



Neutral Citation Number [2020] EWHC 54 (Ch)

CR-2017-005997

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF SYSTEM BUILDING SERVICES GROUP LIMITED
(IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 21/01/2020

Before :

ICC JUDGE BARBER

Between :

- (1) **STEPHEN JOHN HUNT**
(As Liquidator of Systems Building Services Group Limited)
(2) **SYSTEM BUILDING SERVICES GROUP LIMITED- IN LIQUIDATION**
(Acting by its Liquidator)

Applicants

- and -

- (1) **MR BRIAN MICHIE**
(2) **SYSTEM BUILDING SERVICES LIMITED**

Respondents

Raj Arumugam (instructed by **Devonshires Solicitors**) for the Applicants
Cheryl Jones (instructed by **Solomons Solicitors**) for the Respondents

Hearing dates: 2, 3 and 4 October 2019

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.

.....

ICC Judge Barber

1. This is the application of System Building Services Group Limited (the ‘Company’) and its liquidator, for the following relief, namely:
 - (1) a declaration that the First Respondent, Mr Brian Michie, holds the property known as 55 Crown Road, Billericay, Essex CM11 2 AD (‘the Property’) on trust for the Company, together with consequential relief;
 - (2) a declaration that the First Respondent, by causing or allowing the Company to make payments totalling £19,000 to CB Solutions UK Limited just days after the Company had entered administration, was in breach of his duties as a director, together with consequential relief pursuant to s.212 IA 1986;
 - (3) an order that the Second Respondent pay the Applicants the sum of £169,537 alternatively £100,135.51 on the grounds of want of consideration, unjust enrichment and/or monies had and received;
 - (4) a declaration that the First Respondent was indebted to the Company in the sum of £137,674.59 as at 12 July 2012 and an order that the First Respondent repay such sum with interest.

Background

2. The Company was incorporated on 10 August 2000 under the name of System Building Services (London) Limited. The First Respondent, Mr Michie, was appointed a director of the Company on the same day. The principal activity of the Company was that of ‘passive fire protection, fire stopping and intumescent coating’. It commenced trading in April 2002 from a property known as Old Truman’s Brewery, Brick Lane, London. On 18 April 2011, the Company changed its name from System Building Services (London) Limited to System Building Services Group Limited.
3. The Company was placed into administration on 12 July 2013. Mrs Gagen Sharma was appointed administrator. The unsecured creditors recorded in the Statement of Affairs dated 5 September 2012 were estimated at £1,062,715.43. The administration was converted into a CVL on 3 July 2013 and Mrs Sharma served as liquidator.
4. The Company was dissolved on 24 February 2016, but was restored on the application of Mr Hunt, the First Applicant, on 25 April 2017. Mr Hunt was appointed liquidator of the Company by order dated 3 May 2017.
5. The backdrop to the restoration of the Company to the register is that, in 2014, judgment was handed down in *Top Brands v Sharma* [2014] EWHC 2753, in which Mrs Sharma was found liable for misfeasance under s.212 IA 1986 on the grounds that she had negligently and/or in breach of fiduciary duties misapplied monies whilst acting as an office-holder of a company known as Mama Milla Limited (‘MML’). It is not alleged that Mr Michie knew of any investigations or complaints regarding Mrs Sharma at the time that he instructed her.
6. In *Top Brands v Sharma*, judgment was entered against Mrs Sharma in the sum of £548,074.56 (‘the Sum’). At paragraph 173 of his judgment, HHJ Simon Barker had concluded as follows:

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‘On my findings, the Sum, which should have been available for distribution to creditors, was paid out ... by [Mrs Sharma] to third parties in circumstances where, (1) inadequate steps were taken by [Mrs Sharma] to ascertain MML’s state of affairs at liquidation, (2) inadequate, if any, consideration was given by [Mrs Sharma] to the material available as to MML’s trading, assets and liabilities, (3) no attempt was made by [Mrs Sharma] to obtain important missing information, (4) inadequate instructions were given by [Mrs Sharma] to the solicitor [advising her], who advised that repayment could be made, (5) inadequate thought was given by [Mrs Sharma] to new circumstances and evidence as they presented themselves..., (6) inadequate enquiries were made by [Mrs Sharma] as to the payees of the Sum before payment, and (7) [Mrs Sharma] failed to notice, before making payments out, that the indemnity in fact obtained was not in the required form.’

7. The judgment of HHJ Barker was upheld by the Court of Appeal on 10 November 2015 ([2015] EWCA Civ 1140). On 30 June 2016, Mrs Sharma was adjudged bankrupt and on 8 August 2017 she gave an eight-year Bankruptcy Restrictions Undertaking to the Secretary of State.
8. Following the conclusion of the Top Brands proceedings, Mr Hunt took over 44 of Mrs Sharma’s appointments under a Block Transfer Order dated 17 June 2016 and numerous other appointments following restoration applications. A number of Mrs Sharma’s former cases have since been re-opened. In this case, Mr Hunt’s investigations have resulted in the current application.

The Respondents

9. Mr Michie was a registered director of the Company from incorporation until 6 May 2003, then re-appointed as a director on 13 September 2007. He was also the Company’s Secretary from 7 May 2010. He was the Company’s sole shareholder from 20 June 2011 and the Company’s sole director from 16 April 2012.
10. The Second Respondent, Systems Building Services Limited (‘SBSL’), was incorporated on 1 June 2012, on the advice of Mrs Sharma. Its business was stated to be ‘fire service activities’. The managing director of SBSL at the date of incorporation was Mr Paul Metcalfe, a friend of Mr Michie. As put by Mr Michie at paragraph 27 of his statement: ‘He and I knew each other and we did discuss the proposed purchase by [SBSL] of the Company’s work in progress.’
11. Mr Michie was not initially a director of SBSL; in oral evidence he explained that he ‘knew it were best not to’, as ‘it was a similar sounding company’. Whilst not a director of SBSL initially, however, he was a full time employee of SBSL from the outset; in oral testimony he explained that he acted as its contracts and sales manager. He became a 65% shareholder in SBSL in January 2014 and a de jure director of SBSL in November 2014. In November 2016 his shareholding in SBSL rose to 100%, before dropping to 90% in April 2017. As at the date of trial, he was sole director of SBSL.

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The Evidence

12. For the purposes of the trial I have read and considered the following witness statements and their respective exhibits, namely:
 - (1) the third and fourth witness statements of Mr Hunt dated 4 June 2018 and 20 February 2019 respectively; and
 - (2) Mr Michie's witness statement dated 21 December 2018.
13. I also read and considered the expert valuation report dated 21 February 2019 of Mr Lee Charters (who was appointed as single joint expert by order dated 16 November 2018), and other documents set out in a bundle agreed for use at the hearing, to which reference will be made where appropriate.
14. I heard oral evidence from Mr Hunt and Mr Michie. Mr Charters, the expert, was not called as a witness. Prior to trial, directions had been given by an order dated 16 November 2018 that the 'evidence of the single joint expert be given at the trial by written report of the expert, unless otherwise ordered by the Court. The parties have liberty to apply in relation thereto.' I was taken to no evidence to suggest that any party exercised their liberty to apply in this regard.

Missing Company documentation

15. As explained in Mr Hunt's fourth witness statement, prior to his appointment as liquidator of the Company, his staff had attended Mrs Sharma's offices and had taken receipt of all working files and books and records available at those premises for all 44 appointments under the Block Transfer Order dated 17 June 2016 and all 57 anticipated appointments which were then subject to restoration applications. Subsequently, Mr Hunt's staff also recovered further working files and books and records relating to the Block Transfer Order appointments from Mrs Sharma's external storage facility. Some files were missing. Notwithstanding requests made by Mr Hunt's staff for delivery up of the missing files, Mrs Sharma has not been able to account for the missing records in relation to the Company or those in respect of a number of other appointments.
16. In relation to the Company, Mr Hunt only ever received from Mrs Sharma (1) the liquidation working files and liquidation electronic files, not the working files or any records for the period of the administration and (2) some, but not all, of the Company's books and records. In particular, the books and records of the Company passed over to Mr Hunt included no electronic data, no invoices or contracts for any of the projects apparently taken over by SBSL, and none of the dividend vouchers since exhibited to Mr Michie's statement. The records were clearly incomplete. There is no allegation in these proceedings that Mr Michie failed to comply with his duties to deliver up all Company documentation to Mrs Sharma in 2012 and his unchallenged evidence was that he did deliver up all such documentation. The fault for any missing Company documentation, therefore, cannot be laid at Mr Michie's door. I shall address the impact of the missing Company documentation where appropriate during the course of this judgment.

Approved Judgment**Mrs Sharma**

17. The Respondents were critical of Mr Hunt's decision not to join Mrs Sharma as a respondent to these proceedings or to approach her for explanations with regard to the transactions forming the subject matter of the same.
18. By his fourth witness statement Mr Hunt confirmed that he had chosen not to join Mrs Sharma as a respondent in the proceedings as she was adjudged bankrupt in 2016 and he did not consider that entering into costly litigation with a bankrupt individual would be of any benefit to creditors. He further confirmed that he had not made enquiries of Mrs Sharma regarding the specific transactions in issue in these proceedings as she had been 'of very limited assistance on other cases' and in this case had 'misplaced her working files and electronic data relating to the period of the administration' with the result that she 'would simply be relying on memory.'
19. In my judgment Mr Hunt cannot be criticised for his decision not to enter into costly litigation with a bankrupt individual. It was also entirely Mr Hunt's choice as to whether to seek further information from Mrs Sharma over and above that contained in the available records. He has explained why he chose not to do so and I accept his explanation. It was clear from both his written and oral testimony that Mrs Sharma had been approached in relation to other appointments and had not proved helpful. It was open to the Respondents to seek evidence from Mrs Sharma themselves had they so wished. Given their decision not to do so, it appears that overall, none of the parties wished to rely on any evidence that Mrs Sharma might give. The Court must therefore proceed on the evidence before it.

Summary of Heads of Claim**Head 1: The Property**

20. The first claim is against Mr Michie and relates to the Property. The Applicants allege that in 2014, whilst Mr Michie remained a director of the Company, he purchased the Property at what he knew to be a substantial undervalue (£120,000) from the Company acting by its liquidator Mrs Sharma, for his own benefit and without regard to the interests of the creditors as a whole. The Applicants maintain that in so acting, Mr Michie acted in breach of duties owed by him to the Company as its director under ss171 to 175 CA 2006, including in particular his fiduciary duty to act in the best interests of the Company's creditors as a whole from the time at which the Company was insolvent: (PoC, paras 6,7,10 and 12).
21. It was common ground that if Mr Michie was found to have acted in breach of fiduciary duties owed to the Company in procuring or agreeing to a sale of the Property to himself at £120,000, an institutional constructive trust would arise (subject to credit being given for the £120,000 purchase price paid): see sections 170 (3) and (4) and 178 CA 2006; FHR European Ventures LLP v Mankarious [2013] EWCA Civ 17 at paras [75] to [76]; Williams v Central Bank of Nigeria [2014] UKSC 10.

Approved Judgment**Head 2: Payments to CB Solutions UK Limited**

22. The second claim is also against Mr Michie. It relates to three sums, of £5000, £6000 and £8000 respectively, paid out of the Company's bank account on 17 July 2012 and 19 July 2012 in favour of one of its creditors, CB Solutions UK Limited ('CB Solutions'), shortly after the Company's entry into administration.
23. The Applicants allege that Mr Michie 'caused or allowed' these payments to be made. At paragraph 21 of the Particulars of Claim, the formula 'caused or permitted' was employed, but both the prayer for relief (at para 5) and Mr Hunt's third witness statement (at para 22) adopted the formula, 'caused or allowed' and, as argued before me, the case largely proceeded on the basis that 'caused or allowed' was the allegation. I shall proceed on that basis.
24. The Applicants allege that, in causing or allowing these payments to be made, Mr Michie acted in breach of his duties under ss171, 172 and 174 of the Companies Act 2006 and accordingly is guilty of misfeasance under s.212 IA 1986. The Applicants seek an order under s.212 IA 1986 that Mr Michie repay or restore the said sums, totalling £19,000, to the Company, or an order that he contribute the said sum of £19,000 to its assets by way of compensation in respect of his breach of fiduciary duty: (PoC, para 21, prayer for relief paras 5 and 6).

Head 3: Payments by the Company to SBSL of (1) £169,537.06 or (2) £64,135.51

25. The third claim is against the Second Respondent, SBSL. It relates to five payments made on 8 August 2012, 16 August 2012, 4 September 2012, 7 September 2012 and 28 June 2013 by the Company acting by Mrs Sharma to the Second Respondent, SBSL, whilst the Company was in administration.
26. The Applicants' primary case is that SBSL provided no consideration for these five sums, which total £169,537.06. They seek repayment of the same on the basis that there has been a total failure of consideration and that SBSL was unjustly enriched (PoC, para 25).
27. The Applicants' secondary case is that, in the event that consideration is found to have been provided, under or by virtue of a contract between the Company and SBSL entered into on or about 9 August 2012, pursuant to which SBSL purchased the book debts and work in progress of the Company for the sum of £30,000 plus VAT, the contract in question specifically excluded 'cash at bank'; and that the first two of the five payments, a sum of £17,644.80 paid on 8 August 2012 and a sum of £46,490.71 paid on 16 August 2012, (a total of £64,135.51) represented cash at bank and so were excluded from the sale. The Applicants' case is that these should be repaid on the grounds of want of consideration, unjust enrichment and/or monies had and received: (PoC para 32).

Head 4: Directors' loan account

28. The fourth claim is against Mr Michie. It relates to payments made by the Company to Mr Michie, which the Applicants maintain remain unaccounted for, over the period 22 July 2010 to 10 July 2012, prior to the Company's entry into administration.

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29. Whilst there was some debate at trial as to the total net sum received by Mr Michie from the Company over this period, at my invitation, Counsel agreed a figure of £291,789.66 after trial. Counsel for the parties further agreed that, from the figure of £291,789.66, there should be deducted (1) £127,425 in respect of dividend payments listed by Mr Michie at paragraph 38 of his witness statement and (2) £11,990 in respect of certain payments identified in the Company's bank statements. The Applicants maintained that this left a balance of £137,674.59 unaccounted for.
30. The Applicants' case was that the sum of £137,674.59 represented either an outstanding director's loan account owed by Mr Michie to the Company, or an informal unsecured borrowing by Mr Michie from the Company. The Applicants sought declaratory relief as to the sum due and an order for repayment of the same: (PoC paras 34-40, prayer for relief paras 11-13). No limitation defence was pleaded.

Applicable Legal Principles

31. For the purposes of Heads 1 and 2, the Applicants relied upon the general duties of a director as set out and/or referred to in ss171 to 175 of the Companies Act 2006.
32. These duties are well-known. In broad summary:
- (1) Section 171 provides that a director of a company must only exercise powers for the purposes for which they were conferred.
 - (2) Section 172(1) provides that a director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. Section 172(3) goes on to provide that the duties imposed by Section 172(1) and (2) have effect 'subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company'.
 - (3) Section 174 provides that a director of a company must exercise reasonable care, skill and diligence.
 - (4) Section 175 provides that a director of a company 'must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company'. Section 175(3) expressly provides that the section does not apply to a conflict of interest arising in relation to a transaction with the company.
33. As argued before me, the Applicants' case in relation to Head 1 focused largely upon s.172. Their case in relation to Head 2 focused primarily on ss172 and 174.

Section 172

34. A director's duties under section 172 fall to be interpreted and applied in the same way as the previously applicable common law rules and equitable principles: s.170(4) CA 2006. The duty is fiduciary in character.

Approved Judgment**Duty to act in the best interests of creditors**

35. Where the company is insolvent or likely to become insolvent, the duty of a director to act in the best interests of the company is regarded as a duty to act in the interests of its creditors as a whole. At this stage, the interests of the company are regarded as the interests of the creditors alone; their interests are generally regarded as becoming paramount: *Re HLC Environmental Projects Limited* [2013] EWHC 2876 (Ch) at paras 91 to 93; *West Mercia Safetywear Ltd v Dodd* [1988] BCLC 250 (CA) at 252h-253b: see too obiter support for this proposition, in cases of present and actual insolvency at least, in the judgment of David Richards LJ in the recent case of *BTI 2014 LLC v Sequana SA* [2019] BCC 631 at [222].

Objective/Subjective

36. The duty imposed on directors to act bona fide in the interests of the company (or, in cases of insolvency, its creditors) is ordinarily regarded as a subjective one. As put by Jonathan Parker J in *Regentcrest plc (in liq) v Cohen* [2001] 2 BCLC 80 at paragraph 120:

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

37. This general principle is however subject to three qualifications: *Re HLC Environmental Projects Limited* [2013] EWHC 2876 Ch at para 92:

(1) First, where (as in cases of insolvency) the duty extends to consideration of the interests of creditors, their interest must be considered as “paramount”.

(2) Second, the subjective test only applies where there is evidence of actual consideration of the best interests of the company. Where there is no such evidence, the proper test is objective, namely, whether an intelligent and honest man in the position of a director of the company could, in the circumstances, have reasonably believed that the transaction was for the benefit of the company.

(3) Third, where there is a very material interest, such as that of a large creditor (in a company which is insolvent) which is without objective justification overlooked and not taken into account, the objective test must equally be applied.

The ‘reach’ of ss 171 to 177 CA 2006

38. It was common ground that Mr Michie remained a director of the Company notwithstanding the Company’s entry into administration and thereafter voluntary liquidation: see paragraphs 61 and 64 Schedule B1 to the Insolvency Act 1986 (IA 1986) (previously s.14 IA 1986) and s.103 IA 1986. The effect of these provisions (in summary) is that (1) a company’s entry into administration or creditors’ voluntary liquidation does not of itself operate to remove the directors from office; but (2) a director of a company in administration may not exercise a management power (as defined) without the consent of the administrator and (3) subject to s.114(2) and (3), on a company’s entry into creditors’ voluntary liquidation, all the powers of the directors cease, save to the extent that the liquidation committee (or absent that, the creditors) sanction their continuance.
39. There was considerable debate at trial, however, on whether and if so to what extent the ‘general duties’ identified in Section 170-177 of the Companies Act 2006 survive the company’s entry into a formal insolvency process; in this case administration and thereafter voluntary liquidation.
40. This issue had not been heralded by the pleadings, which, I note, were settled by Counsel who appeared at trial before me.
41. By Paragraph 10 of the Points of Claim, the Applicants pleaded that, upon the Company’s entry into CVL, Mr Michie remained a director of the Company and that, in his capacity as a director of the Company, owed it the general duties specified in sections 171 to 175 of the Companies Act 2006, including fiduciary duties (a) to act in the way he considered in good faith would be most likely to promote the success of the Company for the benefit of its members as a whole; (b) to act in the best interests of the Company’s creditors as a whole, from the time at which the Company was insolvent; and (c) to avoid a situation in which he had or could have a direct or indirect interest that conflicted or possibly may have conflicted with the interests of the Company, and to avoid unauthorised personal profits.
42. By Paragraph 14 of the Defence, the Respondents, in turn, pleaded (inter alia) that: ‘In respect of Paragraph 10 it is admitted that Mr Michie had the duties set out therein and it is averred that he at all times complied with that duty [sic]’.
43. By their skeleton argument, however, the Respondents sought ‘row back’ from that admission, putting in issue the existence and scope of the duties owed by a director to a company in administration and in voluntary liquidation. Paragraph 12 of the skeleton, for example, posed, as one of the ‘questions for the Court’, the following: ‘What are the duties of a Director in liquidation towards assets of a company which are in the possession and control of a properly appointed Liquidator with full statutory powers’. Paragraph 17 of the skeleton went on to assert, (with emphasis added), that the Applicants had failed to ‘demonstrate how or why any specified duty *applies* post-liquidation’; see too paragraphs 16(c), 18 and 24 of the Respondents’ skeleton argument for further examples.
44. It is unfortunate that such a significant shift in position should be disclosed so shortly before trial. As the shift involved a point of law, and priority must be given to ensuring that the Court applies the correct legal principles in any given case, I allowed

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Ms Jones to develop her legal arguments on the issue at trial. Nonetheless, the Respondents' late change of position before trial (and various shifts of position during the course of trial) on what had been, until exchange of skeletons, common ground on points of law, impacted materially on timetabling and on Counsel's ability to assist the Court in legal submissions.

45. I would strongly encourage parties to review their pleadings in good time before trial and to ensure that proper notice is given to their opponents and to the Court in any case where it is intended to resile from express admissions on the existence and scope of pleaded legal duties forming the bedrock of a claim. It is unsatisfactory simply to state that the admissions in question do not go to issues of fact. One of the functions of pleadings is to identify the issues between the parties and preparations for trial will inevitably focus on the issues as crystallised by the pleadings. In this regard parties are reminded of their duty under CPR 1.3 to help the Court further the overriding objective.
46. In the event, a number of differing positions on the existence and scope of the duties owed by a director to a company in administration and in voluntary liquidation were adopted by the Respondents at various stages of the trial. In the interests of brevity, I will not attempt to summarise them all. Ultimately, however, as confirmed by Ms Jones in her closing submissions *in reply*, her 'final position' was that, once a company enters into administration or CVL, the 'general duties' of a director under Section 170-177 CA only survive in respect of any *exercise* by that director of *powers, qua director*, preserved by, or permitted in accordance with, the IA 1986.
47. Whilst mindful of the fact that, given the timing of its introduction, I heard limited argument on this issue, I reject Ms Jones' 'final position', for the following reasons.
48. First, it is clear from Sections 170-177 themselves that the 'general duties' of a director set out therein extend beyond the exercise by a director of any given power *qua director*. Section 175(1), for example, provides that 'a director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.' The application of this section is not dependent on the exercise of a given power *qua director*.
49. The distinction is again exemplified in Section 176(1), which provides (with emphasis added) that 'a director of a company must not accept a benefit from a third party conferred by reason of (a) his *being* a director; or (b) his doing (or not doing) anything as director.' Simply 'being' a director is sufficient to trigger this duty; it is not dependent upon the exercise of a power *qua director*.
50. Section 170(2) is also relevant in this context. This provides, *inter alia*, that 'a person who ceases to be a director continues to be subject to the duty in section 175 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was director.' This is a clear example of the 'reach' of these provisions; the duties imposed by s.175 continue to apply to a person even after that person ceases to *be* a director; *a fortiori*, beyond the point at which a given individual is *exercising* any powers *qua director*.
51. Second, when considering the Companies Act 2006 as a whole, it is clear that when given provisions are not to apply in administration, compulsory liquidation or

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creditors' voluntary liquidation, this is expressly stated. One such example is s.193, which expressly provides that members' approval is not required in respect of substantial property transactions (as defined in s.190) between a company and its directors where the company is being wound up or is in administration.

52. Third, as made clear by s.170 (3) and (4), the duties of a director set out in ss171 to 177 'are based on certain common law rules and equitable principles as they apply in relation to directors' and, whilst they 'have effect in place of those rules and principles', are to be 'interpreted and applied in the same way' as the corresponding common law rules and equitable principles. Whilst, therefore, read literally and in vacuo, certain of the duties set out in ss171 to 177 may not immediately lend themselves to a formal insolvency context, s170(3) and (4) require an interpretation and application of those duties in keeping with the common law rules and equitable principles on which those duties are based. These underlying common law rules and equitable principles were plainly of sufficient flexibility to extend beyond the company's entry into a formal insolvency process such as administration or voluntary liquidation.
53. Fourth, s.172(3) expressly preserves the duties of a director in certain circumstances 'to consider or act in the interests of creditors of the company'. I was taken to nothing in the caselaw preceding the Companies Act 2006 (or indeed post-dating it) to suggest that such duties cease on a company's entry into a formal insolvency process.
54. Fifth, the Insolvency Act 1986 makes clear that a company's entry into administration or voluntary liquidation does not, of itself, result in the removal of directors from office.
55. Taking all such factors into consideration, in my judgment, the general duties of a director of a company to the company set out in ss171 to 177 CA 2006 do survive the company's entry into administration and creditors' voluntary liquidation. Whilst in office, a director continues to owe the company the duties laid down in ss171 to 177 CA 2006, as applied and interpreted in accordance with the underlying common law rules and equitable principles on which such duties were based: s170(3) and (4).
56. The fact that, on a company's entry into administration or creditors voluntary liquidation, the Insolvency Act 1986 is engaged, imposing a series of *additional* specific duties on the part of a director and limiting his managerial powers to those authorised under or in accordance with the Act, does not, in my judgment, operate so as to extinguish the fundamental duties owed by a director of a company to the company as reflected in ss.171 to 177 CA 2006.
57. Ms Jones submitted that there was a 'resounding silence' amongst all commentators 'as to anything that anybody has ever done post-administration and post-liquidation, to enforce a director's duty' under the Companies Act, and a wholesale lack of authority on the subject. Ms Jones referred to this as 'the dog that did not bark', contending that the reason for the silence in the authorities and in the textbooks on this subject was that, save in relation to the relatively rare exercise by a director of powers, qua director, preserved by, or permitted in accordance with, the IA 1986, the 'general duties' of a director under Sections 170-177 CA 2006 do not survive the company's entry into administration or voluntary liquidation.

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58. I accept that there is little caselaw in this area, although it would be wrong to suggest there is none at all (see, by way of example, *McTear v Engelhard & Ors* [2014] EWHC 1056). I also accept that there is little textbook commentary in this area, although again, it would be wrong to suggest that there is none (see, by way of example, *Mortimore on Company Directors, Duties, Liabilities, Remedies* (Third Ed, 2017), para 33.58). The limited caselaw and commentary, however, does not lead inexorably to the conclusion that the general duties of a director set out in ss171 to 177 cease to exist on a company's entry into administration or creditors' voluntary liquidation. In my judgment, it simply reflects the fact that, for the most part, licensed insolvency practitioners in this country are highly effective guardians of the assets of those companies in respect of which they are appointed.
59. As submitted by Mr Arumugam, 'the law expects, in an insolvency situation, for more than one actor to play their part. And the directors have an important part to play', their fiduciary duties being 'an important part of the protection' afforded to the company and its creditors under English law. In an administration or a creditors' voluntary liquidation, he submitted, the officeholder and the director owe independent duties to the company. In an insolvency context, first and foremost of a director's duties is the duty expressly preserved by s.172(3) CA 2006: to have regard to the interests of the creditors as a whole.
60. I accept these submissions. In my judgment the duties owed by a director to the company and its creditors survive the company's entry into administration and voluntary liquidation. Those duties are independent of and run parallel to the duties owed by an administrator or liquidator appointed in respect of the company.
61. Against that backdrop, I turn to consider Heads 1 and 2.

Head 1: 55 Crown Road ('the Property')

62. The Property, a 'new build' two bedroomed house known as 55 Crown Road, Billericay, Essex CM11 2AD, was purchased by the Company, off plan, on 30 December 2009 for the sum of £185,000 and registered at HM Land Registry under Title Number EX846610.
63. The Property was purchased as accommodation for use by the directors and sub-contractors of the Company as and when required. The Property was also the registered office of the Company for a while. Prior to the Company's entry into administration, Mr Michie used the Property regularly (approximately once a week) for overnight stays. His main home was in Pontefract, Yorkshire.
64. In the Company's audited accounts for the year ending 31 March 2010, signed by Mr Michie on 7 February 2011, the value of the Property was stated to be £188,065. The sum secured on the property by way of mortgage was stated as £124,722.
65. In the Company's amended audited accounts for the year ending 31 March 2010 (amended to correct distributable profits from £141,404 to £5,926), the value stated for the Property remained at £188,065. These amended accounts were signed by Mr Michie on 10 November 2011 and filed on 19 January 2012.

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66. The Company entered administration on 12 July 2012. Mr Michie was sole director of the Company by the time of its entry into administration.
67. In the Statement of Administrator's Proposals dated 30 August 2012, the estimated value of the Property was stated to be £200,000. This figure had been provided by Mr Michie. The Proposals themselves confirmed the source of the figure as being 'the director' of the Company and Mr Michie was sole director at the time. It was also accepted by Mr Michie in cross examination that he had originally informed Mrs Sharma that the Property was worth 'around' £200,000.
68. By the time that the Administrators Proposals were circulated in August 2012, and before Mrs Sharma had embarked upon marketing the Property, Mr Michie had expressed an interest in purchasing the Property, telling Mrs Sharma that if she got it valued, he would pay the 'proper price' for it. Mr Michie confirmed this in cross examination.
69. In the Administrators' Proposals circulated in August 2012, Mrs Sharma confirmed (at para 5.1.13) that 'the director [in context Mr Michie] has expressed an interest in purchasing' the Property and that she anticipated realising equity of approximately £100,000 in respect of the same. This calculation of equity value was consistent with an anticipated sale price of £200,000.
70. In the Statement of Affairs signed off by Mr Michie on 5 September 2012, just a few days after circulation of the Administrators' Proposals, Mr Michie stated that the estimated value of the Property was £180,000. The Applicants maintained that this was the start of Mr Michie attempting to 'play down' the value of the Property with a view to purchasing it himself at less than market value. When asked in cross examination to explain the change in value (from £200,000 to £180,000), Mr Michie explained that there had been a drop in the market locally due to disruption caused by the building of Crossrail. When asked on what grounds he considered that the market for the Property would have dropped £20,000 in the space of 5 days, however, he had no real explanation, stressing that previously he had only told Mrs Sharma that it was worth '*around* £200,000'.
71. Mrs Sharma did get an independent valuation however. On 25 September 2012, she obtained a drive-by valuation from Colliers International, which valued the Property at £195,000.
72. On or about 21 December 2012, Mrs Sharma and Mr Michie reached an 'in principle' agreement that he would purchase the Property. Whilst no purchase price in monetary terms was agreed at this stage, it was agreed that he would purchase the Property at a price reflecting its 'proper value'.
73. Mr Michie was initially resistant in cross examination to the suggestion that he had reached such an agreement with Mrs Sharma on 21 December 2012, but by day two of the trial, he accepted that it was possible. On the evidence overall, I am satisfied that he did. The timing of it was supported by:
 - (1) Mrs Sharma's later email to Mr Michie dated 4 December 2013, in which she stated 'As you are aware [the Property] was sold to you on 21 December 2012 but to date I have not received any consideration for the sale' and pressed him to get

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on with the purchase, threatening to put the Property on the open market for sale in the absence of any progress;

- (2) the lack of any contemporaneous 'reply' correspondence from Mr Michie in evidence challenging or querying the contents of the email of 4 December 2013, or other evidence to suggest that Mr Michie had at any time disputed or corrected Mrs Sharma's understanding of the position regarding the Property;
 - (3) Mrs Sharma's failure to insure the Property at any time thereafter;
 - (4) the First Progress Report in the administration (for the period 12 July 2012 to 11 January 2013) dated 1 February 2013, in which, having confirmed that she had obtained an independent valuation for the property, Mrs Sharma stated (at para 2.2): 'Taking into consideration the valuation of the [Property] and the fact that it is currently occupied, I have accepted an offer made by Mr Brian Michie the director of the Company for the [Property]. I am in the process of agreeing this offer and arranging for the sale I will report further in due course.'
74. The Property was not placed on the open market for sale. Mr Michie at times sought to challenge this conclusion but on the evidence as a whole, it is clear (and I so find) that the Property was not placed on the open market for sale at any time from its entry into administration until completion of the sale to Mr Michie in December 2014. I am fortified in this conclusion by:
- (1) The lack of any reference in any of Mrs Sharma's reports to creditors of the Property being placed on the open market for sale during the Company's administration or subsequent liquidation;
 - (2) The lack of any provision in Mrs Sharma's reports to creditors for any actual or anticipated expenses ordinarily associated with an open market sale, such as estate agent costs;
 - (3) The lack of any other evidence from third party sources such as Zoopla of the Property being marketed over the material period;
 - (4) The references in the Administrators' proposals and First Progress Report to Mr Michie's expression of interest and agreement to purchase the Property;
 - (5) Mrs Sharma's later email of 4 December 2013, threatening to put the Property on the open market for sale in the absence of progress with Mr Michie; and
 - (6) Mr Hunt's evidence that he had Mrs Sharma's working files for the liquidation from July 2013 onwards and had not come across any correspondence or other documentation suggesting any marketing or negotiations regarding a sale of the Property with any third party.
75. The suggestion in the First Progress Report dated 1 February 2013 that the Property was (then) currently occupied was something of a curiosity. Mr Michie's evidence (which in this regard I accept) was that as far as he was aware, save for his occasional overnight stays at the Property, (with Mrs Sharma's permission when checking the Property periodically at her request), the Property was not otherwise occupied over

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that period. Mr Michie was unable to explain why Mrs Sharma had come to believe that the Property was occupied. He denied that this information had come from him.

76. By letter of 13 June 2013, Mrs Sharma informed creditors of her decision to move the Company from administration into CVL in order that a distribution could be made to unsecured creditors. The notice moving the Company from administration into CVL was registered on 3 July 2013. Mrs Sharma was appointed as liquidator.
77. In her Final Progress Report as administrator, circulated to creditors on 5 July 2013, Mrs Sharma (at para 3.5) again confirmed that ‘As previously reported I have accepted an offer made by Brian Michie the director of the Company for the [Property]. The matter is with my solicitors and I am awaiting completion of the sale. I anticipate the sale will complete in the early stages of the Liquidation. I will report further in due course, the appropriate SIP 13 disclosures will be made on completion.’
78. In cross examination, Mr Michie accepted that, by 5 July 2013, there was still no contractually binding agreement in place with regard to the proposed sale of the Property. From her Final Progress Report as administrator, however, it is clear that at the time of the Report Mrs Sharma still envisaged a sale of the Property to Mr Michie.
79. At paragraph 6.3.2 and 7.1 of her Final Progress Report as administrator, circulated on 5 July 2013, Mrs Sharma confirmed that she anticipated that there would be a distribution to unsecured creditors. On the figures set out in that report, the only way in which there could be any meaningful distribution to creditors would be from sums realised from the sale of the Property. The Final Progress Report still stated a net equity position for the Property of £81,000 with no qualifications. Allowing for sums secured on the Property, a net equity position of £81,000 was compatible with an anticipated sale price of £180,000 for the Property.
80. In cross examination, when asked:
- ‘by the time we get to July and we have started the CVL, still, Mrs Sharma has not put the property on the market, because she believes she has agreed a sale at market value with you, is that right?’
- Mr Michie responded, ‘Yes. Probably, yes. That will be fair and reasonable to say’.
81. From her decision to move the Company from administration into CVL, coupled with the unqualified net equity position of £81,000 for the Property set out in her Final Progress Report as administrator, I consider it legitimate to conclude that, by July 2013, Mrs Sharma was still operating on the basis that she was to receive consideration of £180,000 for the Property. I so find.
82. In the event, despite some chasing by Mrs Sharma, very little progress was made with the proposed sale to Mr Michie for the next 12 months. In the meantime, the Company remained liable for mortgage instalments due in respect of the mortgage loan secured upon the Property. There was no rental income coming in to cover such mortgage instalments. By her email to Mr Michie dated 4 December 2013, pressing him to get on with the purchase, Mrs Sharma referred to the fact that HSBC, the mortgagees, were ‘chasing their redemption amount’.

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83. On 2 July 2014, Mr Michie and Mrs Sharma agreed that the Property would be sold to Mr Michie for the sum of £120,000. The sale price was based on Mr Michie's offer of £120,000; there was no horse-trading. Mr Michie's oral testimony as to the timing of his offer of £120,000 was muddled and inconsistent. It was plain that he simply could not recall when he made the offer. On the written and oral evidence overall, however, I am satisfied that the offer of £120,000 was made shortly before its acceptance on 2 July 2014. Mr Michie's evidence, which in this regard I accept, was that the only time he had ever 'discussed money' with Mrs Sharma was when he offered her the sum of £120,000 for the Property and that there were no protracted negotiations. Prior to that point (as he confirmed in oral testimony) in his discussions with Mrs Sharma he had confined himself to referring variously to paying the 'proper value', 'proper price', or 'market value' for the Property, without identifying a specific figure.
84. On 2 July 2014, Mr Michie paid £40,000 to Mrs Sharma's client account in respect of the Property. In cross examination he initially confirmed that this payment was made pursuant to an oral agreement and that there was still no written contract in place. Whilst later, following interjections from his Counsel, he sought to row back from this and to suggest that there was a written contract, on a balance of probabilities I am satisfied that his first response was accurate. There was no exchange of contracts prior to sale. I am fortified in this conclusion by the following:
- (1) There was no reference to an exchange of contracts in Mrs Sharma's reports;
 - (2) There was no reference in Mrs Sharma's reports to a completion date; had contracts been exchanged, the contract would ordinarily provide for a completion date;
 - (3) The balance of the purchase price was not paid on completion but two months ahead of completion;
 - (4) There was no correspondence in evidence from Mr Michie to Mrs Sharma pressing for completion following the payment of the balance of the purchase price;
 - (5) Mr Hunt confirmed in both written and oral testimony that he had received Mrs Sharma's liquidation files and by 2 July 2014 the Company was in CVL. No contract for the sale of the Property was produced by Mr Hunt in evidence or requested ahead of trial by Mr Michie;
 - (6) No written contract was produced in evidence by Mr Michie and as the purchaser he would have received a counterpart. To the extent that Mr Michie latterly suggested in oral testimony that he had received a contract but had lost it, I reject his evidence.
85. In short, this was an informal arrangement. As Mr Michie put it: 'when I gave her that money, we agreed the sale.' I take that to mean that at the point at which he paid Mrs Sharma the sum of £40,000 (2 July 2014), they moved from the 'in principle' agreement reached in December 2012 (that he would purchase the Property at its 'proper' price), to what they both considered to be a firm deal at a set price, backed by

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the payment of £40,000. The proposed purchase price of £120,000 clearly came from Mr Michie. When asked by Counsel:

‘Q: So, you are saying that when you paid the £40,000 you told her the price had dropped from £180,000 to £120,000 is that right?’

Mr Michie answered:

‘A. Yes, I must have done. That's all I ever offered, your Honour, was £120,000’.

86. Mr Michie described the payment of £40,000 on 2 July 2014 as a ‘deposit’. It was clearly was a much higher percentage (33%) of the overall purchase price than is usual in a standard residential conveyancing context, however. In cross examination, he accepted that the deposit ‘continued to ensure that Mrs Sharma would not market the Property on the open market.’
87. The sale of the Property to Mr Michie at a price of £120,000 was recorded in Mrs Sharma’s First Progress Report in liquidation (for the period 3 July 2013 to 2 July 2014), circulated by letter of 28 August 2014. Paragraph 2.2 of that report confirmed that ‘a sale of the [Property] was agreed to the Director of the Company for a consideration of £120,000’. Paragraph 2.3 of the Report set out information regarding the sale pursuant to SIP13. This gave the date of the transaction as 2 July 2014 and the consideration as £120,000, comprising £40,000 paid on 2 July 2014 and a balance of £80,000 remaining outstanding.
88. Paragraph 4.3 of the First Progress Report in liquidation circulated in August 2014 went on to state that Mrs Sharma had received claims totalling £749,494 from thirty-two creditors. At paragraph 4.4, the Report continued: ‘Due to the secured charge on the [Property], there is no prospect of dividend to any class of creditor on the basis of present information.’ In oral testimony Mr Michie confirmed that he received and read all of Mrs Sharma’s reports to creditors.
89. As at the date of this report, there is likely to have been some change in the sum secured on the Property, to reflect mortgage arrears (which, by the time of the Final Progress Report in liquidation dated 8 September 2015, had taken the total mortgage sum secured on the Property from £99,000 to £111,511, an uplift of £12,000 or so). A far more significant change, however, from the point at which Mrs Sharma decided to move the Company from administration into CVL (a move only appropriate in the circumstances if at the time she thought there would be a distribution to unsecured creditors) was in the anticipated sale price for the Property: from £180,000 as estimated in the Statement of Affairs signed by Mr Michie on 5 September 2012 shortly after the Company’s entry into administration, to £120,000 as ultimately agreed with Mr Michie in July 2014.
90. Between 19 and 24 September 2014, Mr Michie transferred £80,000 (the balance of the agreed purchase price of £120,000) to Mrs Sharma’s client account. The payment of the balance of the purchase price did not coincide with completion. According to the transfer form TR1, filed at HM Land Registry, completion did not take place until 12 December 2014, almost two months later.

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91. It is common ground that, just over two years later, on 7 February 2017, Mr Michie put the Property up for sale for £365,000. On 8 March 2017, the price was reduced to £350,000 and on 6 June 2017 further reduced to £335,000.
92. A single joint expert, Mr Lee Charters, appointed to report on the value of the Property as at July 2014 and currently, has confirmed that the current value of the Property is £300,000 and that, as at July 2014, the value of the Property was £265,000 in good repair and £245,000 if requiring the works claimed by Mr Michie to have been undertaken at his expense following his purchase of the Property.
93. In oral testimony, Mr Michie at times sought to challenge Mr Charters' conclusions on the value of the Property as at July 2014, pointing to a sale price of £140,000 achieved for a neighbouring property, 58 Crown Road, in February 2013. He was unable to recall when he first learned of that sale price but gave evidence that he had based his offer on it. He maintained that 58 Crown Road had been in good condition at the time of its sale in February 2013 (although he did not state the source of his belief and adduced no evidence to substantiate this assertion) and that in contrast, the Property had been in need of numerous repairs, the cost of which totalled £20,000. This in turn, he maintained, justified a further deduction of £20,000, leading to his offer of £120,000.
94. There was no mention of the price of £140,000 achieved in February 2013 for 58 Crown Road in Mr Michie's professionally drawn defence. 58 Crown Road was mentioned in vague terms (without a specific address) in the Respondents' Reply to the Applicants' Request for Further Information, served on 10 December 2018. The subsequent letter of instructions to the single joint expert dated 6 February 2019, however, (in terms required by the order of 16 November 2018 to be agreed by all parties), made no express mention of 58 Crown Road as a comparable. The report of the single joint expert, dated 21 February 2019, does not refer to the sale price achieved for 58 Crown Road in February 2013, although it refers to several other sales in the immediate vicinity over a period spanning several years, both before and after February 2013.
95. I was taken to no follow-up queries put by Mr Michie to the expert pursuant to CPR 35.6 following receipt of the expert report. I consider it legitimate to conclude that he raised no queries with regard to the fact that 58 Crown Road was not included amongst the comparables listed in the expert's report. None of the parties sought directions for the attendance of the expert at trial either, or permission to cross-examine him.
96. To the extent, therefore, that Mr Michie in his factual testimony sought to challenge the conclusions of the single joint expert as to the value of the Property in 2014, it was a rather half-hearted challenge. He had several opportunities to bring the comparable of 58 Crown Road specifically to the expert's attention for comment – both before and after preparation of the expert report. His failure to do so is a factor which I must take into account when weighing up the evidence overall.
97. From the evidence before me, it was clear that 58 Crown Road and the Property were not identical. By way of example, 58 Crown Road was a mid-terrace property, whilst the Property was end of terrace. Mr Charters confirmed in his report confirmed that end of terrace properties in the street commanded a greater value than mid-terrace.

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98. The timings of the sales were also materially different. The sale price of £120,000 agreed by Mr Michie and Mrs Sharma in July 2014 for the Property was some one year and five months after the sale of 58 Crown Road.
99. Taking all such factors into account, coupled with:
- (1) the list in evidence of sale prices achieved in Crown Road over the period 2009 to 2017 (which included the purchase price of £185,000 originally paid by the Company for the Property and the price of £305,000 achieved for 59 Crown Road, immediately next door to and identical to 58 Crown Road, in January 2016);
 - (2) Mr Michie's estimated value of £188,065 for the Property for the purposes of the Company's audited accounts filed in 2011 and 2012;
 - (3) Mr Michie's estimated values for the Property (of £200,000 and £180,000) on the Company's entry into administration in 2012;
 - (4) the drive by valuation obtained by Mrs Sharma in September 2012 (£195,000);
 - (5) the expert report of 21 February 2019, which explored numerous comparables and house price trends in the area and gave the value of the Property as at July 2014 as £245,000 - £265,000, depending on state of repair,

I consider it legitimate to conclude that the sale price achieved for 58 Crown Road in February 2013 was an anomaly. I so find. Quite why 58 Crown Road achieved such a low price was not addressed in the evidence before me. The most obvious explanations are that it was sold tenanted or that it was not an arms-length sale. Whatever the reason, however, the sale price was clearly anomalous. I am fortified in this conclusion by the fact that the expert (whose firm worked in the area in which the Property was situate and also managed, as letting agent, Number 57 Crown Road, the property next door to Number 58) does not address it as a comparable in his report and that Mr Michie did not trouble to bring the comparable to the expert's attention, whether before or after receipt of the report.

100. On the evidence which I have heard and read, notwithstanding Mr Michie's rear-guard attempts to challenge the same in oral testimony, I accept the conclusions on value set out in Mr Charters' report. I am satisfied that as at July 2014, the value of the Property was £265,000 if in good repair and £245,000 if requiring those works claimed by Mr Michie to have been undertaken at his expense following his purchase of the Property. Either way, it is clear that Mr Michie's purchase of the Property in 2014 for £120,000 was at a marked undervalue. I so find.
101. The Applicants allege that Mr Michie knowingly purchased the Property off-market at a substantial undervalue for his own personal benefit and that this was in breach of his duty under section 172(3), given the Company's undoubted insolvency at the material time, to have regard to the interests of the creditors as a whole. Mr Arumugam submitted that Mr Michie saw an opportunity to pick up an asset 'on the cheap' and took advantage of that opportunity; an opportunity which he only knew about through his position as sole director of the Company, as the Property had not been put on the open market. He argued that Mr Michie did not act in the interests of the creditors as a whole and could not have believed that he was acting in their interests. The

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consequence of the sale of the Property to Mr Michie at £120,000, he submitted, as Mr Michie would at all material times have known, was that the Property realised virtually no equity for the benefit of the creditors as a whole.

102. In developing his submissions, Mr Arumugam referred me to *GHLM Trading Ltd v Maroo & others* [2012] EWHC 61 at [168] and *BTI 2014 LLC v Sequana SA & Ors* [2019] EWCA Civ 112. I was also referred to the decision of the Court of Appeal in *Maidment v Attwood* [2012] EWCA Civ 998. This was an unfair prejudice case, but in the course of her judgment, Arden LJ considered the statutory duties set out in Section 171 to 177 CA 2006. Noting that ‘six out of seven of these duties are fiduciary duties’, Arden LJ continued (at [23]) as follows:

“... fiduciary duties are stringent. A director is liable to account for a profit that he obtained from a breach of duty even if the company has suffered no loss: see, for example, *Murad v Al-Saraj* [2005] WTLR 1573. This is a harsh result. Equity has not developed exceptions to avoid this because there is a strong deterrent element in the imposition of liability for breach of fiduciary duty. Cardozo CJ expressed these points in the New York case of *Meinhard v Salmon* (1928) 164 NE 545, 546 in the following memorable passage:

‘Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the ‘disintegrating erosion’ of particular exceptions.... Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd.’”

103. It was common ground that if Mr Michie was found to have acted in breach of fiduciary duties owed to the Company in relation to the purchase, an institutional constructive trust would arise: see sections 170 (3) and (4) and 178 CA 2006; *FHR European Ventures LLP v Mankarious* [2013] EWCA Civ 17 at paras [75] to [76]; *Williams v Central Bank of Nigeria* [2014] UKSC 10.
104. By his pleaded case and written evidence, Mr Michie asserted that prior to the sale to him, Mrs Sharma had ‘sought to sell the Property without success’ and that the Property was sold to him ‘after it had failed to sell to a third party’.
105. To the extent that Mr Michie was by his evidence seeking to suggest that the Property was in any way a ‘bespoke’ property or otherwise difficult to sell, I reject that suggestion. From the documentation in evidence it is clear (and I so find) that the Property was a straightforward, freehold, residential property which could readily have been marketed by conventional means and sold for market value.
106. On the evidence which I have heard and read, I am satisfied that at all material times, Mr Michie was aware that the Property had not been placed on the open market for sale. In oral testimony he confirmed that he and Mrs Sharma ‘had a lot to do with each other’, explaining that he ‘was helping her with the administration.’ He confirmed that he received and read Mrs Sharma’s reports to creditors, which consistently confirmed Mrs Sharma’s intentions to sell to Mr Michie and made no mention of (or provision for) any marketing of the Property. It was clear from Mrs

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Sharma's email to Mr Michie of 4 December 2013 that she had not placed the Property on the open market. Mr Michie also confirmed in cross-examination that his payment of a £40,000 deposit on 2 July 2014 'continued to ensure that Mrs Sharma would not market the Property on the open market.'

107. Moreover, Mr Michie's claims that Mrs Sharma had 'sought to sell the Property without success' and that the Property was sold to him 'after it had failed to sell to a third party' did not stand up in oral evidence. In cross examination it became clear that these claims were based largely upon his recollections of discussions with former directors of the Company, who had indicated that they were *thinking of* putting in an offer. By the time of re-examination, when asked: 'Were you aware at any time between the administration starting and you paying the deposit of anyone else who showed an interest or made an offer?', Mr Michie responded:

'There were plenty of people talking to me about it. The other [in context, former] directors of the company said, "We are going to buy that house off the liquidator." Whether they made any offers to her or not, how many offers she was made, I cannot say. But there were plenty talk about it at the time'.

108. Whilst I accept that not all of Mrs Sharma's records are available, her reports to creditors were all in evidence and made no mention of any expressions of interest or offers other than that of Mr Michie, who was mentioned from the outset. From her email to Mr Michie of 4 December 2013, it was clear that even by December 2013, Mrs Sharma's focus remained on concluding a sale to Mr Michie; she mentioned no competing bids in that letter. Mr Hunt also confirmed in cross examination that he had the liquidation working files from July 2013 onwards and had not come across any correspondence or other documentation suggesting the pursuit of a sale to a third party. On the evidence as a whole, I reject Mr Michie's claim that the Property was sold to him after it had failed to sell to a third party.
109. Mr Michie relied heavily upon the sale price of £140,000 achieved for Number 58 Crown Road in February 2013. For reasons already explored, it is clear the sale price was an anomaly. For present purposes, however, what matters is what Mr Michie believed at the time he purchased the Property.
110. On the evidence which I have heard and read, I am satisfied that, at all material times, Mr Michie knew that the Property was worth significantly more than the price he paid for it. He had a long association with the area, he knew the purchase price originally paid for the Property, he had signed audited accounts for the Company for the year ending 31 March 2010 (in original and amended form) in 2011 and 2012 respectively, giving the value of the Property as £188,065, he had informed Mrs Sharma that the value of the Property was approximately £200,000 on the Company's entry into administration in July 2012 and he had signed a statement of affairs in September 2012 stating the value of the Property to be £180,000.
111. Against that backdrop, I do not accept Mr Michie's evidence that as at July 2014 he genuinely believed that the market value of the Property had dropped to £120,000, even allowing for the sale price achieved for Number 58 Crown Road and the state of repair of the Property. Mr Michie's approach to the expert's report (as summarised in paragraphs 95 and 96 above) suggests an awareness that the 'comparable' of Number

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58 would not stand up to close scrutiny. I was taken to nothing in the evidence to suggest that Mr Michie had learned of factors *since* July 2014 regarding the sale of Number 58 which had led him to reconsider its utility as a comparable. I consider it legitimate to conclude that there has been no material change in Mr Michie's state of knowledge regarding the sale of Number 58 since July 2014.

112. On the evidence which I have heard and read, I am satisfied that as at July 2014, Mr Michie did not believe that the price achieved for Number 58 in February 2013 was representative of the market value of the Property. Had he been keen to ensure that he purchased the Property at market value, I have no doubt that he would have done more than base his offer on that one exceptionally low sale price, which was in any event one year and five months out of date. He could have asked a local estate agent for example (as he did when later marketing the Property). It suited his purposes not to do so at the time of purchasing the Property.
113. It is clear from Mr Michie's actions that he knew that he was getting the Property at a significant undervalue. His deposit of 33% of the purchase price, paid to Mrs Sharma on 2 July 2014 without a legally binding contract in place, which he accepted 'continued to ensure that Mrs Sharma would not market the Property on the open market', speaks for itself; as does his payment of the balance of the purchase price in full, again, without a formal contract in place, approximately two months ahead of completion.
114. Mr Michie's claims to have relied upon Mrs Sharma's 'expertise' when he agreed to purchase the property at that price were not made out on the evidence and I reject them. On the evidence overall, it was clear that, if anything, Mr Michie was advising Mrs Sharma on the sale price achievable for the Property and not the other way round: see, by way of example, the exchange in cross-examination quoted at paragraph 85 above.
115. I further reject Mr Michie's claims in oral testimony that he considered the interests of the creditors as a whole and acted in what he believed to be their interests when purchasing the Property. The Company was clearly insolvent at the time of the purchase. It was plainly not in the interests of the creditors as a whole for Mr Michie to purchase the Property off-market at significantly below market value. Mr Michie is an intelligent experienced businessman. He cannot possibly have believed that a sale of the Property to him at that price without any proper marketing was in the interests of the creditors as a whole. He was the author of the statement of affairs prepared for the Company on its entry into administration. In oral testimony he accepted that he received and read Mrs Sharma's progress reports in administration and liquidation. He knew that the Company's WIP had been purchased for £30,000 by SBSL. At all material times he would therefore have known that the price achieved for the Property would have a material impact on the prospect of a distribution to unsecured creditors.
116. As rightly submitted by Mr Arumugam, Mr Michie saw an opportunity to pick up an asset 'on the cheap' and took advantage of that opportunity; an opportunity which he came to know about through his position as sole director of the Company. In the opening stages of the administration, prior to circulation of Administrators proposals, he made an offer to purchase the Property at what he variously described in oral testimony as the 'proper' price or 'market value', without committing himself to a specific price. At all material times, Mr Michie knew that his offer had led to the

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Property not being placed for sale on the open market. At all material times Mr Michie was also aware that any delay in realising the Property would increase the mortgage burden borne by the Company (as acknowledged at paragraph 18 of his witness statement) and yet despite chasing (and being informed by Mrs Sharma's email of 4 December 2013 that the mortgagee was pressing for their 'redemption amount') did not proceed with the purchase for over 18 months after reaching an agreement in principle with Mrs Sharma in December 2012. In or about July 2014, at a late stage in the liquidation and at a time when, in the light of mounting unpaid mortgage instalments, Mrs Sharma was under pressure to effect a sale, Mr Michie selected one anomalous historic comparable as a means by which to drive down the price at which he purchased to £120,000, with a view to benefitting himself, without any regard for the impact which his actions would have on the interests of the creditors as a whole.

117. In procuring and agreeing to an off-market sale of the Property to himself at what he knew to be a significant undervalue, at a time when he knew the Company to be insolvent, Mr Michie acted entirely out of self-interest and failed to have regard to the interests of the creditors as a whole. I so find.
118. In such circumstances, the objective test is applied: *Re HLC Environmental Projects Ltd* [2013] EWHC 2876 (Ch) at [91] – [93]. The court must ask itself whether an intelligent and honest man in the position of a director of the company could, in the circumstances, have reasonably believed that the transaction was for the benefit of the creditors as a whole. The answer is plainly 'no'.
119. Moreover even if, contrary to my finding, Mr Michie did pause to consider the interests of the creditors as a whole, on the evidence which I have heard and read I am satisfied that Mr Michie did not honestly believe that his act in purchasing the Property off-market for the sum of £120,000 was in the interests of the creditors as a whole.
120. For all of these reasons, I am satisfied that the first limb of the Applicants' case is made out. Mr Michie has acted in breach of his fiduciary duty under s.172(3) CA 2006 to consider and act in the interests of the creditors as a whole. In the words of Cardozo CJ in *Meinhard v Salmon* (1928) 164 NE 545, 546, Mr Michie allowed the level of his conduct to drop to 'that trodden by the crowd'.
121. I accept that Mrs Sharma chose to sell the Property to Mr Michie for £120,000. The fact that Mrs Sharma may also have been at fault, however, is no defence. The fiduciary duties owed by Mr Michie to the Company as its director were independent of the duties owed by Mrs Sharma as liquidator.
122. On behalf of Mr Michie, Ms Jones submitted that Mr Michie should be relieved from liability for his breach under s.1157 CA 2006 on the grounds that he acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused. I reject that submission. In my judgment his conduct in connection with the purchase of the Property was not reasonable and this is not a case where he ought fairly to be excused.

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123. It was common ground that absent relief under s.1157, an institutional constructive trust arises. It is conceded that allowance should be made for the purchase price of £120,000 paid by Mr Michie.
124. The next question is whether an allowance should also be made for the costs of £20,000 alleged to have been expended by Mr Michie on the Property following his purchase of the same.
125. I accept that Mr Michie has adduced little corroborative evidence of the works of repair, redecoration and improvement summarised in his Reply to the Applicants' Request for Further Information which he claims to have carried out at the Property following its purchase in 2014 and as to the costs of such works. I also note the queries raised by the expert, Mr Charters, with regard to the necessity of certain of the repairs claimed to have been effected, given that the Property was a new build property. When weighing up the evidence on this issue, however, I must also take into account the following factors:
- (1) The use to which the Property has been put following its purchase by Mr Michie. In this regard I accept Mr Michie's evidence that at no material time since purchasing the Property has he let out the same. He has therefore had less of an incentive to keep any receipts in respect of the works undertaken for tax purposes;
 - (2) The workers used by Mr Michie to carry out the works. Mr Michie's oral testimony (which in this regard I accept) was that a number of workers used were friends in the trade. It is likely therefore that there would have been a higher degree of informality than usual in relation to documenting the works undertaken;
 - (3) The time which elapsed between Mr Michie's purchase of the Property and the first indication by the Applicants of any challenge in respect of that purchase. Coupled with the considerations summarised in (1) and (2), this will undoubtedly have impacted on Mr Michie's ability to vouch for the repairs undertaken and the costs of the same;
 - (4) Mr Michie's unchallenged evidence that, until the Company's entry into administration, the Property was used as temporary accommodation for a transient selection of sub-contractors and other temporary workers who, unlike any tenants occupying the neighbouring tenanted property referred to by Mr Charters in his report, will not have been subject to ongoing maintenance obligations themselves and are unlikely to have treated the Property as a tenant would have treated it;
 - (5) Mr Michie's written and oral testimony on the works undertaken;
 - (6) The marketing material in evidence, prepared by property agents in respect of Mr Michie's recent attempts to sell the Property, which makes express reference to the Property having been recently refurbished and includes photographic evidence of its current state of repair and decoration.
126. Taking all such matters into account, on the evidence which I have heard and read, I am satisfied on a balance of probabilities that the works claimed in Mr Michie's Response to the Applicants' Request for Further Information to have been undertaken

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at Mr Michie's expense at the Property following his purchase of the same in 2014 were in fact carried out.

127. Whilst Mr Charters has not reported directly on the cost of such works, he does confirm in his report a differential of £20,000 in the value of the Property as at July 2014 on the basis that the works identified by Mr Michie in his Response to a Request for Further Information were carried out by him. This broadly equates with Mr Michie's own estimate of the costs incurred by him in respect of the works. On a balance of probabilities, I find that Mr Michie did expend £20,000 on works at the Property following his purchase of the same. In my judgment an allowance should be made in Mr Michie's favour in respect of this sum, in addition to the purchase price of £120,000 which he originally paid for the Property. I will hear further from Counsel on the handing down of judgment as to how these sums should be reflected in the final order made.

Head 2: Payments to CB Solutions UK Limited

128. The second claim in this application relates to three payments, of £5000, £6000 and £8000, made from the Company's Barclay's bank account (numbered 43804607) to CB Solutions UK Limited (formerly Safewood (UK) Limited) ('CB Solutions') on Tuesday 17 July 2012 and Thursday 19 July 2012, very shortly after the Company's entry into administration on Thursday 12 July 2012. CB Solutions had a long association with the Company as a provider of labour for projects.
129. As presented to me, the allegation against Mr Michie was that he had 'caused or allowed' these payments to CB Solutions in breach of his duties as a director of the Company under ss171, 172 and 174 of the Companies Act 2006 and was therefore guilty of misfeasance under Section 212 IA 1986.
130. There was initially some dispute between the parties as to the means by which the CB Solutions payments were effected. By paragraph 22 of his statement, Mr Michie maintained that the payments in question were made by direct debit or automatic payment/drawdown. On the evidence as a whole, however, I am satisfied that the three payments to CB Solutions were not effected by direct debit or automatic payment/drawdown but were instead effected manually, online, by someone with knowledge of the Company's online banking passcodes. Mr Michie ultimately accepted this in cross examination.
131. The overall thrust of Mr Michie's evidence was that at all material times prior to the Company's entry into administration, only he (as sole director) and his secretary (who generally dealt with on-line banking for him whilst he was a director of the Company), knew of the codes required for online access to the Company's bank accounts. By paragraph 22 of his witness statement he positively asserted (with emphasis added) that, after the date that he 'handed everything over' to Mrs Sharma, 'she was the *only* person who had access'. The clear implication was that no-one else had the codes. My conclusions on this issue are also supported by the following:
- (1) At no point during his written or oral testimony did Mr Michie volunteer (or even attempt to recall) the names of any individuals other than himself and his secretary who had online access to the Companies bank accounts, or state that he had taken steps to ensure that any such individuals were denied such access once the

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Company entered administration. Even if he was not directly asked for the names of any such individuals, they would obviously be relevant to his defence; and any director wanting to get to the bottom of what had happened would volunteer them: and

- (2) At no point during his written or oral testimony did Mr Michie state that, once the CB Solutions payments were raised with him in these proceedings, he had made enquiries of former members of staff or others associated with the Company at the material time, in an attempt to ascertain the circumstances in which those payments came to be made, or who made those payments. I consider it legitimate to conclude that he made no such enquiries.
132. Mr Michie denied making the CB Solutions payments himself (Michie (1) para 26). He maintained that when the Company was placed into administration, he ‘immediately handed over all the Company books, online banking codes and other information to Mrs Sharma’ and ‘from that date ... took no steps in relation to any company bank accounts or any other asset of the Company except as advised and directed by Mrs Sharma’ (Michie (1) para 6).
133. From the overall pattern of payments made from the Company’s bank accounts as shown in the bank statements in evidence, however, it was clear (and I so find) that someone other than Mrs Sharma (and her team) was continuing to monitor and use the Company’s bank accounts after it entered into administration.
134. The continued use of the Company’s bank accounts by someone other than Mrs Sharma (and her team) after the date of the Company’s entry into administration is in my judgment clearly evidenced by the cash machine withdrawals made from the Company’s Barclays bank account after that date. The payments recorded in the Company’s bank statements included, by way of example, (1) a cash machine withdrawal of £100 on 14 July 2012 in Pontefract, Yorkshire and (2) a further cash machine withdrawal of £200 on 16 July 2012 in Pontefract, Yorkshire. Mrs Sharma’s firm was based in Birmingham. Mr Michie lives in Pontefract, Yorkshire. On a balance of probabilities, it is highly unlikely that Mrs Sharma (or any member of her team) would travel to Pontefract to make these cash machine withdrawals. Mr Michie’s evidence was that he would attend at Mrs Sharma’s offices in Birmingham for any meetings required. There was no evidence before me that Mrs Sharma or anyone else from her team ever visited Mr Michie in Pontefract for meetings. I consider it legitimate to conclude that they did not. Whilst no allegation is raised in these proceedings against Mr Michie in respect of the Pontefract cash withdrawals, their location does in my judgment evidence continued use of the bank account by someone other than Mrs Sharma and her team.
135. I accept that Mr Michie was not questioned directly about the Pontefract cash withdrawals in cross examination. As indicated, they did not form the basis of any allegation raised in these proceedings. Moreover, the mere fact that evidence conflicting with that given by a witness is not directly put to the witness does not of itself prevent the judge from preferring the conflicting evidence if in the course of evaluating the evidence overall, the judge concludes that the witness must be incorrect. Whilst the judge’s findings must be fair to the witness having regard to the evidence which he has given, the judge still has to consider whether to accept that witness’s evidence in the context of other evidence in the case and decide how much

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weight to give it. In this regard I remind myself of the guidance given in *Re Mumtaz Properties Limited* [2011] EWCA Civ 610 per Arden LJ at [41].

136. Two further examples of cash machine withdrawals made from the Company's Barclays bank account on 18 July 2012 were explored in some detail in cross examination. The first withdrawal, of £200, was made from a cash machine in Brentwood, Essex, at 16.42. The second withdrawal, of £100, was made from a cash machine at a petrol station at 18.40 on Bow Road, East London. Mrs Sharma was based in Birmingham. Mr Michie's evidence was that, to the best of his knowledge, Mrs Sharma had never visited the Property in Billericay, Essex; his evidence was that, during the course of the administration and subsequent liquidation, he would instead check the Property himself, at Mrs Sharma's request, from time to time and drop the keys back to her office in Birmingham on his way back to Yorkshire. Again, whilst no allegation is raised in these proceedings against Mr Michie in respect of the 18th July cash withdrawals, their location does in my judgment evidence continued use of the bank account by someone other than Mrs Sharma and her team.
137. The questioning on the 18th July 2012 cash withdrawals ran as follows:
- 'Q. you say you had nothing to do with the banking. You say Mrs Sharma was the only person who had control of the bank account.
- A. After the day I signed it over, yes.
- Q. How do you explain the two entries on 18 July at page 311 which are two cash machine withdrawals, one to the Co-op, buying petrol, Bow Road. It sounds like a petrol station. The second one is a cash withdrawal for £200 at what looks like BP Brentwood. They are quite relatively close to each other. We can see one is at 4.32 and one is at 6.40. Was that you driving around using the debit card?
- A. No, not at all. I used my money after the 12th.
- Q. Well, you say it is either you or Mrs Sharma; is that right?
- A. Yes.
- Q. Are you suggesting Mrs Sharma, just to be clear, is going around --
- A. I am not suggesting anything.
- Q. What is your explanation --
- A. There is no explanation for that.
- Q. What you are saying is it is not you.
- A. Absolutely not me whatsoever.
- Q. But if it is not you, presumably it must be Mrs Sharma who has been running around taking cash out from the company's bank account.
- A. Or whoever else Mrs Sharma has given permission to.

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Q. Does that bother you as a director? Does it worry you as a director?

A. What Mrs Sharma does is -- I cannot comment on but I did not do that. I had nothing to do with the banking whatsoever after the 12th, nothing.

Q. I will put it to you that you made those withdrawals because you are the only person who had the debit card.

A. No, not at all. I gave her everything, debit card, the machine. She got everything. I do not know if that was a spare one that somebody had that they did not give to Mrs Sharma. Maybe one of my employees, I do not know but I had nothing to do with the bank'.

138. A notable feature of Mr Michie's responses to this and related lines of questioning in cross examination was that he displayed no concern that someone else might have been accessing the Company's bank accounts after its entry into administration without Mrs Sharma's authority. His responses focussed on an insistence that he, personally, had not effected the post-administration payments to CB Solutions and the various cash withdrawals. He showed no remorse or embarrassment, for example, at the thought that, as sole director of the Company, he may have failed to collect in from employees and others associated with the Company any 'spare' cards when the Company entered into administration.
139. Moreover, the overall pattern of payments made from the Company's bank accounts after its entry into administration simply cannot be explained on the basis of a random employee continuing, whether by accident or design, to use a spare cashpoint card. The CB Solutions payments, for example, which totalled £19,000, required on-line access to the Company's Barclays bank account - and a *monitoring* of the account, in order to determine when funds sufficient to make the payments were received into it.
140. The likelihood of Mrs Sharma (or any member of her team) having effected (or having directed or approved) the CB Solutions payments directly from the Company's bank account is extremely slim. Whilst, in the Top Brands case, Mrs Sharma was found to have acted negligently, it was not alleged or found that she had effected or authorised irregular payments to third parties directly from MML's bank accounts, and I was taken to no evidence to suggest that she adopted such unconventional banking practices during the course of any other appointment as office-holder; in the absence of any such evidence I consider it legitimate to conclude that she did not.
141. On the evidence before me, it was clear (and I so find) that, when making payments in her role as administrator (and latterly liquidator) of the Company, Mrs Sharma's practice, as one would expect of a licensed insolvency practitioner, was to effect these via her own firm's banking system and thereafter to record the payments in her receipts and payments accounts. Even those payments referred to in Mrs Sharma's reports to creditors as 'third party' payments, (which SBSL claimed had been paid into the Company's bank accounts in error), were dealt with by Mrs Sharma via her own firm's banking system, rather than by way of payments directly from the Company's bank accounts, and were then recorded in the receipts and payments accounts in the usual way. In contrast, there was no record of the CB Solutions payments in any of the receipts and payments accounts prepared by Mrs Sharma.

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142. Ms Jones suggested that payments from the Company's bank account in favour of a firm of solicitors used by Mrs Sharma known as Zakman Limited were evidence that Mrs Sharma was making payments for her own purposes directly from the Company's bank account. I reject that suggestion. The bank statements for the Company's bank account show a payment in favour of Zakman Limited on 11 July 2012. This payment was made *prior* to the Company's entry into administration, on Mr Michie's watch as sole director. It also bore the reference in the bank statement 'SBS Ltd' which, in context, given other references in the bank statements to 'SBS Group Ltd' (which clearly referred to the Company), appears to be a reference to the Second Respondent, SBSL. I note that the later payments from the Company's bank account to Zakman Ltd relied on by Ms Jones also bore the reference 'SBS Ltd'.
143. Moreover, Mrs Sharma had no incentive to make the payments to CB Solutions in issue in these proceedings. On the evidence it was clear (and I so find) that the Company had ceased trading on its entry into administration; any suggestion, therefore, that Mrs Sharma may have made the payments in order to prevent CB Solutions pulling its staff off-site, with a view to the Company's continued trading, is untenable.
144. I was taken to nothing in the evidence to suggest that Mr Michie's secretary would have any incentive (of her own initiative rather than as a purely administrative exercise under instruction) to make the online payments to CB Solutions either. In the absence of such evidence I consider it legitimate to conclude that she did not.
145. I turn next to Mr Michie. It was accepted by Mr Michie that CB Solutions 'had a long association with the Company as a provider of labour for projects' (Michie, para 21). In oral testimony Mr Michie recalled that CB Solutions provided approximately 20 workers at a time. Mr Michie had also by his statement acknowledged that 'maintaining the relationship with such a supplier by ensuring proper payment on time is necessary to ensure that work going forward can be contracted for and that existing contracts can be fulfilled.' When it was put to him in cross examination, however, that he had every incentive to pay CB Solutions, to maintain existing goodwill for the benefit of the new company, SBSL, however, he denied it, as follows:

'Q. CB Solutions were important for not just the Company but they were important to the Second Respondent as well, are they not?

A. No, I never used them since because the Second Respondent, System Building Services Ltd, have never done any cladding or any form of work that they sent labour for'.

....

'Q. If they were deliberate payments, it was you who either made them yourself or you authorised somebody in your office to make those payments.

A. Why would I make a payment to CB Solutions? I had categorically stated that I have not used them since, you know. I did not even know that they were the company when it were brought -- the allegation were brought against me. I had to think who -- who are CB Solutions'.

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146. I reject Mr Michie's evidence on the issue of incentive. One of the reasons that SBSL was incorporated on 1 June 2012, on the advice of Mrs Sharma, in the run-up to the Company's entry into administration on 12 July 2012, was in order to purchase the Company's WIP. Despite Mr Michie's claims to the contrary, it is in my judgment clear from paragraph 22 of Mr Michie's statement (and I so find) that the Company's WIP included work for which CB Solutions was providing labour at the time of the Company's entry into administration.
147. At paragraph 22 of his statement, when addressing the three CB Solutions payments in issue, Mr Michie asserted (inter alia) that if the payments were not made by direct debit, then they must have been made by Mrs Sharma. He went on to proffer a reason why she would have made such payments, stating, (with emphasis added): 'If I were to speculate, I would say that if she did make the payments, it would be because otherwise the contract/temporary staff employed via CB Solutions would simply have been pulled off site, *meaning that there would be little or no work in hand to sell on ...*' It is in my judgment implicit in the reference to 'little or no work', in context, that, at the time of the Company's entry into administration, CB Solutions was still providing the Company with a significant proportion of the contract and temporary staff required for completion of the Company's WIP, which (according to para 5.1.4 of the Administrator's Statement of Proposals), Mr Michie and SBSL had already expressed an interest in purchasing.
148. I am fortified in this conclusion by the payments made by the Company on the day before its entry into administration on 12 July 2012. Mr Michie confirmed in his evidence that, by April 2012, he was taking advice from Mrs Sharma and that her advice was that the Company was insolvent and could not continue trading. As at 10 July 2012, long after that point, the Company's Barclays bank account stood at -£257.80. Later that day on 10 July 2012, the sum of £25,514.29 was credited to the account. The next day, on 11 July 2012, two online payments, of £8500 each, totalling £17,000, were made to CB Solutions. These were the only payments made from the Company's Barclay's account on the day before its entry into administration, other than a payment of £1200 in favour of Zakman Ltd bearing the reference 'SBS Ltd'. The effect of these payments was to bring the balance in the Barclays bank account down to £2443.30. That is to say: the Company's Barclay's bank account was largely emptied on the day before administration, by manual online payments, in favour of CB Solutions. Whilst Mr Michie may not personally have effected these online payments (his evidence being that his secretary habitually dealt with online banking for him), the payments to CB Solutions totalling £17,000 on 11 July 2012 were clearly made on Mr Michie's watch, whilst he was sole director. In the absence of any evidence to suggest that he at any later stage queried or challenged these payments, I consider it legitimate to conclude that they were made with his authority. He cannot blame Mrs Sharma or her firm for these payments, as Mrs Sharma was not appointed administrator until the next day. The timing of these payments clearly suggests that CB Solutions remained of ongoing importance to Mr Michie and/or SBSL, for whom Mr Michie worked as sales and contracts manager at the time.
149. The pattern of online payments being made from the Company's Barclay's bank account to CB Solutions, very shortly after receipt into the account of sums sufficient to enable such payments to be made, continued following the Company's entry into administration, as follows:

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- (1) As at 16 July 2012, the Company's Barclays bank account balance stood at £3245.90. On 17 July, a credit of £12,647.60 was received into the account from 'Bbcl'. On the same day, two of the three online payments in issue in these proceedings (of £5000 and £6000) were made to CB Solutions. That is to say: the bulk of the credit of £12,647.60 just received was paid out in favour of CB Solutions.
- (2) As at 18 July 2012, the Company's Barclays bank account stood at £3423.47. On 19 July, a credit of £9954.48 was received into the account from 'Bbcl'. On the same day, the third of the three online payments in issue in these proceedings (of £8000) was made to CB Solutions, together with another online payment of £5000 to 'Zakman Ltd: Ref:-SBS Ltd'. The combined effect of these two payments (of £8000 and £5000) was to reduce the balance standing on the account to £207.95.
150. The timing of these payments suggests that someone was monitoring the account, waiting for given payments to come into the account, and then paying out the bulk to CB Solutions. For reasons previously explored, the thrust of Mr Michie's evidence was that only he and his secretary knew of the codes required for online access to the Company's bank accounts in the run-up to the Company's entry into administration.
151. The adjustments made by Mr Michie to the list of creditors attached to the Statement of Affairs which he signed on 5 September 2012 evidence knowledge on his part that the debt owed by the Company to CB Solutions had been paid down and settled. For the purposes of her Report on Administrators Proposals, dated 30 August 2012, Mrs Sharma had prepared a summary of the estimated financial position as at 12 July 2012, which included a typed list of creditors (report, para 4.1.1). Included in the typed list of creditors was CB Solutions, stated to be owed £92,038.25. At this point (30 August 2012), Mr Michie had not prepared a statement of affairs. Mrs Sharma confirmed in her Report that she was still waiting for it.
152. Shortly thereafter, on 5 September 2012, Mr Michie completed a statement of affairs for the Company as at 12 July 2012. Attached to the statement of affairs was the same typed list of creditors as that attached to the Report on Administrators Proposals dated 30 August 2012, with corrections made in manuscript by Mr Michie and initialled by him. In the corrected list of creditors attached to Mr Michie's statement of affairs, Mr Michie had corrected the figure for CB Solutions in manuscript from £92,038.25 to nil.
153. When addressing in his witness statement the changes which he had made in manuscript to the list of creditors attached to his statement of affairs, Mr Michie stated that, given the passage of time he had no recollection of the reasons for the changes, adding that 'it was Mrs Sharma who dealt with everything and advised me and it was on her advice that I would have made changes.' To the extent that Mr Michie was seeking to suggest by his written evidence that it was Mrs Sharma who advised him, specifically, to reduce the sum owing to CB Solutions to nil in his statement of affairs, I reject that evidence. Some 5 days prior to Mr Michie completing his statement of affairs, Mrs Sharma had signed off her Report on Administrators Proposals stating that, as at 12 July 2012, CB Solutions was a creditor in the sum of £92,038.25; whilst, in theory, it is possible that Mrs Sharma's information as to sums due to creditors had been updated in those 5 days from sources other than Mr Michie, this still would not explain why she would have advised Mr

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Michie to correct the sum due to CB Solutions, as at 12 July 2012, to nil. Had Mrs Sharma asked CB Solutions, for example, during the course of those 5 days between 30 August and 5 September 2012, to confirm the figure owing to it as at 12 July 2012, the response would have been a sum of at least £19,000; any other response would have raised questions as to why it was paid £19,000 after 12 July 2012, given that the Company did not trade after it had entered into administration. On any footing therefore, Mr Michie's statement of affairs, which was required to set out the position as at 12 July 2012, should have shown a sum of at least £19,000 owed to CB Solutions. It is highly unlikely that an office-holder would advise a director in such circumstances to reduce the sum to nil. In the absence of corroborative evidence, I reject any suggestion (if indeed such was intended by Mr Michie) that it was Mrs Sharma who advised him to reduce the sum owed to CB Solutions as at 12 July 2012 to nil.

154. At trial, when asked in cross-examination why he had corrected the figure owed to CB Solutions to nil, Mr Michie stated: 'I don't know much about CB Solutions. I would have been sure that they'd been paid.'
155. Whatever Mr Michie's powers of recall may have been by the time of trial, CB Solutions was clearly of significance to Mr Michie and/or SBSL in 2012, given the urgency with which two manual online payments, of £8500 each, had been made in its favour, on his watch as sole director, the day before the Company entered into administration, very shortly after funds sufficient to cover those payments were received into the Company's bank account: see paragraph 148 above.
156. I remind myself that the burden is on the Applicants to prove on a balance of probabilities that Mr Michie caused or allowed the three payments of £5000, £6000 and £8000 to CB Solutions on 17 July 2012 and 19 July 2012. I accept that this is a serious allegation which should not be found proven on faint evidence. I accept that Mrs Sharma's records of the administration are incomplete and that several years have elapsed since the events under consideration. I further accept that there is no direct evidence before me that any computer linked with Mr Michie was used for the online transactions in issue.
157. That said, on Mr Michie's own evidence, at all material times prior to the Company's entry into administration, the only individuals with knowledge of the codes required for on-line access to the Company's bank accounts were Mr Michie and his secretary. He maintained that following the Company's entry into administration, the 'only' person who had access to the Company's bank accounts was Mrs Sharma. The evidence filed and given orally in his defence rested on the premise that responsibility for the payments must lay with either Mr Michie (and/or his secretary), or Mrs Sharma (and/or her team). No random 'hacker' would choose to use access to make payments in favour of one of the Company's creditors, so I discount that as even a remote possibility.
158. On the evidence which I have heard and read, for the reasons previously explored, I am satisfied that Mrs Sharma did not make or authorise the CB Solutions payments. I am further satisfied that no one else in Mrs Sharma's team made or authorised the payments. The fact that there was no evidence of any later investigations by Mrs Sharma relating to the CB Solutions payments does not lead inexorably to the conclusion that she knew of and made or authorised the same. It is equally consistent

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with Mrs Sharma taking inadequate steps to ascertain the Company's state of affairs and failing to obtain important missing information; failings of a similar nature to those found proven against her in the Top Brands case. In this regard I note that there was no mention of the CB Solutions payments in any of Mrs Sharma's reports to creditors and the payments are not reflected in her receipts and payments accounts. On the evidence overall, the most plausible (and in my judgment correct) explanation for the CB Solutions payments is that someone other than Mrs Sharma and her team, with knowledge of the Company's online banking codes and with an incentive to preserve goodwill with CB Solutions, made the payments.

159. As previously confirmed, I was taken to nothing in the evidence to suggest that Mr Michie's secretary would have any incentive (of her own initiative rather than as a purely administrative exercise under instruction) to make the online payments to CB Solutions and in the absence of such evidence I consider it legitimate to conclude that she did not.
160. In contrast, for the reasons previously given, I am satisfied that Mr Michie and SBSL did have an incentive to preserve goodwill with CB Solutions, as CB Solutions was providing labour required for the Company's WIP, which SBSL was interested in purchasing.
161. I am fortified in that conclusion by the timing of the two payments of £8500 each, which were made to CB Solutions on 11 July 2012, on the eve of the Company's entry into administration, from credits just received into the Company's Barclay's bank account, on Mr Michie's watch as sole director.
162. Taking all such matters into account, on the evidence which I have heard and read, I am satisfied on a balance of probabilities that, following the Company's entry into administration, Mr Michie either caused or knowingly allowed the CB Solutions payments made on 17 and 19 July 2012, on each occasion from credits just received into the Company's Barclay's bank account. Whether he effected the payments himself, or passed on the access codes to another individual who did it for him, is largely irrelevant. Either way, on the evidence before me I am satisfied that he was complicit in the payments being made. I so find.
163. In causing or knowingly allowing the CB Solutions payments to be made after the Company was placed in administration, Mr Michie (1) failed to give proper consideration to the interests of the creditors as a whole, in particular their entitlement to share rateably in the Company's assets on a pari passu basis, contrary to s.172 CA 2006; (2) failed to exercise reasonable care, skill and diligence, contrary to s.174 CA 2006: and accordingly (3) was guilty of misfeasance under s.212 IA 1986.
164. The fact that Mrs Sharma may also have been at fault is no defence. The duties owed by Mr Michie to the Company were independent of those owed by Mrs Sharma.
165. On behalf of Mr Michie Ms Jones submitted that Mr Michie should be relieved from liability for his breach under s.1157 CA 2006 on the grounds that he acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused. I reject that submission. In my judgment, Mr Michie's conduct in connection with the CB Solutions payments made after the Company's entry into

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administration was not reasonable and this is not a case where he ought fairly to be excused.

166. In the light of my findings and conclusions, I propose to order Mr Michie to contribute the sum of £19,000 together with interest to the Company's assets by way of compensation.

Head 3: Payments by the Company to SBSL of (1) £169,537.06 or (2) £64,135.51

167. The third claim is against the Second Respondent, SBSL. It relates to five payments made on 8 August 2012, 16 August 2012, 4 September 2012, 7 September 2012 and 28 June 2013 by the Company acting by Mrs Sharma to the Second Respondent, SBSL, whilst the Company was in administration.

168. The background to the third claim is as follows. Once the Company had entered into administration, Mrs Sharma collected in various sums owed to the Company. During the course of that process, the following sums were received into the Company's bank accounts:

£73,196.60 from the Tate Gallery on 27 July 2012;

£24,000 from ISG South Limited on 27 July 2012; and

£22,505.71 from SCUKL on 8 August 2012.

169. The following sums were then transferred from the Company's bank accounts to Mrs Sharma's client account as follows:

£73,404.55 from the Company's Barclay bank account on 3 August 2012;

£24,000 from the Company's HSBC bank account on 15 August 2012; and

£22,505.71 from the Company's HSBC bank account on 16 August 2012.

170. The five payments made by Mrs Sharma to the Second Respondent, SBSL, were as follows:

8 August 2012: £17,644.80

16 August 2012: £46,490.71

4 September 2012: £25,500

7 September 2012: £25,583.09

28 June 2013: £54,318.46

171. The dates and amounts of the payments to the Second Respondent were admitted.

172. The Applicants' primary case is that SBSL provided no consideration for any of these five sums, which total £169,537.06. They seek repayment of the same on the basis that there has been a total failure of consideration and that SBSL was unjustly enriched (PoC, para 25).

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173. The Applicants' alternative case (as pleaded at para 28 PoC) ('the secondary case') was that, on or about 9 August 2012, the debts and work in progress of the Company were sold to SBSL for the sum of £30,000 plus VAT, pursuant to a document entitled 'Agreement relating to the sale of the business and assets of System Building Services Group Limited (in Administration)', the parties to which were the Company, Mrs Sharma, SBSL and Mr Michie. The Applicants further alleged (at para 28 PoC) that it was inter alia, a term of the agreement that (1) SBSL would pay consideration of £30,000 plus VAT and that (2) all 'cash at bank' or 'cash in hand' was expressly excluded. At paragraph 23 of the Defence, paragraph 28 of the Particulars of Claim is admitted.
174. The Applicants go on to allege (by their secondary case) that in context the first two payments made to SBSL, of £17,644.80 and £46,490.71, represented 'cash at bank' or 'in hand'; that is to say, sums 'excluded' under the terms of the agreement, which should be repaid. The Applicants further maintained that SBSL did not pay the stated sale consideration of £30,000 plus VAT and so, on their secondary case, also seek payment of that sum.
175. By Paragraph 24 of their Defence, the Respondents denied that the two payments of £17,644.80 and £46,490.71 were excluded under the terms of the agreement and averred that the sums were 'advance payments for works to be carried out by SBSL'. By Paragraph 26 of the Defence it was further averred that the sale consideration of £30,000 plus VAT was paid.

Primary case: £169,537.06

176. I can deal very briefly with the Applicants' primary case. On the evidence which I have heard and read, I am satisfied that on or after 9 August 2012, SBSL purchased the debts and work in progress of the Company for the sum of £30,000 plus VAT, pursuant to a written agreement in the same or substantially the same terms as those set out in the final draft agreement exhibited to Mr Hunt's Third Witness statement and summarised in Paragraph 28 of the Particulars of Claim ('the WIP agreement'). I am further satisfied that the consideration payable under the terms of the WIP agreement (£30,000 plus VAT) was duly paid by or on behalf of SBSL. I so find. It follows that the Applicants' primary case on this head of claim (for recovery of the full £169,537.06) is not made out.
177. Before moving on to deal with Applicants' secondary case, I should briefly address two issues raised by the Respondents at trial regarding the timing and terms of the WIP agreement. Neither had been put in issue by the Respondents' pleaded defence; quite the contrary, by paragraph 23 of their defence, the Respondents had admitted both. Nonetheless, as the points were raised before me, I should deal with them.

Timing

178. In relation to timing, the Respondents maintained that the WIP agreement was entered into by 7 August 2012 and not on or after 9 August 2012. In support of this contention I was referred to certain of Mrs Sharma's reports to creditors, in which reference had been made to the WIP agreement having been reached on 7 August 2012.

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179. The suggestion that the WIP agreement was entered into on or by 7 August 2012, however, did not accord with contemporaneous documentation in evidence, charting the timeline of the drafting of the agreement. The references in Mrs Sharma's reports to the WIP agreement having been entered into on 7 August 2012 were clearly an error; I so find. I deal with the contemporaneous documentation below.
180. By his third witness statement, Mr Hunt confirmed that whilst he had not been able to locate the signed and dated version of the WIP agreement, he had been able to obtain an unsigned, undated final draft version from HCB Solicitors, the solicitors who acted for the Administrator on the transaction. HCB Solicitors had also provided Mr Hunt with an email dated 8 August 2012, a time sheet dated 9 August 2012 and a handwritten note from their file relating to the transaction.
181. The email dated 8 August 2012 was from Ms Teresa Lee of Sharma and Co to Mr Rory Barrett of HCB Solicitors. By this email, Ms Lee asked Mr Barrett to 'prepare the necessary sale agreement' for the Company, stating the purchaser as SBSL, the guarantor as Mr Michie, the asset being sold as 'WIP/Debtors as per the attached schedule' and the sale price as £30,000 plus VAT. Given the contents of this email, it is clear (and I so find) that no agreement had been entered into by 8 August 2012.
182. The time sheet of Mr Barrett dated 9 August 2012 recorded a telephone call that day, in which the terms of the WIP agreement were still being clarified and revised. Again, it is clear from the time sheet (and I so find) that no agreement had been entered into by the time of the telephone call on 9 August 2012.
183. Mr Michie claimed in his written evidence that an agreement had been reached by 7 August 2012. He recalled that the consideration payable under the WIP agreement was delivered by hand in cash to Mrs Sharma's offices ahead of the WIP agreement being signed. From the bank statements in evidence, however, it is clear that the cash consideration was not banked until some time after 9 August 2012. It is also clear from the email dated 8 August 2012 from Ms Lee to Mr Barrett (taken with the final draft agreement in evidence) that Mrs Sharma envisaged a professionally drawn written agreement containing surety warnings in conventional terms; it is highly unlikely that she would go to the efforts of instructing solicitors to draw up such a document if she had already entered a contractually binding arrangement. In the event, during the course of cross-examination, Mr Michie conceded that he could not recall the date upon which an agreement had been reached. I also note that, by his own evidence, Mr Michie was not a director or acting as a director of SBSL at the time that it purchased the Company's WIP; the arrangements regarding the purchase were largely agreed between Mr Metcalfe, the de jure director of SBSL at the time, and the Administrator, not Mr Michie; Mr Michie's only role was as surety. Mr Metcalfe was not called as a witness.
184. On the evidence as a whole, and having regard in particular to the contemporaneous documentation in evidence, I am satisfied that no contractually binding agreement to purchase the debts and work in progress of the Company was entered into by SBSL until after the telephone call on 9 August 2012 evidenced by Mr Barrett's time sheet of that date.

Approved Judgment**Terms**

185. In oral testimony Mr Michie at times sought to suggest that the actual written agreement entered into between the Company and SBSL was in terms different to those set out in the final draft exhibited to Mr Hunt's third witness statement. In particular, he claimed that the final version was a 'letter-headed' document and did not include him as surety. He said that he had kept it in the office for years but had 'lost it'.
186. I reject his evidence on this point. This was not his pleaded case, which was prepared by Counsel on instruction. The email of 8 August made clear that Mr Michie was to stand as surety. The final draft agreement in evidence was a professionally drawn, detailed document, replete with surety wording and schedules. It is simply not plausible to suggest that, having gone to the efforts and expense of instructing solicitors to prepare a professionally drawn document such as this, the Administrator would then ultimately complete the deal on the basis of a letter.
187. I also remind myself that Mr Michie was not a director of SBSL at the time of its purchase of the Company's WIP by SBSL and that arrangements regarding that purchase were largely agreed by Mr Metcalfe, Mr Michie's role being simply that of surety: see paragraph 183 above.
188. For all of these reasons, notwithstanding Mr Michie's belated attempts to suggest the contrary, on the evidence which I have heard and read, I am satisfied that the sale agreement entered into by the Company, SBSL and Mr Michie (as surety) was in the same or substantially the same terms as the final draft agreement exhibited to Mr Hunt's Third Witness Statement, as summarised at Paragraph 28 of the Particulars of Claim.
189. I turn now to the Applicants' secondary case.

Secondary case: £64,135.51

190. The Applicants' secondary case is summarised at paragraphs 173 to 174 above. In the light of my earlier findings, the issue of whether the consideration of £30,000 was paid falls away.
191. By their secondary case, the Applicants allege that the first two payments made to SBSL, of £17,644.80 and £46,490.71, represented 'cash at bank' or 'in hand'; that is to say, sums 'excluded' under the terms of the WIP agreement, which should be repaid. The Respondents deny that the two payments of £17,644.80 and £46,490.71 were excluded under the terms of the agreement and aver that these sums were 'advance payments for works to be carried out by SBSL' (paragraph 24 of the Defence), which had been paid by mistake into the Company's bank account.
192. As a matter of timing, the two payments of £17,644.80 and £46,490.71 plainly represented part of the sums paid (in differing amounts) into the Company's bank account prior to 9 August 2012 (the earliest date of the agreement): see paragraphs 168-170 above. This was readily apparent from a review of the Company's bank statements and the corresponding bank statements relating to Mrs Sharma's office accounts. The bank statements in evidence strongly supported the Applicants' claim

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that the payments of £17,644.80 and £46,490.71 represented ‘cash at bank’ excluded from the WIP sale under the terms of the agreement.

193. The Respondents nonetheless maintained that these sums did not qualify as ‘cash at bank’ for such purposes.
194. By his written evidence, Mr Michie (at para 31) stated that SBSL had commenced trading on 1 June 2012 and that, ‘before the agreement with the Company’, it had ‘entered into new contracts with new clients and with existing clients.’ At paragraph 32 he went on to state that ‘existing clients occasionally accidentally paid sums to the Company in respect both of debts purchased and of [sic], rather than making payments to R2. The sums of £17,644.80 and £46,490.71 and [sic] were new contracts that began and the payment was made to [the Company] by mistake.’
195. This explanation for the payments of £17,644.80 and £46,490.71 did not stand up to cross examination, however, and I reject it. In cross examination, Mr Michie confirmed that when SBSL started trading on 1 June 2012 (ie prior its purchase of the Company’s WIP on or after 9 August 2012), it did not take on any work from existing clients of the Company initially; it took on work from existing clients of Paul Metcalfe’s ‘old company’. Mr Michie did not give the name of Mr Metcalfe’s ‘old company’ in evidence. I was taken to no documentary evidence (such as a company search) to support the suggestion that Mr Metcalfe’s old company had a similar sounding name to the Company and in the absence of any corroborative documentary evidence on this issue, notwithstanding Mr Michie’s occasional hints to the contrary in oral testimony, I consider it legitimate to conclude that it did not.
196. There was, therefore, no obvious reason why the ‘existing clients’ (of Mr Metcalfe’s ‘old company’) referred to at paragraphs 31 and 32 of Mr Michie’s witness statement would pay the Company by mistake; they would be invoiced by SBSL (presumably with payments details on the invoice) and, if they were going to make any mistake at all in payment, one would expect them to have paid Paul Metcalfe’s old company (which would be on their payment system) rather than the Company, which would not be on their payment system, as they were not, as Mr Michie confirmed in oral testimony, ‘existing clients’ of the Company. In short, the explanation given did not add up.
197. Mr Michie laid great store by the fact that Mrs Sharma had satisfied herself that the payments of £17,644.80 and £46,490.71 were sums properly due to SBSL. At paragraph 33 of his witness statement he stated ‘I recall clearly that all payments were made to R2 only upon the provision of invoices showing that the work was done by R2 after the administration was entered into and, with respect to work invoiced by R2 but paid into the wrong bank accounts, that proper invoices had been rendered and that the payments were made by mistake.’
198. Mrs Sharma plainly made material errors in calculating the sums properly payable to SBSL however. Quite how those errors came about was not the subject of any specific allegation in these proceedings. Nonetheless, it is clear that errors were made. One such error relates to a sum of £73,196.60 paid into the Company’s bank account by the Tate Gallery on 27 July 2012 and transferred to Sharma & Co’s account on 3 August 2012 (‘the Tate Gallery payment’). In cross examination, it was admitted by Mr Michie that the Tate Gallery payment related to work which had been completed

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by the Company prior to its entry into administration; it was not undertaken by SBSL and, as it represented 'cash at bank' received by the Company prior to 9 August 2012, SBSL had no legitimate claim to any part of it. Yet in the receipts and payments account attached to Mrs Sharma's first progress report in administration for the period 12 July 2013 to 11 January 2013, the Tate Gallery payment is treated as part of a total of £127,708.81 described as 'third party funds', said (at para 1.4 of the Report) to have been 'incorrectly credited to the Company account' and since 'returned.' This was plainly an error. The fact that such a material error was made impacts upon the weight which can properly be given to the conclusions reached by Mrs Sharma in relation to the payments of £17,644.80 and £46,490.71 under consideration.

199. I accept that not all of Mrs Sharma's records of the administration remain available. Nonetheless, for reasons already given, it is clear from the bank statements in evidence that the two sums of £17,644.80 and £46,490.71 represent part of sums paid into the Company's bank account prior to 9 August 2012 (the earliest date of the agreement). The evidence therefore strongly supports the Applicants' case that the sums of £17,644.80 and £46,490 form part of the 'cash in hand' excluded from the WIP agreement. If SBSL was truly entitled to the sums of £17,644.80 and £46,490.71, it should be a simple enough exercise for it to produce, from its own books and records, all or any of the following:
- (1) The contracts under which entitlement to the sums in question arose;
 - (2) The invoices under which entitlement to the sums arose;
 - (3) Evidence of communications with the clients alleged to have made payment into the wrong bank account, either chasing payment or addressing the allegedly erroneous payments made into the wrong bank accounts;
 - (4) Evidence of communications with Mrs Sharma regarding the above.
200. No such paperwork was produced by SBSL, however. When challenged in cross examination to explain why, Mr Michie first stated that he had given all the relevant documents to Mrs Sharma. This was simply not plausible; any company would need to keep its own records of sale, even if it had to provide copies of relevant contracts and/or invoices to others. Mr Michie then reneged from that position, stating that he did have records of the relevant invoices. I do not accept his evidence on this issue. If SBSL had records supporting its entitlement to the said sums of £17,644.80 and £46,490.71, those records would have been produced. I consider it legitimate to conclude that SBSL does not have the records to demonstrate its entitlement to the said sums of £17,644.80 and £46,490.71, and that the reason why it does not is that it was not entitled to payment of those sums, which represented cash at bank excluded from the terms of the WIP sale agreement.
201. I am fortified in this conclusion by the lack of any explanation why the sums of £17,644.80 and £46,490.71 paid by Mrs Sharma to SBSL were in amounts differing from the sums alleged to have been mistakenly paid into the Company's bank accounts in the first place.
202. On the evidence which I have heard and read, I am satisfied that the payments of £17,644.80 and £46,490.71, made to SBSL on 8 and 16 August 2012 respectively,

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represented the Company's 'cash at bank' and were excluded from the WIP agreement. There was therefore no basis for these payments being made to SBSL and they were plainly paid in error. I find that no consideration was provided by SBSL for these sums and that SBSL was unjustly enriched by the same. I shall order SBSL to restore them to the Company with interest.

Head 4: Mr Michie's loan account

203. The fourth claim is against Mr Michie. It relates to payments made by the Company to Mr Michie over the period 22 July 2010 to 10 July 2012, prior to the Company's entry into administration, which the Applicants maintain remain unaccounted for. The Applicants sought declaratory relief as to the sum due and an order for repayment of the same: (PoC paras 34-40, prayer for relief paras 11-13). No limitation defence was pleaded.
204. For the purposes of this head of claim, Mr Hunt analysed the bank statements for both bank accounts operated by the Company and prepared a list of all transactions relating to Mr Michie in the period from 31 March 2010 (the final day included in the last available audited accounts for the Company) until the start of administration on 12 July 2012. The first relevant transaction within that period occurred on 22 July 2010. According to Mr Hunt's list, a total of £305,129.66 was paid by the Company over the relevant period. From that total, Mr Hunt then deducted any items identified in the bank statements as 'dividend' or 'salary' and any reversals on the bank accounts recorded in the bank statements. This left a balance of £215,919.59 unaccounted for. Crediting the sum of £11,990 (which appeared in the Company's last audited accounts, for the year ended 31 March 2010, as owing to Mr Michie), against this figure, Mr Hunt arrived at a balance of £203,929.59 which he maintained was unaccounted for and not explained in the Company's books and records (PoC, paras 34-37; Hunt (3) paras 34-39). At paragraph 38 of Hunt(3), Mr Hunt stated as follows: 'Given that [the sum of £203,929.59] does not include payments marked 'dividend' or payments marked 'wages', I am left with the conclusion that this sum either represents an outstanding director's loan account owed by [Mr Michie] to the Company, or an informal unsecured borrowing by [Mr Michie] from the Company – there is certainly nothing in the Company's books and records that have been passed to me to indicate otherwise – which loan falls to be repaid on demand.'
205. By his Defence, Mr Michie admitted the sums paid to him by the Company over the period 31 March 2010 to 12 July 2012 but denied that the sum of £203,929.59 was not accounted for or explained in the Company's books and records. At paragraph 28 of his Defence, it was pleaded that 'The sums paid to Mr Michie were on account of outstanding wages/salary and in respect of dividends outstanding from previous years and to which he was entitled.'
206. By paragraph 37 of his witness statement dated 21 December 2018, Mr Michie asserted that 'the payments made to me and set out in Paragraph 36 of the Liquidator's evidence', [in context, the sums totalling £305,129.66], 'were properly paid to me as dividends declared and due'. Pausing there, this is clearly inaccurate; even on Mr Michie's own case, some of the sums paid were by way of salary rather than by way of dividends. He continued: 'I have at all times relied on the advice of my accountants and have provided all documentation to them to assist them to prepare my own tax returns as well as the accounts for the Company. In voting dividends I

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only ever did so on their advice that it was appropriate. I did not always draw my dividends out immediately, but to the best of my knowledge, I only drew out what I was entitled to.'

207. At paragraph 38 of his statement he went on to exhibit board minutes in respect of the years ending 31 March 2011 and 9 May 2012, and tax vouchers from the Company for dividend payments spanning 22 July 2010 to 18 January 2012, totalling £133,925 net and £148,805.17 gross. Of that total, the sums totalling £127,425 had already been identified as 'dividends' and allowed for in Mr Hunt's calculations. There was also an item of 'double-counting' on Mr Michie's part (£6000). Even allowing for the dividend certificates produced by Mr Michie, therefore, and proceeding on the assumed basis that such dividends were lawfully declared (their legality not having been put in issue by the pleadings), on Mr Hunt's calculations, there remained a substantial balance in issue.
208. At paragraph 39 of his statement Mr Michie continued: 'I believe that there may be other vouchers but after all this time, some of my papers are no longer available.'
209. Mr Michie produced his P60 for the year ending 5 April 2010, which showed a gross salary from the Company of £127,358 and tax of £47,507.60 deducted.
210. Mr Michie produced no P60s for the years ending 5 April 2011 and 2012, but did produce his tax returns for those years. These showed (inter alia) a gross salary of £74,200 from his employment from the Company and tax of £29,680 deducted for the year ended 5 April 2011, and a gross salary of £22,916 from his employment by the Company and tax of £11,549 deducted for the year ending 5 April 2012.
211. At paragraph 41 of his statement, Mr Michie stated that 'I did not borrow any money from the Company and I did not pay myself anything which was not either part of my salary or dividends properly voted and payable.'
212. Notwithstanding the pleaded defence (which did not put the point in issue), there was some debate at trial as to the total sum received by Mr Michie from the Company over the period 22 July 2010 to 10 July 2012. At my invitation, Counsel for the parties agreed the total 'net cash received' figure after trial at £291,789.66. Counsel for the parties further agreed that, from the figure of £291,789.66, there should be deducted (1) £127,425 in respect of dividend payments listed by Mr Michie at paragraph 38 of his witness statement and (2) £11,990 in respect of certain payments identified in the Company's bank statements. The sums so agreed were set out in a schedule, adapted from that exhibited to Mr Hunt's third witness statement. The Applicants maintained that notwithstanding the sums agreed, there remained a balance of £137,674.59 unaccounted for.
213. The Applicants' case was that the sum of £137,674.59 represented either an outstanding director's loan account owed by Mr Michie to the Company, or an informal unsecured borrowing by Mr Michie from the Company.

Legal Principles

214. Mr Arumugam submitted that the burden was on Mr Michie to justify the payments to him totalling £137,674.59 which on the Applicants' case had not been accounted for.

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In support of that contention he referred me to GHLM Trading Limited v Maroo and others [2012 EWHC 61 at [143] to [149].

215. I accept that submission. As confirmed by Newey J in Maroo at [143] to [149], where a person in a fiduciary position receives property of his principal, the burden is on him to account: Gillman & Soame Ltd v Young [2007] EWHC 1245 at [82]. This principle applies to company directors as it does to trustees: Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd [2011] EWCA Civ 347 per Lord Neuberger MR (Richards and Hughes LJJ concurring) at [34]. It follows that once it is shown that a company director has received company money, it is for him to show that the payment was proper: Maroo per Newey J at [149].
216. On the approach to be adopted to the written evidence, Mr Arumugam referred me to Mumtaz Properties Ltd v Ahmed [2011] EWCA Civ 610; in particular, per Arden LJ at paragraphs 16 and 17:

‘[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.

[17] Put another way, it was not open to the respondents to the proceedings in the circumstances of this case to escape liability by asserting that, if the books and papers or 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, as in this case, 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.’

217. On behalf of Mr Michie, Ms Jones submitted that the passage of time and change of officeholder in the somewhat unusual circumstances of this case had left Mr Michie seriously disadvantaged in meeting this allegation, and that this was not a case in which the approach espoused in Mumtaz should be adopted. The payments in issue spanned 2010 to 2012, Mr Michie was interviewed by Mr Hunt’s staff in 2017, the letters of claim were dated 11 May 2018 and the application was issued on 5 June 2018. The Applicants did not allege by their pleaded case that Mr Michie had failed to deliver up all books and records to Mrs Sharma in 2012, and Mr Michie’s unchallenged evidence was that he had properly delivered up to Mrs Sharma all such books and records at the time of the Company’s entry into administration. Mr Hunt accepted by his fourth witness statement that Mrs Sharma had not delivered up to him all of the books and records of the Company or a complete set of her own working files for the period of the administration: see paragraphs 15 and 16 above. Whilst, as explained by Mr Hunt in oral testimony, where a company moves from administration

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to liquidation with the same officeholder in place, often files will be blended; that is to say, relevant paperwork obtained during the course of administration will, to an extent, be 'carried over' into the liquidation files for the same company, he readily accepted that he did not have a complete set of books and records for the Company.

218. I can see that these factors do put a different complexion on this case when compared with the circumstances under consideration by the Court in Mumtaz, where responsibility for any deficiencies in the company books and records available was viewed by the court as that of the defendant directors. On the Applicants' pleaded case and on the evidence before me, any loss of papers forming part of the books and records of the Company cannot be laid at Mr Michie's door.
219. Taking such factors into consideration, whilst I accept that the burden remains upon Mr Michie to account for the payments of £137,674.59 in issue, in my judgment the Court should be slow in this case to draw adverse inferences from the absence of Company books and records which might otherwise explain or justify any of the payments in question.
220. This, however, only takes Mr Michie so far. Whilst, in the circumstances of this case, the Court should be slow to draw adverse inferences from the absence of Company books and records which might otherwise explain or justify the said payments, any failure on the part of Mr Michie to produce documents forming part of his own personal accounting records (particularly as on his own evidence, he regularly uses the assistance of accountants in preparing his personal tax returns), falls for separate consideration. In my judgment it remains open to the Court to draw adverse inferences from the absence of documents explaining given payments where such documents form (or should form) part of Mr Michie's own personal accounting records and no adequate explanation is given for the failure to produce the same.
221. With these principles in mind, I shall now address in detail the agreed schedule of payments by the Company to Mr Michie over the relevant period, helpfully provided by Counsel following the trial. Having considered the payments set out in that schedule in the light of the oral and written evidence which I have heard and read, I have reached the following conclusions.
222. First, the P60 issued by the Company in respect of Mr Michie for the tax year ended 5 April 2010 lends support to Mr Michie's evidence that he was duly authorised by the Company to draw a salary in that tax year. Given the circumstances of this case, Mr Michie should not be prejudiced by the lack of board minutes or related company documentation in this regard. According to the P60 in evidence, Mr Michie's gross salary from the Company for the year ended 5 April 2010 was £127,358.35, with tax deducted of £47,507.60. In approximate terms, this is equivalent to a net salary of £6654 per month. On the evidence before me, on a balance of probabilities I am satisfied that Mr Michie was duly authorised by the Company to draw a salary of £127,358.35 (less tax deducted of £47,507.60) in the year ended 5 April 2010.
223. Whilst the schedule of cash payments forming the focus of this head of claim does not include the year ended 5 April 2010, in my judgment Mr Michie's authorised salary from the Company for that year does form part of the relevant background when considering the sums in issue.

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224. Mr Michie did not adduce in evidence his P60s for the years ending 5 April 2011 and 5 April 2012. He explained that he had thought he had provided two P60s, but he was mistaken on that. In oral testimony he stated that he had asked his accountant for the necessary paperwork, saying

‘Are the tax returns not of some use? Because I showed this to my accountant and he gave me the relevant documents to show that tax had been paid and all that were drawings’.

225. Whilst Mr Michie should have produced his P60s for these two years, I accept his explanation for having failed to do so. It was an error. Mr Michie did produce his professionally drawn tax returns for the years ending 5 April 2011 and 5 April 2012 and both show tax deducted by the Company. I consider it legitimate to conclude that the accountant drew the information regarding tax deducted from P60s for those years provided to him by Mr Michie or on his behalf.

Year ended 5 April 2011

226. The tax return for the year ended 5 April 2011 stated Mr Michie’s gross income from employment by the Company as £74,200, with tax deducted of £29,680. In approximate terms, this amounts to a net salary of £44,520 per annum or £3710 per month. His tax return for the year ended 5 April 2011 also declared income from employment by another company for which he worked as a director, Systems Building Services Limited (later named Garish Services Limited). This was stated as £8750 gross, with tax deducted of £3500. Income from dividends for the year was also declared as £66,575.
227. The Applicants maintain that the fact that Mr Michie declared his income from the Company in his annual tax returns was not evidence that he was authorised by the Company to draw a salary; it simply showed that he paid tax on the income. The declaration of the income for tax purposes, however, does in my judgment display a degree of transparency by Mr Michie regarding his earnings from the Company. That and the regular professional involvement of his accountants in the preparation of his annual returns (who included employers’ PAYE tax reference numbers and details of tax deducted by each of his employer each tax year) cannot simply be ignored. Moreover for reasons already indicated, I am satisfied that Mr Michie was authorised by the Company to draw a salary in the year ended 5 April 2010; on the evidence which I have heard and read, I consider it legitimate to conclude that Mr Michie was also duly authorised by the Company to draw a salary of £74,200 (with tax deducted of £29,680) for the year ended 5 April 2011. I so find. For reasons already explored, the lack of any company documentation to confirm such authorisation should not be held against Mr Michie in this case.
228. The items in the agreed schedule described as ‘salary’ over the period 22 July 2010 to 5 April 2011 do not, of themselves, total £44,520 (gross salary of £74,200 with tax deducted of £29,680). The items marked ‘salary’ in the schedule over that period total £8118.69. The balance of £36,401.31 (£44,520 net salary as declared in the tax return less items marked ‘salary’ totalling £8118.69 in the Company’s bank statements) cannot be explained by payments in the tax year ended 5 April 2011 occurring prior to 22 July 2010 in that tax year, as Mr Hunt has confirmed that the first transaction in the relevant tax year took place on 22 July 2010. This is consistent with Mr Michie’s

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evidence that he did not always withdraw from the Company sums to which he was entitled on those sums falling due for payment.

229. Within the agreed schedule of net cash receipts, I am satisfied that credit should be given in favour of Mr Michie in respect of the balance of his declared salary (ie £36,401.31) for the year ended 5 April 2011. In my judgment, Mr Michie has accounted for this figure. Two items which, by reference to the pattern of payments and amounts set out in the schedule, clearly make up part of the 'salary balance' of £36,401.31 over this period but have not been conceded by the Applicants are £1202.26 (26 August 2010) and £702.33 (25 March 2011). The bulk of the 'salary balance' of £36,401.31 for the year ended 5 April 2011 is in my judgment represented by the sums of £3335, paid by monthly standing order on or about the 24th of each calendar month. There are seven such entries, over the period 22 July 2010 to 5 April 2011, totalling £23,245. The remaining balance (of £11,251.72) in declared salary for the year ended 5 April 2011 should also be credited in Mr Michie's favour. The bulk of that is likely to be represented by the £10,000 withdrawn on 16 September 2010, shortly before the monthly standing order of £3335 was put in place. This leaves a balance of £1251.72 in respect of declared salary to be credited.

230. Subject to credit being given in Mr Michie's favour as indicated in respect of his declared salary for the year ended 5 April 2011, and allowing also for the conceded dividend payments for which tax vouchers have been produced, in my judgment, on the evidence which I have heard and read, the following payments set out in the schedule referable to the year ended 5 April 2011 have not been accounted for by Mr Michie:

30/09/10: £16,000

09/11/10: £5000

12/01/11: £6000

09/03/11: £20,000

Total: £47,000

Less balancing credit of £1,251.72: £45,748.28

231. I have taken into account the passage of time and also the fact that, through no fault of Mr Michie, not all of the books and records of the Company which he delivered up to Mrs Sharma on the commencement of the administration are now available. Even allowing for such factors, however, the payments made to him by the Company in the year ended 5 April 2011 listed at paragraph 230 above cannot be accommodated within the employment and dividend income declared in his tax return for the year ended 5 April 2011.

232. Whilst, in oral testimony, Mr Michie asserted that he had also incurred 'expenses' for the Company, I reject the suggestion that any of the sums listed in paragraph 230 above represented reimbursement for expenses incurred by Mr Michie for the Company. Mr Michie's claim that some of the payments in issue were 'expenses' was made for the first time in cross-examination; the issue of expenses was not

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referred to at all, even in general terms, in Mr Michie's professionally pleaded defence or in his written evidence, still less particularised or vouched in any way. Mr Michie's written evidence was that he had 'at all times relied upon the advice of [his] accountants' and that he had 'provided all documentation to them to assist them to prepare [his] own tax returns as well as the accounts for the Company'; that being so, even if Mr Michie was not in the habit of retaining all documents relevant to his personal tax affairs himself, his accountants should have been a ready source of information in relation to any payments set out in the schedule which represented 'expenses'. Indeed, for the purposes of defending these proceedings, he did obtain from his accountants tax vouchers dating back to July 2010; if the accountants still had these and other documents relating to the tax years ending April 2011 and 2012 in their working files, I consider it legitimate to infer that they would have access to details of and documentation relating to any significant expenses for these years as well. In short, Mr Michie has failed to adduce any documentation in support of his contention that any of the sums listed in paragraph 230 represented expenses and I reject that contention.

Year ended 5 April 2012

233. I turn next to the payments set out in the agreed schedule which fall within the tax year ending 5 April 2012. According to his tax return for the year ended 5 April 2012, Mr Michie's gross salary from employment by the Company totalled £22,916 and the tax deducted from that figure was £11,549. In the same tax return, Mr Michie's gross salary from employment by another company of which he was a director, Garish, was stated to be £69,690, with tax deducted of £27,876. The total dividend income declared stood at £62,000.
234. When taken to his employment income figures set out in his tax return for the year ended 5 April 2012 in cross examination, Mr Michie's immediate reaction was that the accountant had got the figures 'the wrong way round'; that is to say, he had stated the employment income from Garish to be what should have been declared in respect of the Company, and vice versa.
235. On behalf of the Applicants, Mr Arumugam rightly noted that each employer has a unique employer tax reference for these purposes, and that these had been correctly linked with the appropriate company in each case in the return. Nonetheless, having examined:
- (1) the figures set out in the agreed schedule;
 - (2) the income declared from each company the previous tax year;
 - (3) the income declared from each company in the year ended 5 April 2012; and
 - (4) the evidence of the financial state of each company (Garish having gone into decline first in trading terms),

I have concluded that Mr Michie is correct. I accept his evidence on this issue.

236. In so concluding, I am fortified by the following. The payments expressly described as salary in the Company's bank statements for the year ended 5 April 2012 total

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£6742.01. As with the previous tax year, however, the bank statements of the Company show a regular pattern of payments of £3335, paid in favour of Mr Michie by standing order on or about the 24th of each calendar month. There were ten of these in the year ended 5 April 2012, totalling £33,350. If one adds the sums of £6742.01 and £33,350, the total figure achieved is £40,092, a figure very close to the net salary declared in the tax return for the year ended 5 April 2012 in respect of Garish (£41,812) but markedly at variance with the net salary declared in respect of the Company (£11,367).

237. I accept that the evidence on this issue is far from perfect. Nonetheless, for reasons already explored, Mr Michie should not be held responsible for missing Company documentation. The most plausible explanation for the marked variance in declared income in respect of Garish and the Company respectively in the years ending 5 April 2011 and 5 April 2012, considered in context, is that the accountant has, as Mr Michie put it, 'got the figures the wrong way round'. On the evidence which I have heard and read, I am satisfied that the gross salary from employment by the Company which Mr Michie at all material times intended to declare in his tax return for the year ended 5 April 2012 was £69,690 with tax deducted of £27,876 and not £22,916 with tax deducted of £11,549. In this regard I bear in mind that by the time Mr Michie's tax return for the year ended 5 April 2012 was filed, both companies had ceased trading and had entered formal insolvency processes and, in both cases, Mrs Sharma was the office-holder.
238. For reasons already indicated, I am satisfied that Mr Michie was authorised by the Company to draw a salary in the years ended 5 April 2010 and 2011; on the evidence which I have heard and read, I am also satisfied that Mr Michie was authorised by the Company to draw a salary of £69,690 (with tax deducted of £27,876) for the year ended 5 April 2012. I so find. For reasons already explored, the lack of any company documentation to confirm such authorisation should not be held against Mr Michie.
239. In my judgment, in determining which of the payments set out in the agreed schedule have been accounted for in relation to the year ended 5 April 2012, (1) Mr Michie's declared net income from employment by the Company should be treated as £41,812 (£69,690 minus £27,876) and not £11,367 and (2) in determining which of the payments set out in the agreed schedule have been accounted for in relation to the year ended 5 April 2012, Mr Michie should be credited with the balance of such declared salary (£41,812 less £6742.04, totalling £35,069.96).
240. Save as aforesaid, however, the remaining payments set out in the schedule in respect of the year ended 5 April 2012 (other than conceded dividend payments for which vouchers have been provided) have not been accounted for. For reasons already given in paragraph 232 above, in the absence of documentary evidence in support, I reject Mr Michie's belated claim in cross examination that any such payments were in respect of expenses. On the evidence which I have heard and read, the payments made by the Company to Mr Michie in the year ending 5 April 2012 which have not been accounted for are as follows:

16/5/11: £3000

16/5/11: £300

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31/1/12: £2000

02/2/12: £1500

03/2/12: £3000

01/3/12: £1470

Total: £11,270

Less £1720 (£41,812 less £40,092)

Total: £9550

6 April 2012 to 10 July 2012

241. The remaining payments set out in the schedule cover the period from 6 April 2012 to 10 July 2012. On the evidence which I have heard and read, Mr Michie has failed to account for the payments made by the Company to him in the period 6 April 2012 to 10 July 2012 as listed in the schedule.
242. Mr Michie has not produced in evidence his tax return for the year ended 5 April 2013 or any dividend vouchers (or other documentation evidencing a lawful declaration of dividends) relating to dividends paid by the Company over the period 6 April 2012 to 10 July 2012. These are documents which should be in his possession and given his regular use of accountants to prepare his tax returns, his accountants should also have copies. Mr Michie cannot lay the blame for their absence upon Mrs Sharma's record-keeping.
243. In the absence of any documentary evidence supporting even the formal declaration for tax purposes of salary drawn from the Company, I am not satisfied that the payment of £3335 made to Mr Michie on 24 April 2012 was duly authorised salary. By this stage the Company was receiving insolvency advice. It cannot readily be assumed that the same salary arrangements were in place as those in place in previous years. I was taken to no other documentary evidence accounting for the sum of £3335.
244. To the extent that any of the sums set out in the schedule for this period are described as 'dividends' in the Company bank statements, no dividend vouchers or other documentation evidencing a lawful declaration of dividends have been produced. In the absence of such documentation, which is documentation of a kind which Mr Michie would have been advised to keep as part of his personal records and would have been given to his accountants for preparation of his tax return for the year ending 5 April 2013, I am not satisfied that such payments are accounted for as dividends.
245. For reasons already given in paragraph 232 above, in the absence of documentary evidence in support, I reject Mr Michie's belated claim in cross examination that any such payments were in respect of expenses.
246. On the evidence which I have heard and read, the sums paid to Mr Michie by the Company over the period 6 April 2012 to 10 July 2012 which have not been accounted for are as follows:

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18/4/12: £1470

24/4/12: £3335

02/5/12: £5000

04/5/12: £2000

17/5/12: £5000

01/6/12; £2400

18/6/12: £1000

10/7/12: £2000

Total: £22,205

247. On my calculations, overall, the total sum for which Mr Michie has failed to account in respect of payments made by the Company to him over the relevant period is £77,503.28 (£45,748.28 + £9550 + £22,205). From that figure, according to the agreed schedule, a further sum of £11,990 (representing the balance due to Mr Michie as per the accounts for the year ending 31 March 2010) falls to be deducted, bringing the total due to be repaid down to £65,513.28.
248. On behalf of Mr Michie, Ms Jones submitted that Mr Michie should be relieved under s.1157 CA 2006 from liability to repay this sum to the Company on the grounds that he relied properly on the advice of his accountant and acted honestly and reasonably. I was taken to no documentary evidence in support of the contention that Mr Michie's accountant advised him that it was legitimate for him to withdraw any of the sums making up the total of £65,513.28 found not to have been accounted for, however. I consider it legitimate to conclude that Mr Michie's accountant gave no such advice in relation to these sums. It was open to Mr Michie to obtain copies of any relevant documents on this issue from his accountant (or indeed to obtain a witness statement from his accountant summarising the advice given); his failure to do so cannot be blamed on bad record-keeping by Mrs Sharma or the loss of company documents.
249. Whilst no dishonesty has been alleged or found proven in respect of Mr Michie's withdrawal of the sums totalling £65,513.28 found not to have been accounted for, on the evidence which I have heard and read I am not satisfied that Mr Michie's conduct in withdrawing such sums was reasonable and in my judgment, this is not a case where Mr Michie ought fairly to be excused.
250. I shall therefore grant a declaration that Mr Michie is liable to repay the Company the sum of £65,513.28 plus interest and will order repayment of such sums.

Conclusions

251. For the reasons given, I find in favour of the Applicants on heads 1 and 2 of their application, on their secondary case in relation to head 3, and in the sum of £65,513.28 plus interest in relation to head 4.

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252. I shall hear from Counsel on the appropriate wording of an order to reflect my conclusions and on the issue of costs on the handing down of this judgment.

ICC Judge Barber

20 January 2020