. It is pleaded that between 2006 and 2010 they were registered to Mr Buzzoni. That changed after 2010.
12. Capital’s annual returns for the years ended 19 April 2011 and 19 April 2012 show the Company as the registered holder of Capital’s ordinary shares. Consistent with the annual return of Capital, the Company’s abbreviated accounts dated 24 June 2011 filed at Companies House for the year ended 31 March 2011 show that Capital’s ordinary shares were owned by the Company from 31 March 2010. The accounts were approved by Mr Buzzoni.
13. Capital’s annual return for the year ended 19 April 2013 shows Mr Buzzoni as the registered shareholder once again. The accounts detail that the Company transferred the ordinary shares to Mr Buzzoni on 26 September 2013.

14. It is said that the legal and beneficial ownership of the Capital's ordinary shares was transferred from Mr Buzzoni to the Company during the period covered by the 2010/2011 annual return and from the Company to Mr Buzzoni on or about 26 September 2012 when the Company was insolvent. The transfer to Mr Buzzoni was for no consideration.
15. Mr Green accepts that for the legal title to the shares to have been transferred there would have had to be a form of transfer. The documents delivered to him by Mr Buzzoni and Mr Stephenson did not include a form of transfer. He contends that this does not mean that a form of transfer did not exist in 2011 or 2012. He invites the court to infer that the transfer forms have either been lost, destroyed or purposely not delivered-up. The inference, it is argued, is to be drawn in part from the facts surrounding the transfers and partly from the dealings of the Company through its director. Mr Green argues that Mr Buzzoni's professional qualification and knowledge of finance make it likely that the transfers were executed in accordance with the provisions of the Companies Act. Mr Buzzoni is not the type of director who would have no knowledge of the formalities required to transfer shares or understanding of the importance of a share transfer.
16. Reliance is also made on the factual matrix. In addition to holding out that Capital was a subsidiary of the Company in the annual returns, the corporation tax computations stated that the Company made an assessable profit for the period ended 31 March 2010 of £375,402 which was reduced by way of group relief in the sum of £251,683. The Corporation Tax Return submitted to HMRC for the period 1 April 2009 to 30 March 2010 shows a group relief claim of £258,163.00. This large relief claim was dependent upon Capital being a subsidiary of the Company (the statutory requirement is that at least 75% of Capital's shareholding had to be owned by the Company).
17. Mr Green claims that if the court does not make an inference in respect of the transfer form, the Company was and remains the beneficial holder of the ordinary shares. Mr Buzzoni should either restore the shares in specie or contribute to the Company's assets by way of compensation.
18. In respect of the preference shares the annual accounts of Capital at April 2011 state that the Company holds 220,000 preference shares of Capital at £1:00 each. The annual return states that they are redeemable at £2:00 per share. These shares are said to have been redeemed on 26 September 2013 for £220,000 which was paid by way of an "inter-company account". A set-off. The claim is that the full price for the preference shares was £2:00 and not £1:00 and the set off was not real. Mr Green claims (paragraph 52 of the particulars of claim):

"In the absence of a clear account as to how the obligation to pay £220,000 was discharged, the Liquidator infers and will invite the court to infer that the payment due from [Capital] on the redemption of the Preference Shares has not been discharged. If that inference is correct, [Capital] remains liable to pay the full amount, namely £440,000."
19. The third pleaded claim is that there has been an unlawful capital reduction. The Company's annual return dated 26 February 2012 and filed electronically on 18 May

2012 states that the total issued share capital of the Company at that date was £18,550 but the annual accounts to 31 March 2012 state that the capital had been reduced in the previous 12 months to £100. Mr Green has been give no books and records that enable him to say for certain that the return of capital was unlawful and so invites the court to infer that the Company has returned capital in breach of sections 642 to 644 of the Companies Act 2006, in that there has been no resolution of the Company, no solvency statement by Mr Buzzoni as its sole director, and no registration of the same at Companies House.

20. Turning to the defence, Mr Buzzoni and Capital deny the Company was insolvent prior to 12 December 2014 (the date judgment was entered against it by the Employment Tribunal in the sum of £23,000 odd). This position altered during the trial.
21. In respect of the ordinary shares of Capital it is said that the annual return for Capital for the year ending 19 April 2011 contain an error and that the error is compounded by an error to notice the error so that it was carried through to the 2012 annual return. The error is also repeated in the abbreviated accounts for the Company for the year ended 31 March 2011.
22. It is said that Mr Stephenson prepared and filed the annual returns, without the approval of Mr Buzzoni. There was no form of transfer and therefore the legal title to the shares did not pass to the Company.
23. It is not denied that the Company did claim group tax relief, but it is said that the basis for the claim was that the Company was the holder of the preference shares.
24. It is admitted that the preference shares were purportedly redeemed for £1:00 but that there was a set-off “as explained in the letter from Richard Slade & Co dated 14 December 2018...”.
25. As regards the capital reduction claim it is admitted that the formalities were not adhered to but that as Mr Buzzoni was the sole director and shareholder of the ordinary voting shares in the Company, he was entitled to act without a resolution.

### **The evidence**

26. Mr Green gave evidence on the first morning of the trial. His evidence is based on what he has of the Company’s books and records, and some reliance is placed on the interview with Mr Buzzoni. Mr Green provided an update in relation to the fees in the liquidation, explained that the proceedings were financed by a contingency fee arrangement and denied that he adopted an aggressive attitude to the Defendants. Mr Green accepted that he may have asked for the same documents on more than one occasion and although Mr Buzzoni viewed the repeated requests as a form of harassment, that was not intended. I accept the evidence of Mr Green who gave his evidence in a straight-forward manner. His evidence was not undermined in cross-examination.
27. The evidence of Mr Green was followed by evidence given by Mr Stephenson. Mr Stephenson qualified as a chartered accountant in November 1982. He was a manager with Grant Thornton and the finance director of a mobile communications company.

He has spent the best part of his working life running his own practice. He acted as an accountant to the Company and had considerable dealings with Mr Buzzoni in the period 2006 to 2014.

28. He was cross-examined in detail as to the relevant events which began some 10 years before the trial. He has produced two witness statements. He made or kept no notes of any meetings or conversations he had with Mr Buzzoni, even it seems, in respect of critical issues. This is a matter he gave evidence on at the hearing. There is some written evidence of his dealings with Mr Buzzoni in the form of e-mail exchanges, but that evidence is also limited.
29. At times his evidence was careful and at other times it was clear that he had genuine difficulty in recalling matters of detail. Early in his evidence, Mr Stephenson would seek to provide an answer that he was uncertain was correct: guessing if he could not recall the event under examination. This did not persist as later in his evidence he did accept that he was not sure of the answer to a question. I do not discount the possibility that he felt a responsibility to and had a bond with Mr Buzzoni which affected his evidence and is likely to have created a powerful bias. I cannot discount the possibility that his apparent candid evidence admitting to many mistakes and errors while acting as an accountant was strategic. Overall, I find he overstated his own incompetence, and owing to a lack of documentary evidence to refresh his memory, his evidence was in material ways unreliable. I shall treat it with caution.
30. Mr Buzzoni is a qualified chartered accountant and member of the Institute of Chartered Accountants. He was responsible for the corporate finance activities of KPMG and Grant Thornton in Northampton and had worked for Ernst and Young. He considered that there was an opening for professional advisers to transact corporate finance activities in the range of £1m-£15m and set up his own in 1998. To compete the fees were lower than others in the market and fully contingent on obtaining a successful outcome.
31. In his second witness statement he states that he had read the statement provided by Mr Stephenson and agreed with it. This is a small indication of how he gave his evidence. He was candid at times accepting that he had cut-off the life blood of the Company, transferred its assets to Capital, purposely left the liability for the lease and other liabilities with the Company, and using its resources (employees) promoted the business in Capital. By doing so Mr Buzzoni admitted that he had failed to act in the best interests of the Company and breached his duties as director.
32. His evidence in respect of the interview with Mr Green in November 2015 demonstrated his inclination to respond to hard questions by answering that he did not know why he had made certain assertions in his written evidence. He tended to respond by reference to an action or omission of Mr Stephenson or provide evidence not included in his witness statement. He could be precise and vague. An e-mail in October 2012 demonstrates that he is willing to manufacture a situation to obtain an optical financial outcome. He wrote to Mr Stephenson "Could you set up a new company and swap the names so that newco becomes Watersheds ltd. Could you make the company currently called Watersheds ltd make enough profit in the year to March 2012 that it can redeem all its share capital bar £10". The framing of the e-mail

is not a straight-forward query about whether the old company would make sufficient profit. He was asking Mr Stephenson to manipulate the accounts.

33. He recalled in evidence a telephone call on 29 March 2012 but when tested was unable to give details about most other telephone communications. He acknowledged that he had read documents he recognised as important but distanced himself from other documents that he also accepted as important. My assessment of the evidence he gave is that it was not always reliable and needs to be treated with caution.

### **Legal analysis**

34. In *Gestmin SGPS S.A. v Credit Suisse (UK) Limited, Credit Suisse Securities (Europe) Limited* [2013] EWHC 3560 (Comm) Leggatt J (as he was) explained that the litigation process itself may lead to a witness's memory of events being based on documents and later interpretation rather than the original experience; all remembering of distant events involves reconstructive processes and taking account of recent research the memory is malleable:

[18] "Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time."

[19] The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

[20] Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then,

usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

35. Leggatt J set out the best approach to evidence [22]:

“[T]he best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth”

36. Although the electronic authorities bundle filed contains 33 authorities, the court was taken to only one case: *Pennington v Waine* [2002] 1 WLR 2075. This is relevant to the transfer of the ordinary shares of Capital to the Company.

37. The issue in *Pennington* was whether there had been an equitable assignment of shares. The transferor died after signing a share transfer form in favour of the transferee who required the shares to be a director. The transferee countersigned and the transfer form was retained by the company’s auditors. It was not delivered to the company in question or the transferee. The Court of Appeal unanimously held (Arden LJ (as she was) giving the leading judgment and Clarke LJ agreeing with the outcome for different reasons) that an equitable assignment had taken effect. Once an intention to gift had been found it would be unconscionable to resile. Arden LJ explained by reference to *Choithram International SA v Pagarini* [2001] 1 WLR 1 at paragraph 45 of *Pennington*:

“It is not and cannot be literally true that the donor has to do everything which he can to transfer the property to the donee: see *T Choithram International SA v Pagarini* [2001] 1 WLR 1 where a gift of shares was valid though vested in one only (the donor) of a number of trustees. The donor intended to create a trust. As a trustee he could not retire from the trust. The donor's conscience as one of the trustees was affected and it would be unconscionable and contrary to the principles of equity to allow him to resile from his gift. At an earlier point in his judgment, at the start of an analysis of the rules of equity as to completed gifts, Lord



Browne-Wilkinson said, at p11: “Although equity will not aid a volunteer, it will not strive officiously to defeat a gift.”

38. Arden LJ thought that Ada (the transferor) would only have the power to recall the transfer if the assignment was ineffective, and on the facts there was no right to recall. The policy decision behind the rule, that the court will not perfect an imperfect gift, was considered to be paternalistic. That may outweigh the respect to be given to the intention of a gift. On the other hand, policy should favour perfecting an imperfect gift: to do so would be to give effect to the intention, and a donor should not act in a manner that is unconscionable.
39. Arden LJ explained that the difficulty was identifying the circumstances that gives rise to an equitable assignment and when the assignment can be said to have been completed:
- “The equitable assignment clearly occurs at some stage before the shares are registered. But does it occur when the share transfer is executed, or when the share transfer is delivered to the transferee, or when the transfer is lodged for registration, or when the pre-emption procedure in article 8 is satisfied or the directors resolve that the transfer should be registered?”
40. The court proceeded on the basis that an incomplete gift is to be treated as a completely constituted gift where the court finds that it would be unconscionable, “in the eyes of equity, vis-à-vis the donee to do so.” Having commented that there is no comprehensive list of factors that would make it unconscionable for a donor to change his or her mind, Arden LJ said [65]:
- “Accordingly the ratio of *Rose v Inland Revenue Comrs* [1952] Ch 499 was as I read it that the gifts of shares in that case were completely constituted when the donor executed the share transfers and delivered them to the transferees even though they were not registered in the register of members of the company until a later date...it does not follow that delivery cannot in some circumstances be dispensed with”
41. Mr Lord QC argues that: “it is not enough for Mr Buzzoni to manifest an intention to transfer the shares. He must also have done all that he needed to do, so that the gift could be perfected by the Company or some other third party. As I have explained by reference to *Pennington*, that is not a wholly correct statement of the law: equity will not strive officiously to defeat a gift. In *Pennington*, three factors supported unconscionability. First the puisne judge had made a clear finding that there was an intention to make an immediate gift. Secondly, the donee had been informed of the gift. Lastly it would have been unconscionable to recall the gift.
42. There has been argument about the burden of proof. Mr Lord argues that the conventional rule is applicable: he who asserts must prove. Mr Fennell does not dispute the general rule but says it is more nuanced in this case as (i) directors are under a statutory obligation to keep and maintain books and records; (ii) they owe fiduciary duties to the company and (iii) a liquidator comes to an insolvent company as a stranger to the events in dispute. As directors are fiduciaries and owe statutory

duties to a company the failure to produce evidence that should be available risks conclusions being reached by the finding of an adverse inference. A liquidator cannot be expected to prove a case against a director by producing documents that have either been destroyed or not kept by the person responsible for keeping and maintaining proper records. There is Court of Appeal authority to support Mr Fennell's submission that (a) a director cannot rely on an absence of records to avoid liability if he is unable to account for his use of the company's assets and (b) relevant adverse inferences may be drawn from a director's failure to produce those records.

43. In *Re Mumtaz Properties Ltd, Wetton v Ahmed* [2011] EWCA Civ 610 at [11] Arden LJ said:

“By the end of the judgment, it is clear that what has impressed the judge most in his task of fact-finding was the absence, rather than the presence, of contemporary documentation or other independent oral evidence to confirm the oral evidence of the respondents to the proceedings.

44. Dealing with inferences she said [14]:

“That was the predicament in this case. The liquidator could not show that Munir and Zafar were de facto directors from the company's books and papers because the directors had not handed over the necessary documents to the administrators. The judge held, in the context of Munir's denial that he was a de facto director despite the fact that he had acted as chairman of the meeting convened to pass a resolution for voluntary liquidation, that, had it been necessary to do so, he would have been entitled to draw adverse inferences against the respondents to the Proceedings:”

45. Arden LJ thought the approach of the judge apposite [16]:

“The approach of the judge in this case was to seek to test the evidence by reference to both the contemporary documentary evidence and its absence. In my judgment, this was an approach that he was entitled to take. The evidence of the liquidator established a prima facie case and, given that the books and papers had been in the custody and control of the respondents to the proceedings, it was open to the judge to infer that the liquidator's case would have been borne out by those books and papers.”

46. Mr Fennell draws my attention to paragraph 17 of her judgment:

“It was not open to the respondents ... to escape liability by asserting that, if the books and papers and other evidence had been available, they would have shown that they were not liable in the amount claimed by the liquidator. Moreover, persons who have conducted the affairs of limited companies with a high degree of informality... cannot seek to avoid liability or to be judged by some lower standard than that which

applies to other directors, simply because the necessary documentation is not available...”

47. Where a document requires interpreting the court is charged with ascertaining the meaning that the document would convey to a reasonable person having all the background knowledge that would reasonably have been available to the parties. The test is objective. In *Arnold v. Britton* [2015] UKSC 36 Lord Neuberger (PSC) explained [paragraph 15] that the court construes the relevant words of a contract in their documentary, factual and commercial context, assessed in the light of (i) the natural and ordinary meaning of the provision being construed, (ii) any other relevant provisions of the contract being construed, (iii) the overall purpose of the provision being construed and the contract or order in which it is contained, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions. Although this concerns interpreting a contract, it has not been suggested that other rules of interpretation should apply to construing words contained in documents submitted to Companies House by the Company.
48. I turn to an analysis of the factual issues which will lead to my conclusions applying the finding to the legal principles.

#### **Factual analysis**

49. Mr Stephenson expressed embarrassment at making what he considered to be mistakes in the accounting records of the Company and Capital. In short, he says he made an error when completing the accounts in 2011 and 2012. He says that he made a mistake about the ownership of the ordinary shares, made a mistake by carrying forward the error to subsequent accounting years, that his “straightforward error[s]” were based on a “misunderstanding”, that he gave mistaken advice about group tax relief, made a mistake in his evidence about how an electronic submission form did not provide a drop down box for the date of transfer of shares, and made an error in respect of the preference shares.
50. In respect of the capital reduction he said: “I did prepare a special resolution for the company. The mistake I made was to not complete the formalities required by Companies House.”
51. Mr Stephenson denied that he was admitting the mistakes to assist Mr Buzzoni. He accepted, however that Mr Buzzoni had paid his legal fees: Richard Slade & Company represents Mr Buzzoni, represented Mr Stephenson on an interlocutory application in these proceedings and assisted him to produce the witness statements for this trial.
52. The number of mistakes admitted by Mr Stephenson would appear, at the very least, to reflect a careless attitude toward work or incompetence, yet his answers were at times precise and he was careful when giving his responses. He agreed that he took instructions from Mr Buzzoni and “if a meeting is particularly relevant, then I will keep a note of it, but not as a general rule because effectively, by asking a director to sign a set of accounts or returns, then effectively, that is a relevant note of the meeting”.

53. The evidence does not support Mr Stephenson's memory that he would act without instructions from Mr Buzzoni. He accepted that he would obtain instructions where a matter was important ("particularly relevant"). There is little documentary evidence but one example of Mr Buzzoni instructing Mr Stephenson to carry out a specific task comes in the form of an e-mail dated 18 June 2012 where Mr Buzzoni asks Mr Stephenson to redeem "140k of preference shares...and the cash used to repay the loan stock in [the Company]." In his written evidence, he says that Mr Buzzoni gave him instructions in respect the redeemable shares held by the Company.
54. The ownership of Capital was, in my judgment, sufficiently important for him to take instructions from Mr Buzzoni. Claiming tax relief on the basis that Capital and the Company were a group was also sufficiently important. He may have forgotten what instruction he received but I find that it is more likely than not that he did take instructions on these issues. I find it more likely than not that the statement contained in the accounts and signed by Mr Buzzoni was true, that he (Mr Stephenson) had: "not verified the accuracy or completeness of the accounting records or information and explanations [Mr Buzzoni had] given to me and I do not, therefore, express any opinion on the accounts." This is a statement made at the time the accounts were approved and is likely to be an accurate record of what was discussed and agreed. I reach the decision based records that are contemporaneous. The accounts for 2011 and 2012 contain the statement that they were produced "in accordance with the instructions given to me, I have prepared for your [Mr Buzzoni's] approval the accounts".
55. There is no reason to find that the language used by Mr Stephenson in preparing the accounts was false or that he acted in a way that was inconsistent with his own engagement letter where he spelt out the responsibilities expected of Mr Buzzoni: "You are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Act."
56. In so far as his evidence is inconsistent with the contemporaneous statements signed by Mr Buzzoni, I find Mr Stephenson's memory mistaken or affected by litigation bias as explained in *Gestmin* (supra).
57. In his oral evidence Mr Stephenson was directly asked about instructions given in respect of the ordinary shares:
- Q. What I am going to suggest to you, Mr. Stephenson, is that you were not mistaken when you showed the 100 ordinary shares as moving from Mr. Buzzoni to Watersheds Limited. You did that on Mr. Buzzoni's instructions.
- A. No, that is not the case.
58. For the reasons given above I do not accept this evidence which is either mistaken because of the distance in time or has become affected due to litigation bias. It is inconsistent with the Company's record approved by its director, and the record of Capital as stated in the accounts. It is more likely than not that he would have taken instructions and acted on those instructions. I find that these matters were sufficient enough for notes to have been kept but they have either been lost or destroyed or

otherwise not delivered up to Mr Green. There is an alternative explanation. That Mr Stephenson did not take any notes and relied upon the accounts, having been approved by Mr Buzzoni, as acceptance of advice provided and that the accounts accurately reflected the instructions provided to him and advice he gave.

59. This conclusion is supported by Mr Stephenson's written evidence where he stated that he would "usually send" a "draft balance sheet and profit and loss and we would go through these at a meeting together." It is probable that the meeting and meetings like this were held by phone. I find that Mr Stephenson went through the detail of the 2011 and 2012 accounts with Mr Buzzoni before he signed them off.
60. This is bolstered by a recollection of Mr Stephenson that he discussed with Mr Buzzoni the formation of a group. A group of companies can only have been formed if one of company owns another. Mr Stephenson appears to acknowledge that he understood the meaning of a group of companies, yet his position forced him to say that he advised that group tax relief could be obtained if there was no group. He failed to explain why. There is no written note of the advice, and no attendance note. I find that on balance of probabilities that his advice was that group tax relief could be claimed if the Company owned the ordinary shares of Capital. That is consistent with the accounts signed by Mr Buzzoni and his discussion. It does mean that his evidence that he gave incompetent advice about the meaning of a group is not accepted, but that follows naturally from my other conclusions.
61. Despite Mr Stephenson making clear to Mr Buzzoni that as director, he was responsible for keeping the Company's books and records, the records produced to Mr Green were far from complete. In his oral evidence Mr Buzzoni thought records existed and had not been provided to the liquidator, such as a letter that senior employees had to sign when they were issued 50 shares in the Company. The letter informed the employee, according to Mr Buzzoni, that the shares could be redeemed at nominal value at any time by the Company upon its request. As there was more than one employee who held 50 shares (9) there will have been more than one letter. Mr Buzzoni thought that either the letters had been lost or that he had failed to deliver them to Mr Green despite the fact that they are company records. This is an acknowledgment by Mr Buzzoni that he has failed to provide Mr Green with all the books and records.
62. I remind myself that the evidence of Mr Buzzoni is, in effect, that the 100 ordinary shares of Capital remained with him at all times, that a stock transfer form was not executed, and that there was never an intention to transfer the ordinary shares to the Company.
63. In his written evidence he says:
- "On 1 February 2013 I reviewed Mr Stephenson's draft accounts for WCPL and noticed that they referred to it being a subsidiary of the Company. This was not correct, and I wrote to him explaining that a correction was required. I now realise that there was also an error in a note to the Company's filed accounts for March 2011 which said the same thing."

64. He says that it was not until after liquidation of the Company that he became aware that there were “discrepancies in the 2011, 2012 and 2013 annual returns”. An e-mail sent after the Company had been struck-off and reinstated for the purpose of the employee claim, and after the employee had presented his petition to wind up the Company was sent to Mr Stephenson: “I owned the company for three years then it changed?!!”. There is no other correspondence between Mr Buzzoni and Mr Stephenson and no attendance notes of any conversations. The timing of the e-mail, just prior to winding up, is curious. In my judgment it is more likely than not that Mr Buzzoni was attempting to “tidy up” past dealings.
65. Mr Buzzoni was asked whether he was advised that group tax relief could have been obtained because of the preference shares. In my view he responded honestly. He was uncertain. Mr Buzzoni, a self-employed businessman of many years standing, is likely to be independently minded. I find he did not need to query the advice concerning group tax relief provided by Mr Stephenson because the advice accurately informed him that he should gift his ownership of the ordinary shares in Capital to the Company. By forming a group of companies tax relief could be claimed. He would remain the owner of the ordinary shares of the Company which in turn owned Capital. In respect of the preference shares he says: “I did not intend for them to specify that they were redeemable only at £2 per share.” There is no evidence that his uncertainty manifested itself into any action.
66. Mr Buzzoni was taken, in examination, to a company officer preliminary information questionnaire form that he completed for the Official Receiver on 20 May 2015. The questionnaire provides useful evidence for two reasons. First Mr Buzzoni signed a declaration that the answers he gave on the form were true to the best of his knowledge and belief. Secondly, it provides a record of his recollection of events 5 years before the trial and 15 days after the Company was wound up by the court.
67. In cross-examination Mr Buzzoni said that he recognised the questionnaire was an important document. He said that he would have been careful reading the questions, that the answers needed to be true and that he would not have thought it a mere “casual enquiry”. The document contains some evident failures to disclose the whole truth. I shall not deal with them item by item but give a few examples. First, it asks for details of any bank at which the Company held an account. Mr Buzzoni did not disclose that the Company had any accounts but the notes to the questionnaire refer to a bank account. He failed to give details or explain that Capital and the Company shared the account. The questionnaire asks if in the last 5 years any of the Company’s assets had been used for any purpose other than its business. He answered that it had not, knowing that the goodwill was an asset and used to benefit Capital. As had the employees and premises from which it traded. These omissions reflect either a sloppy attitude to dealing with matters that he recognised as important or a willingness to not disclose all that he knew. I accept his evidence that he read the questionnaire with care and provided his answers carefully.
68. He informed the Official Receiver that the Company stopped trading in 2012 and was first unable to pay its debts when they became due in June 2012. The reason he gave for the date was that it was in June 2012 that the Company ceased to trade. As far as accounting records were concerned, he was able to provide the dates of the last accounts, give the Company’s VAT registration number and inform the Official

Receiver when the last VAT return had been sent to HMRC. The provision of this detail indicates that Mr Buzzoni had an eye for detail and had important information at his fingertips. In respect of maintaining accounting records Mr Buzzoni stated that no officer of the Company was responsible, and that the books and records were kept by Mr Stephenson and that no records were held electronically.

69. Mr Buzzoni completed another questionnaire in October 2015 for Mr Green after his appointment as liquidator. There is no reason to believe that he did not give his answers with care as he did on the previous questionnaire. The responses given were that the Company took on no new clients after 2006, the bank account statements, cheque book stubs, sales and purchase invoices, and all correspondence and contracts for the Company, sent and received had been shredded. Mr Buzzoni represented the Company had no electronic server.
70. In fact, the Company did have records and the live evidence of Mr Buzzoni is that he knew that it had other records. Those records were not kept by Mr Stephenson. Susan Green, an employee of the Company and Capital, found the documents in a basement.
71. The documents provided to Mr Green were not comprehensive records of the Company. The fact that some documents had been kept, and not kept by Mr Stephenson demonstrates the unreliability of Mr Buzzoni's evidence. It is unlikely however that he would have stated on the questionnaire that documents had been "shredded" if they had not. The extent of the shredded documents is not known. I cannot discount the possibility that they may have included a stock transfer form. It is entirely possible for some documents to have been shredded and others not. There is no record kept of the documents that had been shredded.
72. Mr Buzzoni stated in cross examination that the Company did have a server: "we have not handed over computer records. No, we have not handed over computer records. I do not understand why". He added: "This is a long time ago and I am afraid I am vague on that." This is further evidence that company records existed that were not given to the Official Receiver or the liquidator. It is entirely possible that records kept on the server were or are important to the determination of this case.
73. Mr Buzzoni gave some startling evidence about his knowledge of company law. A few examples suffice. He said that he did not know the difference between a company being struck off the register of companies and liquidation. On his evidence it did not occur to him that as the only director of the Company he was responsible for ensuring that books and records were maintained, and said that he only knew the importance of stock transfer forms because of this case.
74. I find as a matter of fact that both these statements are unreliable. First, Mr Buzzoni dealt directly or indirectly with employees who obtained preference shares on a regular basis. That involved processing stock transfer forms. Secondly, Mr Buzzoni is a qualified accountant and spent his professional life dealing with corporate transactions. He accepted in evidence that he knew that transfer forms were significant for completing the purchase of shares. I find that he did understand that they would be significant to demonstrate a share transfer and knew they were significant to demonstrate share ownership. Thirdly, the statements in the accounts, that he was responsible for their accuracy, would not have been missed by a person

who is a self-proclaimed careful reader of accounts. Lastly, I have found that Mr Stephenson did inform him of his responsibilities as director in respect of books and records and took instructions directly from him. He signed the declarations in the accounts. These contemporaneous documents are more reliable than Mr Buzzoni's "vague" memory.

75. Mr Buzzoni was specifically questioned about the ownership of the ordinary shares in Capital and the 2010 accounts:

Q. Again, putting this into context, and I can take you back to your witness statement if we need to, your evidence is that in March 2010, year end, you created preference shares to give Capital a stronger balance sheet. Do you remember that?

A. Yes, I do.

Q. You did that by the creation of preference shares to bring the total up to 220,000?

A. Yes, that is true.

Q. That was important, because without that, Capital would have been in some difficulty with its regulator?

A. That is true.

Q. If we look at the balance sheet, which is at EL873.

A. Yes.

Q. We see note 6, "Investments", under "Fixed Assets" we see "Investments". Do you have that?

A. Yes, I have the balance sheet. I see ----

Q. If you open the balance sheet and you see "Investments".

A. Yes, I have that.

Q. It is shown as £220,100.

A. It is shown as that.

Q. That is £100 more than the amount of preference shares you intended to be created?

A. It is £100 more, and it is an error. It should not be there.

Q. You would have spotted that at the time, would you not?

A. Well, I did not, did I, unfortunately.



Q. We go on then to note 6 in the accounts, which is at page EL876.

A. Yes.

Q. In these accounts it says that the fixed asset is 220,000 cumulative preference shares.

A. Yes.

Q. Because there is a different document which deals with, which refers to the £100 ordinary shares which I will come back to later. What I am suggesting to you is that it is obvious that there is more in that balance sheet, and you knew that the extra £100 was the ordinary shares?

A. No, I did not.

76. I find his evidence disingenuous. As I have found, Mr Stephenson took instructions from him and drew his attention to the accounts and notes before he gave his approval.

77. In respect of the 2011 accounts Mr Buzzoni was taken to the notes that stated the Company owned the 100 ordinary shares. Mr Fennell put it to Mr Buzzoni that he “would have read these full accounts, including the note, before you made the filings with HMRC?” Mr Buzzoni answered: “I am not sure I read the notes”. The cross examination proceeded:

“Q. I am suggesting to you that you knew that these accounts were recording ----

A. That is just not true.

Q. ---- Nosnehpetsj as the ----

A. That is not ----

Q. I think you have anticipated my question. I was putting to you that you knew that the accounts were showing the ordinary shares as an asset of Nosnehpetsj?

A. That is untrue.”

78. The interruption was not because of a delay on the video link. Mr Buzzoni was particularly keen to make a denial before the question was put. His answer was inconsistent with his earlier evidence, that he read accounts carefully, and inconsistent with my finding that they reflected instructions he gave to Mr Stephenson when preparing the accounts.

## **Solvency**

79. I did not understand that there was anything between the parties as to the date of insolvency by the end of the trial. For the sake of completeness, I find that the Company was insolvent or near insolvent from the beginning of March 2012.
80. This conclusion is reached first, on the basis it was admitted that the Company had by this date transferred its business, goodwill and clients to Capital by that date, and it remained obligated to pay for employees, the premises occupied by Capital and other outgoings. If it had outgoings and no income it is more likely than not that it was insolvent.
81. Mr Buzzoni said in evidence that he did not consider it insolvent because he would lend money to the Company or cause Capital to lend money to capital in order to meet any outgoings. As the Company's asset base had been eroded by transfer (despite how the accounts may have looked) any loans would have increased not decreased its insolvency. Secondly, Mr Buzzoni stated that the Company had not taken on new clients since 2006. Thirdly, the questionnaire completed for the Official Receiver by Mr Buzzoni stated that the Company was insolvent from June 2012. This is inconsistent with his written testimony that the Company did not become insolvent until after the determination of the employee claim.
82. In cross examination he was asked if there had been any change in the period March and June of 2012. He did not think there had been. In my judgment he thereby admitted that the Company was insolvent by March 2012. Lastly, although the Company's abbreviated accounts for the year to 31 March 2012 filed at Companies House show net assets of £26,593, it was loss making as it had no income stream but continued to have outgoings. The management accounts to July 2012 reflect this as they show a loss of £44,614. Even if the net asset position as posted was correct the loss was greater than its assets.

### **The ordinary shares in Capital**

83. As I have explained it is common ground that Mr Buzzoni was the legal and beneficial owner of the ordinary shares in Capital before 2011, that the annual returns for 2011 and 2012 state that the Company is the owner, and that there was a transfer of the same shares to Mr Buzzoni on 26 September 2012. The issue of fact to determine is whether the ordinary shares were, as stated in the annual returns, owned by the Company in 2011 and 2012.
84. The starting point is the accounts. I have found that Mr Buzzoni's evidence that he read the accounts with care, true. There is no logical reason to make a different finding in respect of the accounts for 2010 and 2012. These accounts carry different accounting figures. In the period 2010 to 2012 positive steps were required to state that the ordinary shares had become an asset of the Company as they were not shown as an asset prior to that date. As a careful reader of the accounts, I do not accept that Mr Buzzoni missed the movement. I find that he read the annual returns with care.
85. I find it more likely than not that the entries in the returns and abbreviated accounts of the Company and Capital were made purposefully. They were not a mere accident or misunderstanding. They were approved by Mr Buzzoni. The missing evidence is (i) the transfer form and (ii) written communications between Mr Stephenson and Mr Buzzoni discussing the transfer.

86. There is a paucity of contemporaneous documents relating to the movement of the ordinary shares as stated in the returns and accounts. This is perhaps not surprising as some documents had been shredded and others not disclosed. Only 4 e-mails relate to the issue but are after the event. One e-mail is dated 11 March 2013 from Mr Buzzoni: “keen to get the annual return in now for Watersheds Capital Partners to make it clear that this company is not a subsidiary.” Soon after on 3 May 2013 Mr Stephenson wrote to HMRC stating that the Company has “no assets and the Registrar of Companies has been asked to strike off the company.” The direction to Mr Stephenson is best explained on the basis that it would have been important to ensure that there was no value in the Company at the time it was struck off as that value would be lost.
87. I find that Mr Buzzoni was keen to apply for and obtain group tax relief. Much was at stake. The sums claimed for group tax relief were large. As the sole shareholder of the Company which owned Capital, Mr Buzzoni is likely to have benefitted financially from the relief claimed.
88. This finding is supported by the evidence of Mr Buzzoni: “in around 2010 I had had various discussions with Mr Stephenson about ways in which the Watersheds Companies could reduce their tax bill. He was keen that the Watersheds Companies should become a group where the voting shares of the subsidiary company were wholly owned by the parent”. Mr Buzzoni says that one of the aims of setting up Capital was to defeat the liability owed to the landlord. He says he remembers “making the point” to Mr Stephenson that by creating a group, that aim would be defeated. Mr Stephenson does not say he has the same recollection. I find that due to the length of time between the event and trial Mr Buzzoni was mistaken. The evidence is that Mr Stephenson would investigate the issue. There are no contemporaneous documents to support his research.
89. I find on the balance of probabilities that Mr Stephenson investigated how to obtain the most favourable tax outcome advising Mr Buzzoni to transfer the ordinary shares to the Company to create a group. Since Mr Buzzoni was the sole director and shareholder of the Company and Capital the arrangement made little operational difference.
90. Obtaining tax relief is more likely than not to have been the reason why Mr Buzzoni would have transferred the ordinary shares in Capital to the Company as reflected in the annual returns and accounts of both companies. The knowledge that the group of companies obtained tax relief and intention of Mr Buzzoni to obtain it in 2010 and 2011 can be gleaned from not just the accounts and from the findings I have made, but from an e-mail in early October 2012 where Mr Buzzoni asked Mr Stephenson not to claim group tax relief in the year to 31 March 2012 “could you make sure we don’t”. The annual return for the year ending 2013 notes that the ordinary shares were transferred to Mr Buzzoni on 26 September 2012.
91. In testing the evidence, by reference to both the contemporary documentary evidence and its absence, I find it was intended by Mr Buzzoni that the shares were to be a gift to the Company as by making the gift, a large sum of money would be saved. The intention is supported by (i) a finding of fact that the act of showing that the ordinary shares of Capital were assets of the Company in public documents was deliberate (ii)

a desire to obtain group tax relief (iii) knowledge that relief would be applied for and was received (iv) a failure to produce documentary evidence to support advice provided by Mr Stephenson that a group of companies could be formed by the ownership of preference shares or any advice on the subject (v) a corresponding finding of fact that Mr Stephenson investigated how to obtain group tax relief by transferring the ordinary shares to the Company (vi) an understanding that Capital if owned by the Company remained in effect in the ownership of Mr Buzzoni due to his majority shareholding in the Company and (vii) a finding that Mr Buzzoni knew of the returns and accounts, approved and signed them.

92. On the balance of probabilities these two accountants would have produced a stock transfer form completed by Mr Buzzoni and countersigned by the Company. If HMRC had asked for evidence that Capital and the Company qualified for tax relief Mr Buzzoni could have produced the stock transfer form. In my judgment it is more likely than not that the stock transfer, although not registered, was left on the Company file and was one of the documents shredded. Alternatively, it was uploaded electronically and held on the Company server which either no longer exists or has not been disclosed, as admitted by Mr Buzzoni.
93. The mistake Mr Stephenson said he made in respect of the preference shares namely, failing to "...complete the formalities required by Companies House", is more likely to be the mistake he made in respect of the ordinary shares. The time gap between the event and this litigation is likely to have distorted his memory. Mr Buzzoni, who has either caused or allowed the transfer form to be shredded or lost, cannot avoid liability simply because it is no longer available.
94. In my judgment the intention to make the gift was immediate as the tax relief was valuable and pressing. The share ownership was publicised to third parties (HMRC) who relied on the representation. Once the intention to make the gift had been made, shown on the returns and accounts and publicised to third parties there was no right to "recall" the gift. It would have been unconscionable to recall the gift in the circumstances I have described, after tax relief had been received and after 1 March 2012 as the assets of the Company were no longer held for the benefit of its members, but for creditors. In these circumstances I find, on the balance of probabilities that there was an equitable assignment of the ordinary shares in favour of the Company.
95. These findings are supported by the action taken by Mr Buzzoni after the Company became insolvent in March 2012, namely the transfer of the ordinary shares to Mr Buzzoni from the Company in September 2012. In my judgment there would have been no need to make a "transfer" if the shares had always belonged to him.
96. Mr Buzzoni has not suggested that the transfer of the ordinary shares to himself in or around 26 September 2012 was for any consideration. Accordingly, the transfer for no consideration was made in breach of duty to the Company. The liquidator is entitled to relief on behalf of the Company. I shall deal with the relief at a further hearing.
97. I turn to the preference shares.
98. It appeared to be common ground that the preference shares were not redeemed due to a failure to comply with the provisions of the Act. In so far as I am mistaken as to my

understanding of the common ground, there was a failure to comply with the statutory requirements, and any purported redemption was ineffective.

99. In arriving at the true meaning of the redemption obligation as stated in the accounts, I disregard evidence of subjective intention. The language used by the parties on the face of Capital's 2013 annual return is most important because (a) the parties have control over the language they use and (b) the parties must have been specifically focussing on the issue covered when forming the wording of that redemption provision: *Arnold v. Britton (supra)* at paragraph 17. In my judgment there is no ambiguity in the language. As the test is objective and there is no ambiguity the preference shares were redeemable at £2-00 per share. The timing of redemption was to be at the discretion of the directors. The return was not corrected or rectified. I find that the price which Capital was required to pay on redemption was £440,000.
100. In any event it is accepted that no cash was transferred to the Company to redeem the preference shares. The defence relies on a letter written by Richard Slade & Co on behalf of Mr Buzzoni dated 11 January 2018. The letter sets out some detail of the debt owed to Capital that was said to be used to redeem the preference shares as follows:

“Richard Buzzoni Account £13,824.60

WCPL £47,775.40

Share Capital £6,300.00

Loan Stock £140,000.00

Preference Shares £12,000.00

Redeemable Preference Shares £100.00

TOTAL £220,000.00”

101. The calculation is elaborated upon (or changed) in correspondence from the solicitors. It was updated nearly a year later by e-mail dated 14 December 2018:

“the information previously provided by Mr Stephenson may have been somewhat difficult to follow, the manner in which the payment was made was as follows. Per [the Company's] accounts as at 31 March 2011, [the Company] owed [Capital] the sum of £96,503. In the following period, [Capital] loaned [the Company] the sum of £140,000. The effect of that was that [the Company] then owed [Capital] the sum of £236,503, of which the sum of £220,000 was written off in the redemption.”

102. In my judgment these figures are flawed and on the balance of probabilities do not represent sums owed by the Company to Capital. First there is a failure to explain the loan sum of £96,503. It may be that as the Company had been stripped of its assets

and was still paying the employees for the benefit of Capital. Capital had transferred money to enable the sums to be paid. If not for the employees, then for Capital in another way.

103. In these circumstances any sum provided to the Company to pay what was the debts of Capital should not be treated as loans from Capital to the Company. The evidence of Mr Buzzoni is that the Company was being used as a conduit to pay for the liabilities that could only benefit Capital. Without further explanation as to how sums paid to benefit Capital can be treated as a loan, I find there is no basis for finding that there was an outstanding sum as contended. As regards the loan of £140,000 there is no loan documentation to support the transaction. There is no logical reason for a Company that has ceased to trade to borrow money. It had no income. The liquidator has been unable to establish that the loans existed to enable the set-off. I find on the balance of probabilities that there were no sums to set-off.
104. As regards the claim for a return of capital, the defence is that no capital was in fact returned to the members. I understood Mr Fennell to accept that was the case and that no loss had been caused to the Company.
105. In reaching these conclusions I have taken account of the inconsistent accounts provided by Mr Buzzoni when giving information about the Company to the Official Receiver and later the liquidator. I have taken account of the written and live evidence, applied the reasoning in *Re Mumtaz Properties Ltd, Wetton* and drawn appropriate inferences of fact upon a balanced consideration of the whole of the evidence at the end of a trial.
106. I invite the parties to agree an order.