



OUTER HOUSE, COURT OF SESSION

[2021] CSOH 48

CA5/18

OPINION OF LORD ERICHT

In the cause

BELLHILL LIMITED

Pursuer

against

RAJINDER BAINS

Defender

**Pursuer: Dean of Faculty, Wilson; BTO Solicitors LLP  
Defender: Sandison QC, O'Brien QC; Dentons UK and Middle East LLP**

5 May 2021

**Introduction**

[1] This is one of four related cases arising out of the business relationship between, on the one hand, Mr Rajinder Bains and his associated companies OMI Facilities Limited (“OMI Facilities”) and OMI Management Limited (“OMI Management”), and on the other hand, Mr Sohan Singh and his associated company Bellhill Limited (“Bellhill”). The cases relate to the Lorne Hotel in Sauchiehall Street, Glasgow (the “Hotel”).

[2] In this action Bellhill seeks repetition of sums said to have been misappropriated by Mr Bains during the time when Mr Bains was running the Hotel, in respect of missing cash,

cash payments recorded as relating to maintenance, unreceipted petty cash, bar and restaurant expenditure by Mr Bains and cheque payments from Bellhill's accounts.

[3] In *OMI Facilities Limited v Singh* (2021 CSOH [45]) OMI Facilities seeks payment of sums said to be outstanding under a Personal Bond dated 9 October 2010 (the "Personal Bond"). In *OMI Facilities Limited v Bellhill Limited* ( [2021] CSOH [46] ) and *OMI Management Limited v Bellhill Limited*( [2021] CSOH [47]) Mr Bains' associated companies seek payment of sums for services said to have been provided to Mr Singh's associated company Bellhill in respect of the running of the Hotel.

[4] The opinions in all four cases should be read together in order to give a complete view of my findings.

### **First conclusion: missing cash amounting to £595,603 from 2013 to 2017**

#### ***Introduction***

[5] Under this conclusion Bellhill seeks to recover cash which is said to be missing and to have been misappropriated by Mr Bains during the time when he was responsible for managing the Hotel on behalf of Bellhill from 2013 to 2017.

#### ***Expert evidence***

[6] Each party produced an extensive report by an expert accountant, Mr Robb on behalf of Bellhill and Mr Cuerden on behalf of Mr Bains. The court benefited from pre-proof dialogue between the two experts, including a joint meeting, which resulted in agreement being achieved on some previously controversial issues and the matters in dispute being narrowed. The evidence of the experts was heard concurrently by Webex.

[7] Mr Robb considered that, due to the incomplete and inaccurate nature of the Hotel's accounting records, it was not possible to estimate with any accuracy the total cash received by Bellhill or the true cash expenditure for the period under review. Mr Robb considered that, by his analysis, Mr Bains misappropriated cash of between £533,934 and £595,603. The higher figure was taken as the figure for the conclusion.

[8] Mr Cuerden concluded that the cash income generated in the Hotel was either lodged into the Bellhill bank account, or utilised on cash expenditure linked to its operation and activities (including repayments allocated against the Personal Bond), and there was no missing cash.

#### *Factual evidence*

[9] Mr Bains' evidence was that in January 2014 he had a conversation with Mr Singh and told him that the Hotel was beginning to have a cash surplus some weeks. Mr Singh asked for all surplus cash to be taken out of the Hotel safe (the "Hotel Safe") and kept in a safe in Mr Bains' office (the "Office Safe"). At the end of 2014 Mr Bains asked Mr Singh to make a payment towards the Personal Bond and Mr Singh asked Mr Bains to take repayments in cash from the surplus cash. Mr Singh's evidence was that these conversations never took place. I prefer the evidence of Mr Bains. It is consistent with my finding in *OMI Facilities v Singh* that the Personal Bond existed and that repayments of £178,000 had been made towards it. It is also consistent with Mr Cuerden's evidence that £178,000 from the Office Safe had been allocated to repayments under the Personal Bond. It is also consistent with Mr Singh's evidence in the 2015 Affidavit that payments had been made towards the Personal Bond.

[10] Mr Bains also gave evidence as to the procedures put in place for the handling of cash. At the end of each shift, each till was balanced by the member of staff operating it and was placed in the Hotel Safe. The safe was opened the following morning by two people, generally the financial controller Mr Scott and the General Manager. I accept the evidence of Mr Bains as to these procedures. His evidence was supported by the evidence of Mr Scott, who was called as a witness by Bellhill.

### *Submissions for Bellhill*

[11] Senior Counsel for Bellhill submitted that the difference between the experts came to be whether Mr Cuerden was right or wrong to say that no cash was missing. Mr Cuerden was wrong because he omitted £248,000 recorded as banked which was in fact not banked. If that sum were included the closing balance in Mr Cuerden's cash reconciliation would be a negative figure which would suggest there was more cash available within Bellhill than was recorded through the Guestline till system. Mr Cuerden had identified a lodgement of £16,000 into the Hotel in the week ended 1 September 2014. This was significant as it shows unrecorded cash coming into the Hotel. That could have happened in other weeks also, so we know that there was more cash available than was recorded, but we do not know how much. Mr Robb had tried to calculate how much cash was taken. His preferred figure was £595,603, which was based on the £248,200 missing from weekly cash sheets plus the £178,000 which Mr Bains admits to have taken but allocated to the Personal Bond. The remainder of the £595,603 was based on an estimate of how much cash was taken in in the weeks for which cash sheets were missing, based on the weekly cash sheets that do exist. His conclusion that more than £0.5 million was taken was supported by his other calculation, based on incomplete Guestline statements and average cash expenses in 2014

and 2015, which comes to £533,934. Mr Cuerden had assumed that the cash removed was reintroduced by being banked at a later date, but there was no evidence of it being reintroduced: cash was taken out of the company and recorded as banked but there were no records of what happened to it. The account given by Mr Bains and accepted by Mr Cuerden that he banked some cash and stored other cash in the Office Safe despite having recorded it as having been banked was inherently implausible because, firstly, the records of it having been banked (the petty cash vouchers and weekly reconciliation sheets) were false and, secondly, if Mr Cuerden were correct, at times in 2015 Mr Bains would have been holding over £107,000 of Hotel cash in his personal safe, and in June 2015 £120,000. This was not a legitimate accounting practice. There was no contemporaneous document showing that the money taken in cash was allocated to the Personal Bond. Cash could have been received without it being recorded in Guestline by putting terminals in training mode.

### *Submissions for Mr Bains*

[12] Senior Counsel for Mr Bains submitted that the drastic change between Mr Robb's first and second reports showed how unreliable his methodology was. In the first report he provided three possible estimates of missing cash, ranging from £990,770 to £1,213,000. His second report, taking into account additional data, reduced the estimate to £533,934 to £595,603. Mr Robb's caveat that it was not possible to estimate with any accuracy Bellhill's cash position meant that the burden of proof had not been discharged. In any event, Mr Robb's analysis had been comprehensively rebutted by Mr Cuerden. By examining the available documentation Mr Cuerden was able to reconcile the Hotel's cash inflows and outflows without requiring any estimation or extrapolation, leaving a discrepancy of only £18,432, which was too low to support any inference of

misappropriation. Mr Robb accepted that the documented cash receipts had been accounted for, and there could only be missing cash if there were additional undocumented cash receipts. In respect of Bellhill's argument about monies removed from the Hotel safe and shown as banked, Mr Bains evidence that the money was dealt with as agreed with Mr Singh should be accepted. This was the simple explanation. Mr Robb was not in any position to explain how a fraud could have been committed in respect of money unrecorded as income. The system of dealing with cash left no opportunity for Mr Bains to divert it. If he had, it made no sense that he created records of the money going out. There was no evidence of a noticeable increase in cash takings after Mr Bains left the Hotel.

### *Discussion and decision*

[13] I find in favour of Mr Bains in respect of this conclusion for the following reasons.

[14] Firstly, Bellhill's case on this conclusion is founded on the opinion of Mr Robb.

However, Mr Robb's opinion is a qualified one. He makes estimates but qualifies these by stating that it is not possible to make estimates with any degree of accuracy. In his supplemental report at para 2.13 he states:

"In view of the incomplete and inaccurate nature of the accounting records, and the omission of the cash not banked from Mr Cuerden's analysis of cash inflows and outflows, **I have concluded that it is not possible to estimate with any accuracy the total cash received by Bellhill or the true cash expenditure for the period under review.** However, I have provided two separate methods on which estimates can be made" (emphasis added)

In order to succeed, Bellhill would require to establish on the balance of probabilities that the sum sued for was an accurate amount of misappropriated cash. Standing Mr Robb's qualification, in my opinion it has not done so. Bellhill's argument that because there was unrecorded cash of £16,000 coming into the Hotel in a particular week in September 2014

that could have happened in other weeks also, is of no assistance to Bellhill in this regard. It does not necessarily follow that it did in fact happen in other weeks, and it certainly does not follow that the amount sued for includes the other weeks' cash, the existence of which is speculative and which is of unknown amount.

[15] Secondly, I accept Mr Cuerden's evidence that the cash income generated in the Hotel was either lodged into the Bellhill bank accounts or utilised on cash expenditure linked to its operation and activities and therefore there was no cash missing. Mr Cuerden's analysis was in two parts. In his first report, he considered the cash movements in and out of the Hotel. At that stage, his work was vulnerable to the criticism that it treated monies placed in the Office Safe as having been banked and did not examine further what had happened to these monies. In his second report, he rectified the defect by accounting for the use made by the monies placed in the Office Safe. He identified the cash inflows and outflows to the Office Safe. He accounted for all the cash outflows from that safe. He identified that £178,000 was paid to the OMI companies in partial repayment of the Personal Bond. Accordingly there was no misappropriation in respect of the sum of £178,000.

Mr Cuerden identified £645,300 having been banked in Bellhill bank accounts from the Office Safe. Accordingly there was no misappropriation in respect of that sum of £645,300. He identified the closing balance in the Office Safe on 29 July 2016 of £52,000 having been paid into Bellhill's Royal Bank of Scotland account on 30 August 2016. Accordingly there was no misappropriation of that sum.

[16] Thirdly, I prefer Mr Cuerden's methodology to that of Mr Robb as Mr Cuerden's opinion is derived from the financial records and documentation and does not rely on estimation or extrapolation. Indeed, in his oral evidence Mr Robb accepted that the documented cash receipts had been accounted for, and there could only be missing cash if

there were additional undocumented cash receipts. Other than Mr Robb's qualified opinion, there was no evidence before me that there had been additional undocumented cash receipts amounting to the sum concluded for. There was no evidence before me that the tills had been set to training mode in order to fraudulently divert cash from being properly accounted for.

[17] In all the circumstances, I find that there has been no misappropriation in relation to the first conclusion.

### **Second conclusion: maintenance payments in the amount £126,000 in 2013-16**

#### *Introduction*

[18] Under this conclusion Bellhill seeks repetition of cash which although recorded as maintenance payments is said to have been misappropriated by Mr Bains during the period from August 2014 to September 2016.

[19] There was no dispute that round sum payments had been recorded as maintenance. The experts agreed that the total of the payments was £106,200, and senior counsel for Bellhill restricted the amount sought to that sum.

[20] The maintenance payments were listed in a schedule to the Summons. All the sums were round sums ranging from £500 to £5,200. The payments were recorded in weekly cash reconciliation sheets or petty cash vouchers under the descriptions "maintenance", "monthly maintenance", "P Davies Maintenance", "Davies Maintenance", "Peter Davis Electrical", "Billy Jamieson", "monthly maintenance Raj - Gas man", "monthly maintenance Gas man", "Gas man", "electrician", "maintenance no receipt", "no receipt", "carpets" or similar wording.



*Factual Evidence*

[21] In his evidence, Mr Bains gave an explanation in relation to these payments. I heard the explanation under reservation as senior counsel had objected to the explanation on the basis that the evidence was collateral and had no bearing on the matters before the court. I refuse the objection. I find that it is essential for the resolution of the dispute about maintenance payments to admit Mr Bains' evidence.

[22] Mr Bains' evidence was that every so often, Mr Sharif would contact him and ask him to leave a large sum of cash at reception for "the Gas man". Mr Bains subsequently found out that no gas bills were ever paid by the Hotel other than a standing order in the region of £100 every quarter. The arrangement was already in operation before Mr Bains took over the running of the Hotel. When he queried it Mr Singh and Mr Sharif told him that there was an arrangement in place. Mr Bains did not question it because it was what Mr Singh and Mr Sharif told him he was supposed to do. Mr Bains did not know and had never met Billy Jamieson or Peter Davis. They did not, to his knowledge, carry out any maintenance work at the Hotel. So far as Mr Bains was concerned the payments to those individuals were payments for "the Gas man" and Mr Bains correctly recorded the true purpose of these payments in the petty cash sheets.

[23] Mr Singh's evidence was that he was unaware of how the utilities were paid.

[24] Mr Sharif's evidence was that "Gas man" was a code for a drugs supplier. Mr Bains would ask Mr Sharif to use Mr Sharif's connections to source drugs for him to feed his drug habit. This was before and after he started working at the Hotel. Mr Singh knew nothing about that and was not involved.

[25] Tom Scott gave evidence that he did not know where the cash maintenance payments were going. These slips were signed by Mr Bains. Mr Bains was handling it all so

he could not really query. As far as he was aware Mr Singh did not know anything about it. It would be rare to see Mr Singh.

***Submissions on behalf of Bellhill***

[26] Senior counsel for Bellhill invited the court to accept (1) Mr Singh's evidence that the payments were not made on his instructions; (2) the evidence of Mr Scott and Mr Murphy in the practice of leaving envelopes containing cash for collection for "maintenance" or "the Gas man" did not continue after Mr Bains had left the Hotel; and (3) that of Mr Sharif that these payments were not legitimate Hotel expenditure. Mr Bains did not dispute that this expenditure was illegitimate: his only answer was that these payments were approved by Mr Singh. That line should be rejected because (a) no coherent explanation had been given as to why the payments were being made at all; (b) there was no suggestion of such payments benefiting Bellhill or Mr Singh or that they were lawfully approved by Bellhill; (c) Mr Singh was very rarely at the Hotel, the running of which was left entirely to Mr Bains; (d) Mr Bains knew that the payments were not legitimate: an instruction from Mr Singh would not absolve Mr Bains of liability, but would only make him jointly and severally liable with Mr Singh in a question with Bellhill.

***Submissions on behalf of Mr Bains***

[27] Senior counsel for Mr Bains invited me to find that the evidence indicated that the arrangements were put in place by Mr Singh and Mr Sharif, and Mr Bains did no more than acquiesce in the arrangements by dispensing Bellhill's money in accordance with the directions of Mr Singh as its sole director.

*Discussion and decision*

[28] The arrangements for the supply of gas at the Hotel were at best unconventional and appear to have been illegitimate or perhaps even fraudulent. However for present purposes it is not necessary to establish precisely how the arrangements operated, which in any case could not be established on the evidence before me. All that I have to determine, in terms of Bellhill's plea in law, is whether Mr Bains having misappropriated Bellhill's monies, Bellhill is entitled to repetition.

[29] I found Mr Sharif's evidence on the maintenance payments, as with his evidence in general, to be wholly incredible. Mr Sharif's evidence was that "Gas man" was a code for a drugs supplier. The maintenance payments were considerable, and some months amounts in the range of £5,000 to £10,000 were paid out. In my opinion it is far more credible that this related to the gas supply to the Hotel, rather than a very expensive drug habit of Mr Bains. Further, these were not the only premises where Mr Sharif had unconventional cash arrangements for the supply of gas. Mr Tanveer Navid gave evidence, which I accept, in relation to Mr Sharif's Trophy Centre business. His evidence was that Mr Sharif would periodically meet with a man in the Trophy Centre car park and make cash payments to the man and that Mr Sharif told Mr Navid that the payments were for gas and electric and it was "just an arrangement I have with them".

[30] Given Mr Sharif's use of similar arrangements at the Trophy Centre, I find that the cash maintenance payment arrangements were already in place before Mr Bains took over the running of the Hotel from Mr Sharif. Given the efforts made by Mr Bains to put the Hotel on a proper financial footing when he took over (which are dealt with in detail in *OMI Facilities v Singh*, *OMI Facilities v Bellhill* and *OMI Management v Bellhill*), I find it credible that Mr Bains would have raised these unusual arrangements with Mr Singh, the sole

director of Bellhill, and Mr Sharif. Accordingly, I reject the evidence of Mr Singh that he knew nothing about the arrangements. Rejection of that evidence is consistent with the evidence I have accepted in *OMI Facilities v Singh* as to Mr Singh using other people to front businesses while he remained in control. I therefore accept the evidence of Mr Bains in relation to the maintenance payments, and in particular I accept his evidence that Mr Singh told him that there was an arrangement in place. The question then becomes whether Bellhill is entitled to repetition from Mr Bains of cash sums from Bellhill paid with the express consent of Bellhill's director. In my opinion, Bellhill is not entitled to such repetition. There has been no misappropriation by Mr Bains. He did not benefit personally, as the payments were made to a third party. Bellhill received a benefit as the effect of the arrangements was that in return for the cash payments Bellhill received a gas supply without further payment to a utility company. Mr Bains did not make the cash payments unilaterally, but did so under a pre-existing arrangement and with the approval of the sole director of Bellhill. If senior counsel for Bellhill is right in his secondary submission that Mr Bains is jointly and severally liable with Mr Singh for repetition of the maintenance payments, then Bellhill ought to have brought an action against Mr Singh as well as Mr Bains.

[31] For these reasons I find that Bellhill is not entitled to repetition of the sums sought under this conclusion.

**Conclusion three: unreceipted petty cash vouchers in the sum of £40,591**

[32] Under this conclusion, Bellhill sought payment in respect of unreceipted petty cash vouchers totalling £40,591. The payments were set out in an appendix to Mr Robb's report. There were thirty-seven items dating between 26 September 2011 and 16 December 2014.

There was a description attached to almost all of the payments. The descriptions described the sorts of things which it would be expected would have to be paid for in the day to day running of the Hotel, for example curtains, postage deposit, cooker parts. Included in the schedule was the deposit reimbursed to Frank Queen for the emergency generator which I have dealt with in *OMI Facilities v Bellhill*. In submissions, Senior Counsel for Bellhill indicated that Bellhill were content to restrict the claim to £310.

[33] Mr Cuerden analysed each of the thirty-seven transactions. He identified two transactions, with a total value of £310 that related to the OMI companies rather than Bellhill. He considered that thirty-three of the transactions with a total value of £38,281 represented Hotel expenditure.

[34] In coming to that conclusion, Mr Cuerden agreed the values and descriptions to the petty cash vouchers, except in relation to one transaction on 26 September 2001 which he identified in fact related to a transaction on 29 September 2013. He matched thirty-one transactions with a total of £37,911 to data from Thomas Scott, the Hotel's Finance Manager, and one transaction with a value of £1,000 to data from Khokhar McAdam, the firm of accountants who carried out certain financial functions for the Hotel. These transactions were included in Mr Cuerden's overall assessment of the Hotel's cash outflows which has been dealt with under other conclusions.

[35] In respect of an item on the list in respect of a loan to Frank Queen, Mr Cuerden identified that this was not a cash transaction but a cheque transaction and the cheque had been cashed in the Bellhill bank account. He identified that another payment to Mr Queen on the list was a loan to Mr Queen, rather than a petty cash transaction.

[36] Counsel for Bellhill submitted that Mr Cuerden's assessment that only £310 is unexplained relied on the descriptions borne by some items and explanations given by Mr Bains in relation to others, and that these could not be relied upon.

[37] I accept the evidence of Mr Cuerden. His opinion can be relied upon as it proceeded upon a thorough investigation of each item against the other available financial information. Bellhill's case relied entirely on the absence of receipts and Bellhill made no attempt to lead evidence to show that any particular item had not in fact been bought. The narrative for the items described an item of the sort which would require to be purchased by a hotel business. As Mr Cuerden has found that two transactions, totalling £310, were not expenditure on behalf of Bellhill, I shall grant decree in that amount only.

**Conclusion four: bar and restaurant expenditure by Mr Bains in the sum of £40,002**

[38] Under this conclusion Bellhill seeks payment of bar and restaurant expenditure by Mr Bains. Bellhill seeks the sum of £6,553.54 for the periods September to November 2016 and April 2017. In addition, it has estimated such expenditure for the period June 2013 to April 2017. In submissions, Senior Counsel for Bellhill indicated that Bellhill were content to restrict the claim to £6,353.

[39] Mr Bains' evidence was that he, Mr Singh and the Hotel general manager were allowed to assign expenditure to a "management room." When the stock count occurred, the management rooms allocated to Mr Bains, the Hotel general manager and Mr Singh, together with any stock taken for use by the Hotel, were removed from sales as they were instead treated as Hotel expenses. At the end of every month the Hotel general manager would check the expenditure assigned to each of the management rooms and send Mr Bains a copy for him to review and sign. Everything assigned to the management room was at the

full retail price. The amounts charged to management rooms were never intended to be paid: it was simply an internal record of what had been taken for accounting purposes and to ensure that all stock taken for use internally by the Hotel had been accounted for.

[40] Mr Singh's evidence was that nobody, staff included, was provided with food or drink at cost price: everything had to be accounted for.

[41] I prefer the evidence of Mr Bains. I did not find Mr Singh to be a credible witness. His evidence that nobody was provided with food and drink at cost price was inconsistent with his position in other evidence that he knew nothing about how the Hotel was run as he left everything to Mr Bains. In particular I accept Mr Bains' evidence that the amounts charged to management rooms for himself, Mr Singh and the general manager were never intended to be repaid.

[42] Accordingly, I find that the sums sought under this conclusion have not been misappropriated by Mr Bains from the Hotel and do not require to be repaid.

[43] There was also a dispute about the amount to be repaid. Given my finding that there was no misappropriation, I do not have to make a finding on the amount but I will set out my views on it for completeness. There was a dispute between Mr Cuerden and Mr Robb as to how much should be charged for the expenditure. Mr Robb assessed the charge by reference to the Hotel's sales price, rather than the cost to the Hotel of providing goods and services to Mr Bains: in other words, Mr Robb included the Hotel's profit mark-up. Further, for periods where there were no records, Mr Robb simply extrapolated from periods where there were records. If I am wrong and there was in fact misappropriation by Mr Bains, in my view the misappropriation would require to be quantified at cost price without applying a profit mark-up. The measure of loss to the Hotel is the loss of the stock which was consumed by Mr Bains, not the loss of potential profit on that stock if it were sold to a

customer. Further, I do not accept Mr Robb's extrapolation. The amounts extrapolated are unrepresentative and excessive and extrapolated over too long a period. If, contrary to the above, I had come to the view that Mr Bains had misappropriated the items in the management rooms accounts, I would have awarded under this head only £6,353, being the amounts which are shown in the accounts at cost price.

**Conclusion five: cheque payments to Mr Bains from Bellhill's Bank of India account in 2014-16 amounting to £36,277.**

[44] Under this conclusion Bellhill seeks repetition of payments made to Mr Bains by cheque from Bellhill's Bank of India bank account. The cheques are listed in Appendix 9 to Mr Robb's Supplementary Report. Despite the clear averment that the payments concluded for are from the Bank of India account, Mr Robb's table lists the largest payment (£12,154.70 on 15/4/16) and another payment (£1,970.84 on 8/8/16) as being from a Royal Bank of Scotland account. There was no dispute that cheque payments set out in the table totalling £36,277.90 were paid to Mr Bains from Bellhill's Bank of India or Royal Bank of Scotland accounts between August 2014 and September 2016.

[45] Mr Robb's position was that these payments were unauthorised and therefore ought to be reimbursed to Bellhill by Mr Bains.

[46] Mr Cuerden analysed the transactions in detail. He divided them into three categories. The first category was payments totalling £16,161 reimbursing payments made for the benefit of the Hotel. Supporting documentation was available for these. The second category was a payment of £5,000 to Mr Bains on 17 October 2014. Mr Bains' personal bank account statements showed that he had received the £5,000 from Bellhill then paid that £5,000 to Mr Sharif on 17 October 2014. The third category was payments



totalling £15,116, reimbursing payments made for the benefit of the Hotel but for which full supporting documentation was not available.

[47] Mr Bains' position in respect of the first and third categories was that these were reimbursement for items he had bought personally for the benefit of the Hotel due to the Hotel's financial difficulties. His position in respect of the second category was that Mr Singh had requested him to make the payment to Mr Sharif and recovered it from the Hotel at the request of Mr Singh. This was not contradicted by Mr Singh or Mr Sharif.

[48] I find that the payments sought to be recovered under this conclusion are not misappropriations. Consistent with my findings in *OMI Facilities Limited v Bellhill Limited* and *OMI Management Limited v Bellhill Ltd* that Bellhill was in a poor financial position and Mr Bains and his associated companies required to buy items for Bellhill and be reimbursed, I find that the first and third categories were expenditure by Mr Bains for the benefit of Bellhill for which he was entitled to be reimbursed. The second category, being a payment authorised by Mr Singh as the sole director of Bellhill, is not a misappropriation.

[49] As I have found that the payments listed in Mr Robb's Appendix are not misappropriations, it is not necessary for me to consider whether prescription has operated in relation to recovery of any of them. However, had I found that they were misappropriations, I would have found that as conclusion five and the supporting averment were introduced to the pleadings on 29 April 2020, Bellhill's claim in respect of payments in Mr Robb's Appendix made more than 5 years before that date had now prescribed in terms of section 6 of the *Prescription and Limitation (Scotland) Act 1973*.

**Order**

[50] I shall uphold the pursuer's pleas in law to the extent of £310 in relation to conclusion three. *Quoad ultra* I shall repel the pursuer's pleas in law and uphold the defender's third and fourth pleas in law.

[51] I shall grant decree in terms of the third conclusion restricted to the sum of £310.

*Quoad ultra* I shall assoilzie the defender. I reserve all questions of expenses in the meantime.