



Neutral Citation Number: [2024] EWHC 1636 (Ch)

Case No: CR-2022-000054

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

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

Date: 28/06/2024

**Before :**

**ICC JUDGE MULLEN**

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**IN THE MATTER OF BSS LED [R&D] LIMITED (IN CREDITORS' VOLUNTARY LIQUIDATION)**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**Between :**

**MANOLETE PARTNERS PLC**

**Applicant/  
Claimant**

**- and -**

**(1) MR AUSTIN BELL**

**(2) MR CHRISTIAN BELL**

**(3) MSV ENGINEERING LIMITED**

**(4) MR STEVEN BELL**

**Respondents/  
Defendants**

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**Mr Phillip Gale (instructed by Bermans) for the Applicant/Claimant**  
**The First to Third Respondents did not appear and were not represented**  
**The Fourth Respondent/Defendant appeared in person**

Hearing dates: 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> March 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 28<sup>th</sup> June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ICC JUDGE MULLEN

**ICC JUDGE MULLEN :**

1. This is my judgment following the trial of a hybrid Part 7 claim (“the Claim”) and an application under section 238 of the Insolvency Act 1986 (“the Insolvency Act Application”) brought by Manolete Partners plc, which took an assignment of the causes of action set out in them from the liquidator of BSS LED [R&D] Limited (“BSS”) on 12<sup>th</sup> January 2021.
2. BSS was incorporated on 27<sup>th</sup> April 2010 as Building Software Solutions Limited and changed its name to BSS LED Limited on 3<sup>rd</sup> May 2012. It adopted its current name, inserting the characters “[R&D]”, on 15<sup>th</sup> October 2018. The company went into creditors’ voluntary liquidation on 19<sup>th</sup> November 2019 and Ms Claire Dwyer was appointed as liquidator.
3. At all material times the director of BSS was Mr Steven Bell (“Mr Bell”). His report on the history of the company, contained in the report to creditors signed by him, is as follows:

“BSS LED [R&D] Limited was established and commenced to trade in April 2010 supplying electrical wholesalers and other businesses with LED lighting. The Company was set up to take advantage of the significant rise in the LED lighting industry.

In October 2012 the Company entered into a factoring facility with Lloyds TSB Commercial Finance Limited to assist with cash flow.

It was quickly realised that imported products from China did not perform correctly and that the Company had very little control over quality. The Company therefore started a programme to manufacture the LED lighting products in the UK.

This required substantial investment and the business made the commercial decision to relocate to Northumberland in April 2014 to take advantage of a Regional Growth Fund Grant of approximately £200,000 to assist in the funding of materials.

Unfortunately, as a business location Northumberland proved very challenging in terms of accessibility and the availability of staff. The anticipated support from Northumberland Council did not come to fruition.

Initially the business operated from two small sites. It became clear that the five mile distance between the two sites made them ineffective, and that larger premises were required. In addition, the isolated location meant that the company did not benefit from visiting customers or passing trade.

It was therefore decided in 2017 that it would be in the best interests of the business to relocate back to Manchester. This would allow the business space to grow and expand into suitably

sized premises and also have access to greater pool of resources. The market for LED lighting was initially dominated by cheap imported goods, to the detriment of the Company and it's [sic] more expensive, but superior, offering. Once the market acknowledged the failure rate of the inferior imported products this unfortunately impacted on the desire for LED lighting overall, leading to a drop in sales.

Following the move back to Manchester in June 2017 it took the Company approximately eighteen months to optimise production levels. The Director estimates the lower production volumes and therefore sales in the interim cost the Company approximately £250,000.

The business was also under pressure from Northumberland Council to repay the grant.

Whilst it was eventually agreed that this was not repayable, dealing with this took time from the Director which could otherwise have been spent focussing on the business. The ultimate demise of the Company was a result of the failure of Lloyds Bank Commercial Finance Limited to correctly allocated cash receipts and their continued failure to address this. This resulted in them accepting that they couldn't service the account, cancelling the factoring agreement in July 2018 and subsequently refusing to provide a cash allocation and reconciliation. Substantial funds were debited from the Company's current account by Lloyds as a result of this and they refused to allow the Company to open an alternate bank account. Customers were contacted by Lloyds and advised that all the book debts and future book debts belonged to them, which significantly affected trade.

The lack of cash flow following the removal of the factoring facility and the associated losses of sales compounded with historic costs incurred meant the Company was no longer viable.

The Company ceased to trade on 31 March 2019 and all employees were transferred to BSS LED Manufacturing Limited. The stock was sold to BSS LED Manufacturing Limited for £42,000 which was offset against amounts owing from BSS [R&D] Limited to BSS LED Manufacturing Limited.

The Director took the decision to place the Company into Liquidation on 7 November 2019."

4. The deficiency as regards creditors shown in the statement of affairs was £961,532.29. A significant minority of this was due to trade and expense creditors but the statement of affairs also showed:
  - i) £10,502.43 due to Mr Bell as a director's loan to the company;

- ii) £159,973.70 due to BSS LED Manufacturing Limited (“Manufacturing”), also described as a loan;
  - iii) £100,000 due under a loan from “Solon Security/ Mr John Fernell; and
  - iv) £71,497 due under a loan from Mr Andreas van der Meerendonk.
5. Manufacturing was incorporated on 10<sup>th</sup> August 2018. Mr Bell was a director of that company and held 90% of the issued shares. It too entered creditors’ voluntary liquidation on 30<sup>th</sup> April 2020. He was also a director and shareholder of a further company, MSV Engineering Limited (“Engineering”), from incorporation on 2<sup>nd</sup> September 2011 until 21<sup>st</sup> May 2020. Engineering was known as MSV Properties Limited between 12<sup>th</sup> September 2012 and 11<sup>th</sup> May 2020 and was thus using that name during the period referred to in the Claim and Insolvency Act Application. Engineering was struck off the register of companies and dissolved on 4<sup>th</sup> April 2023.
6. The Insolvency Act Application was issued on 11<sup>th</sup> January 2022 but it did not name Mr Bell as a respondent, but instead joined Mr Bell’s sons, Mr Austin Bell and Mr Christian Bell, together with Engineering. I do not intend any discourtesy but for brevity I will refer to Mr Bell’s sons as Austin and Christian. The application claimed the following relief against Austin –
- i) a declaration that a payment by BSS to Newcastle University in respect of fees on or around 24<sup>th</sup> December 2018 in the sum of £2,808.21 in respect of tuition fees was a transaction at an undervalue within the meaning of section 238 of the Insolvency Act 1986 (“the 1986 Act”);
  - ii) a consequential order that Austin pay the sum of £2,808.21;
  - iii) further or alternatively, an order that Austin pay £2,808.21 on the basis of unjust enrichment.
7. As against Christian it claimed –
- i) a declaration that the payment of the total sum of £40,242.44 by BSS to Christian between 3<sup>rd</sup> August 2018 and 9<sup>th</sup> November 2018 was a transaction at an undervalue within the meaning of section 238 of the 1986 Act;
  - ii) a consequential order that Christian pay the sum of £40,242.44; and
  - iii) further or alternatively, an order that Christian pay the sum of £40,242.44 on the basis of unjust enrichment.
8. As against Engineering it claimed –
- i) a declaration that the sale on or around 8 June 2018 of equipment itemised in invoice number INV-4364, dated 8 June 2018, by BSS to Manufacturing was a transaction at an undervalue within the meaning of section 238 of the Insolvency Act 1986.
  - ii) a consequential order that Engineering pay the sum of £65,000.

9. The Claim was commenced on the following day in the Business List of the Chancery Division and named only Mr Bell as defendant. It was predicated on the company having become insolvent, or having been likely to become insolvent, by 3<sup>rd</sup> April 2018 and alleges breaches of the duties owed by Mr Bell as director of BSS to consider and act in the best interests of the company's creditors when faced with such insolvency. It also makes claims in debt. In summary it seeks:
- i) damages for breach of duty in respect of the sale of equipment to Engineering at an undervalue on or about 8<sup>th</sup> June 2018 in the sum of £65,000;
  - ii) damages, or an account of profits, in respect of payments made to Manufacturing between 28<sup>th</sup> October 2018 and 28<sup>th</sup> June 2019 in the sum of £143,138.90;
  - iii) damages, or an account of profits, in respect of the transfer of stock and office equipment to Manufacturing between 4<sup>th</sup> October 2018 and 1<sup>st</sup> November 2018 in the sum of £138,680;
  - iv) damages in respect of foreign exchange and foreign travel payments made between 28<sup>th</sup> October 2018 and 2<sup>nd</sup> January 2019 in the total sum of £54,013.37;
  - v) £50,712.24 in debt, alternatively, damages, for payments made to Mr Bell personally between 6<sup>th</sup> April 2018 and 9<sup>th</sup> November 2018;
  - vi) £10,200 in debt, alternatively, damages, for the transfer from BSS to Mr Bell for the sale of a Doosan computer numerical control, or "CNC", machine, invoiced on 8<sup>th</sup> August 2018;
  - vii) damages in respect of payments made to a company incorporated in the Commonwealth of Australia called BSS Lighting and Power Solutions Pty Ltd ("BSS Australia") in the sum of £68,000.88;
  - viii) £5,251.44 as a debt, alternatively, damages, for unrecovered laptops, a satellite telephone and iPhones;
  - ix) damages equivalent to:
    - a) the sum paid to Newcastle University in respect of Austin, said in the particulars of claim to be £3,145, and
    - b) the sums paid to Christian, totalling £40,242.44.
10. The Claim was transferred to the Insolvency and Companies List by the order of Deputy Master Hansen on 7<sup>th</sup> March 2022 and it was case managed with the Insolvency Act Application thereafter. There have been a number of hearings but I need only highlight five matters in particular –
- i) First, the Insolvency Act Application as against Austin and Christian was withdrawn by consent on 22<sup>nd</sup> June 2023, the claims made against them having been settled.

- ii) Secondly, Engineering was debarred from defending the Insolvency Act Application in default of having filed and served evidence in answer pursuant to an unless order made by Deputy ICC Judge Schaffer dated 15<sup>th</sup> March 2022.
  - iii) Thirdly, a wide-ranging order for Model D extended disclosure was made by consent on 24<sup>th</sup> October 2022, covering more or less all of the issues in the case, and further directions for disclosure in relation to Mr Bell's contention that he had provided company hard drives to the liquidator.
  - iv) Fourthly, the deadlines for disclosure and evidence were extended on a number of occasions.
  - v) Fifthly, Mr Bell having narrowly missed the deadline to file all of his evidence within the time limit, he was nonetheless given permission to rely at trial on the evidence of Mr John Fearnall, Mr James Knight, Mr Stuart Knox, Mr Andreas van de Meerendonk, Christian, Austin, Mr Christopher Hurst and Mr Karl Oultram, in addition to his own evidence. He was also given permission to rely on a statement from Mr Carl Curren provided that a signed version of his statement was filed by 20<sup>th</sup> February 2024, which it was.
11. The claim proceeds against Mr Bell only, the claims against Austin and Christian having been compromised and Engineering having been dissolved. A further development at trial was that the claimant did not pursue the claim in relation to the monies paid to Christian, except to the extent of the monies said to have been paid by way of reimbursement of expenses.

### **Legal principles**

12. I set out the legal principles as raised in the particulars of claim and in submission, insofar as they are relevant. Section 238 of the 1986 Act provides:

“(1) This section applies in the case of a company where—

...

(b) the company goes into liquidation;

and ‘the office-holder’ means the administrator or the liquidator, as the case may be.

(2) Where the company has at a relevant time (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.

(3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(4) For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if—

(a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(5) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—

(a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and

(b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.”

13. Section 239 of the 1986 Act provides:

“(1) This section applies as does section 238.

(2) Where the company has at a relevant time (defined in the next section) given a preference to any person, the office-holder may apply to the court for an order under this section.

(3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.

(4) For the purposes of this section and section 241, a company gives a preference to a person if—

(a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and

(b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.

(5) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b).



(6) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5).

(7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.”

14. The “relevant time” for the purpose of both of these sections is set out in section 240 of the 1986 Act:

“(1) Subject to the next subsection, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given—

(a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency (which expression is defined below),

(b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency.

...

(2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (b), that time is not a relevant time for the purposes of section 238 or 239 unless the company—

(a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or

(b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference;

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

(3) For the purposes of subsection (1), the onset of insolvency is—

...

(e) in a case where section 238 or 239 applies by reason of a company going into liquidation... the date of the commencement of the winding up.”

A person is connected with a company if he is a director or an “associate” of a director or the company by reason of section 249 of the 1986 Act. An associate of an individual is defined by section 435 of the Act to include a relative of the individual and a company is an associate of another company if, among other things, the same person has control of it.

15. The general duties owed by a director of a company are set out in Chapter 2 of Part 10 of the Companies Act 2006 (“CA 2006”). Section 172 CA 2006 provides the duty to promote the success of the company:

“(1) 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, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company’s employees,
- (c) the need to foster the company’s business relationships with suppliers, customers and others,
- (d) the impact of the company’s operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members of the company.

...

(3) The duty imposed by this section has 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.”

The duty to creditors is engaged where the directors know, or ought to know, that insolvency is imminent or that it is probable that the company will enter into insolvent liquidation (*BTI v. Sequana* [2022] UKSC 25).

Whether a director has acted in accordance with this duty is ordinarily approached subjectively, that is to say by reference to what the director believed. In *Regentcrest plc (in liq) v Cohen & Anor.* [2001] BCC 494, Jonathan Parker J (as he then was) said, 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 court, 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."

The exceptions to the subjective approach were set out by Mr John Randall QC, sitting as a deputy High Court Judge, in *HLC Environmental Projects Ltd (in liq.)* [2013] EWHC 2876 (Ch) at paragraph 92:

"However, this general principle of subjectivity is subject to three qualifications of potential relevance in this case:

(a) Where the duty extends to consideration of the interests of creditors, their interests must be considered as 'paramount' when taken into account in the directors' exercise of discretion (per Mr Leslie Kosmin QC in the *Colin Gwyer* case (above) at [74]). Although I note the contrary view expressed by Owen J. in the Supreme Court of Western Australia that although 'the directors must "take into account" the interests of creditors [i]t does not necessarily follow from this that the interests of creditors are determinative' (*Bell Group Ltd v Westpac Banking Corp* [2008] WASC 239 at [4438]–[4439], applying the judgment of Mason J. in *Walker v Wimborne* [1976] HCA 7; (1976) 137 C.L.R. 1), so far as English law is concerned I respectfully agree with Mr Kosmin QC that his use of 'paramount' was consistent with the judgment of Nourse L.J. in *Brady v Brady* (1987) 3 B.C.C. 535 (CA) at 552, where he observed that 'where the company is insolvent, or even doubtfully solvent, the interests of the company are in reality the interests of existing creditors alone'. I also note that this passage from Mr Kosmin QC's judgment was cited with apparent approval by Norris J. in *Roberts (Liquidator of Onslow Ditchling Ltd) v Frohlich* [2011] EWHC 257 (Ch); [2012] B.C.C. 407 at [85].

(b) As Miss Leahy submitted, 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 concerned could, in the circumstances, have reasonably believed that the transaction was for the benefit of the company (*Charterbridge Corp Ltd v Lloyds Bank Ltd* [1970] Ch. 62 at 74E–F, (*obiter*), per *Pennycuik J.*; *Extrasure Travel*

*Insurances Ltd v Scattergood* [2003] 1 B.C.L.C. 598 at [138] per Mr Jonathan Crow).

(c) Building on (b), I consider that it also follows that where a very material interest, such as that of a large creditor (in a company of doubtful solvency, where creditors' interests must be taken into account), is unreasonably (i.e. without objective justification) overlooked and not taken into account, the objective test must equally be applied. Failing to take into account a material factor is something which goes to the validity of the directors' decision-making process. This is not the court substituting its own judgment on the relevant facts (with the inevitable element of hindsight) for that of the directors made at the time; rather it is the court making an (objective) judgment taking into account all the relevant facts known or which ought to have been known at the time, the directors not having made such a judgment in the first place. I reject the respondent's contrary submission of law."

16. Having set out those familiar principles I will turn to the evidence.

### **The witnesses**

#### Ms Dwyer

17. I heard first from the liquidator, Ms Dwyer. Ms Dwyer made a statement in support of the Insolvency Act Application, dated 16<sup>th</sup> December 2021 and a further statement for trial, dated 30<sup>th</sup> January 2024. She, of course, had limited first-hand knowledge of BSS, having assembled her evidence in support of the Insolvency Act Application from the records available to her. Her second statement did set out a first-hand account of her acquisition and examination of the company's records, however. In particular, she records that, contrary to the statement given by Mr Bell in his disclosure statement, she had not received any of the hard drives that the company is said to have had. She also confirmed that she was unable to find any contract of employment or resolution of the company that would have entitled Mr Bell to a salary.
18. The existence or location of the company hard drives was not the only question about the scope of the company records. Ms Dwyer explained that she had been told by Mr Bell that BSS had used Sage accounting software and that the data had been corrupted and so was not available. It was only from speaking to a staff member at the firm dealing with the liquidation of Manufacturing that she discovered that BSS used Xero accounting software. She obtained access to BSS's Xero account and extracted information from it. She also identified that an user with the name "Steve Bell" had accessed the system about two years prior to her statement for trial, that is to say at the beginning of 2022.
19. Ms Dwyer was cross-examined by Mr Bell. Mr Bell tended to make statements, some of which were rather prolonged, but he methodically cross-examined Ms Dwyer on each element of the claim. Ms Dwyer gave careful and reasoned answers and struck me as a professional and honest witness who did her best to address Mr Bell's questions accurately, bearing in mind the time that has passed, by reference to documents in the

trial bundle. I am satisfied that she was seeking to assist the court and I accept her evidence.

Mr Bell

20. Mr Bell's answers in cross-examination were courteous and considered, as indeed were his submissions. He did not, however, always answer questions and, on occasions, simply did not accept what appeared on the face of the documents in front of him. A hallmark of his evidence was that, when presented with an absence of documents to support his case or with documents that flat-out contradicted his case, he tended to assert that there would be a document somewhere in the company records to which he had not had access. Another recurrent feature was his statement that certain actions on the part of the company, in particular the non-payment of rent on the company premises, were "strategic", though it was not particularly clear what that ultimate strategy was, as I shall explain. For present purposes I can say that I am afraid that Mr Bell's account of why rent was withheld made no sense at all and was plainly contradicted by contemporaneous events.
21. He was also prepared to change his evidence when it suited him. Mr Gale, who appeared for the applicant, took him to the statement of Mr Bond as to the value of the equipment sold to Engineering in June 2018. This statement included screenshots of some equipment advertised on eBay, which were said to indicate the likely true value of some of the machinery sold. It was put to Mr Bell that he had created the screenshots. He said that he had not.
22. The webpages in the screenshots, however, included the note "not available for delivery to Spain", where Mr Bell then lived. Mr Bond lives in the UK. It was thus tolerably clear that the website was accessed in Spain, or that the user of the account had their location set to Spain when the website was accessed. The likelihood is the former. Mr Bell then altered his story and said that Mr Bond had sent him the links and he had taken the screenshots of the websites. Mr Bond's statement was created in January 2024 so one might have thought that the method by which the screenshots were created would have been relatively fresh in his mind. The true explanation in my judgment is that Mr Bell was seeking to distance himself from the creation of Mr Bond's statement and shifted his story when caught out.
23. Overall, Mr Bell's evidence was inconsistent and difficult to reconcile with the documentary evidence. While he had confident and ready answers many of them simply did not stand up to scrutiny. I therefore treat his evidence with caution and given Mr Bell's willingness to change his evidence to suit his case I am not able to accept it where it is not supported by corroborating evidence or otherwise inherently probable.

Mr John Fearnall

24. Mr Fearnall gave evidence via video link. He is the chief executive officer of, among other entities, Solon Security Ltd. His statement sets out his opinion that BSS was "perfectly solvent based on its final accounts of 2018" and says that he had been interested in investing in the company, with the discussions regarding this investment continuing into 2019.

25. Mr Fearnall's opinion as to the solvency of BSS is not admissible and is not explained at all. What was clear from his evidence however is that he did not distinguish between Mr Bell's companies and was proposing to invest, if he was to invest at all, in whatever company Mr Bell was going to use. As he put it, he was interested in the future of the business and not its past.
26. In relation to the £100,000 that he caused to be paid to BSS he was asked whether he intended to lend it to BSS or Mr Bell. He said that the money was intended for the company but that Mr Bell would have been personally responsible for it as a moral obligation. He accepted that it was paid because the company was in serious need of money.

Mr Christian Bell

27. Christian gave his evidence confidently and clearly. He explained that he was technical manager of BSS from April 2010 until November 2019 and that he was involved in working with customers and suppliers during 2019. He contended that BSS continued to trade until the "day of liquidation", which is the day on which he was told not to continue to come in to work. He accepted, however, that he did not distinguish between the companies with which his father was connected. In particular he did not recall when his employment was transferred from BSS to Manufacturing.
28. He produced a single page showing expenditure on his credit card between August and early September 2018, which he said was the only document available to him to support his expenditure on behalf of the company. It is not obvious that these payments had any connection to the company. For example, there is a payment to a bookshop in Los Angeles. He attempted to explain the purpose of a number of the transactions but could not do so with any certainty.
29. I consider that he was seeking to assist the court but he did not draw clear distinctions between his father's companies. It is difficult therefore to have any confidence that the expenses were incurred for the benefit of BSS.

Mr Austin Bell

30. Austin Bell was, in my view, an honest witness seeking to assist the court but he had limited knowledge of the business of BSS or the other companies with which his father was associated. He was taken to his employment contract of 2<sup>nd</sup> September 2018, which, as I shall explain, uses BSS's current name, which was not adopted until October of that year. He said that it might have been backdated and that he had simply received it from Mr Bell or Ms Sarah Cockburn, the human resources and finance manager of BSS, at around the time that he went to university. He did not know when his employment was transferred to Manufacturing.
31. I accept Austin's evidence insofar as it goes but, entirely understandably, he was not in a position to provide any evidence as to whether BSS continued to trade. As far he was concerned "it was all one business".

Mr Andreas van de Meerendonk

32. Mr van de Meerendonk was appointed as a director of the company in September 2016 and resigned in about July 2017. His witness statement says that he was involved in the trading relationship between BSS and BSS Australia, which he described as a “normal trading relationship” as part of BSS’s strategy to expand into new markets. When cross-examined by Mr Gale as to the failure to demand repayment from BSS over a prolonged period he said that this was not abnormal in a “family of companies”.
33. His witness statement also addressed BSS’s failure to pay rent under the leases of its premises which, like Mr Bell, he described as a “strategy”, following what the company perceived to be a failure on the part of the landlord to provide staff and premises in accordance with the terms of a regional growth fund grant. He described the company’s irregular payment of rent as an attempt to force the landlord to find new premises. As I shall explain, I have difficulty in accepting this explanation, certainly in the period after Mr van de Meerendonk resigned as a director, though it may well have been that BSS was dissatisfied with being split between two sites. However that may be, Mr van de Meerendonk had relatively limited knowledge of the period on which the proceedings were focused and, as such, his evidence was of limited assistance.

#### Other witness statements

34. Mr Bell filed further statements from Mr Knight and Mr Knox as to the potential investment in BSS. They did not attend for cross-examination and their evidence does not fall to be considered. Their statements are of little probative value in any case. A statement was put in in the name of Ms Cockburn but it is not signed and Ms Cockburn was not one of the witnesses on whom Mr Bell was permitted to rely. Mr Oultram and Mr Hurst were released from attending. Their evidence is not challenged but it does not contain anything that is material to the issues that I have to decide.
35. A statement was also put in the name of Mr John Bond, which is not signed and nor did he attend the trial to be cross-examined. Mr Curren did not attend for cross-examination either, citing ill-health. Mr Bond and Mr Curren’s statements are in the main impermissible opinion evidence in any event. I can place no reliance upon them.

#### **The company records**

36. I should start by saying that I am satisfied that Mr Bell has had access to the records of the company and made use of his own user account for the company’s Xero software. The only satisfactory explanation for a person with the user name “Steve Bell” accessing the Xero software in early 2022 is that this was Mr Bell himself.
37. I am not satisfied that he delivered up any hard drives to the liquidator. This is a case where Mr Bell’s account is at odds with the available records. The statement of affairs makes no reference to hard drives being an asset of the company and there is no mention of any hard drives in the inventory of books and records sent to Mr Bell by the liquidator’s firm on 22<sup>nd</sup> November 2019, which confirmed the contents of four boxes of records delivered up on 19<sup>th</sup> November 2019 and identified information still to be provided.
38. I proceed on the basis that Mr Bell has had access to the complete set of available company records, or could have gained access to them.

## **Insolvency of BSS and the cessation of trading**

39. I am satisfied that BSS was insolvent from the first part of 2018. The company was in arrears of rent due to its landlord, Arch Commercial Enterprise Ltd (“Arch”) in respect of one of its premises, Unit 14, Grasmere Way, Blyth, Northumberland, from January 2017. It stopped paying altogether from 1<sup>st</sup> October 2017. Mr Bell claimed that this was “strategic” as the company’s intention was to move back to Manchester and he claimed that Arch was in breach of their obligations to the Regional Growth Fund. BSS was similarly in arrears in respect of its lease of Unit 5, Ashwood Business Park, Birchwood Way, Ashington, Northumberland and stopped paying on 1<sup>st</sup> October 2017. By March 2018 the company owed Arch around £30,000. Mr Bell described this as similarly “strategic”.
40. Mr Bell said that the company had a counterclaim. He maintained that Arch knew that the rent was disputed and did not do anything. This is simply not true. On 9<sup>th</sup> February 2018 Arch issued a Part 8 claim against BSS seeking a declaration that a purported exercise of a break clause in respect of Unit 14 by the Company was invalid and seeking a money judgment for rent arrears under both leases. BSS defended on the basis that it has validly exercised the break clause. There is nothing in the documentation in the rent proceedings, that I have seen, to suggest that any breach of Arch’s obligations, whether to the regional growth fund or otherwise, was pleaded. The trial bundle contains Mr Bell’s statement in those proceedings. It makes no reference to such a breach at all.
41. Indeed, the company’s defence of the claim in correspondence was that it was in financial difficulties. On 28<sup>th</sup> February 2019, Bennett Verby Accountants, acting for the company wrote to the landlord’s solicitors and said
- “Since the forced move relocation from Northumberland in 2017, our client has suffered financially and is currently seeking re-financing as part of an ongoing strategy to continue trading. The current credit history on public file will acknowledge this position.
- As part of the structure and with the court hearing on the 10<sup>th</sup> April 2019, our client is not currently in a position to enable settle [*sic*] the outstanding amount owed to your client”
- They proposed an amount of £5,000 per month until the debt was discharged. The proceedings were concluded by consent and a Tomlin order was made on 5<sup>th</sup> April 2019. The company did not make any payments to Arch pursuant to that consent order. A judgment for £92,597.05 plus costs was entered against the Company on 31 July 2019.
42. It is impossible to see what “strategy” was being advanced by the failure to pay rent. The company in fact sporadically paid rent until it stopped altogether in October 2017, made payments of some of the arrears during the currency of the proceedings and it prayed in aid financial difficulties to negotiate a plan for payment by instalments. The contemporaneous documents are consistent with a company that was struggling financially and trying to meet its rent obligations until it was unable to do so. Had there been any real defence to the claim, or if the strategy had been to withhold payment for as long as possible to bring pressure to bear on the landlord to help the company rationalise its accommodation, one might have thought that the company would have



continued to defend the claim, rather than enter into a settlement agreement the breach of which would, as it indeed did, lead to the entry of judgment of the full sum shortly thereafter.

43. Nor is this the only example of the company being unable to meet an obligation. Mr Bell was cross-examined on exchanges between the company and a supplier called Seoul Semiconductor Co Limited (“SSC”) as to payment of outstanding invoices. Mr Bell denied in his evidence that the company had any liability to SSC. He explained that SSC had sought to persuade the company to start using its product and accepted that the company had ordered stock from SSC. Rather than ship and invoice this stock as needed by the company however, he said that SSC had shipped a large proportion of the stock ordered to BSS to improve its own sales figures. One might think that the shipping of stock that had been ordered was exactly what a supplier might be expected to do and I have to say that I found Mr Bell’s explanation of the arrangement that he says existed between BSS and SSC rather difficult to reconcile with commercial logic. He said that lead times for SSC’s product were up to a year. They would order an amount well in advance and but would tell SSC periodically what they needed from it, which would be shipped to BSS. Those products that had been ordered by BSS, but were not ultimately needed by BSS would be put back into “buffer” stock by SSC. On this occasion however a larger proportion of the order had been shipped in one go. Mr Bell said that BSS could simply have returned the items but instead negotiated extended payment terms.
44. It appears rather unlikely to me that SSC would accept the risk that BSS, having ordered stock, might require little or none of it in the event, leaving SSC with manufactured but unsold product on its own hands without any guarantee of another client to resell it to. There is no evidence of this arrangement at all and, again, it is entirely at odds with the contemporaneous correspondence and the explanations given at the time.
45. The email correspondence between BSS and SSC was exchanged between Ms Cockburn on behalf of BSS and Ms Amanda Chambers and Ms Hailey Kim of SSC. Ms Chambers was the sales manager and she emailed both Mr Bell and Ms Cockburn on 8<sup>th</sup> August 2018 to say that she had been trying her best to be understanding about the non-payment of invoices but that she was now at the stage where she wished to organise a conference call to discuss the matter. Ms Cockburn replied on the same day to “apologise for the delay in payment” and to explain that BSS was in the process of changing banking supplier. Mr Bell said that this was simply to maintain good supplier relationships. The email does not, however, acknowledge any difference in opinion as to how the situation arose – such as the explanation that Mr Bell now offers. It simply accepts that the monies were overdue.
46. By 23<sup>rd</sup> August 2018 an agreement as to payment had not been reached. Ms Chambers emailed a number of her colleagues to say that she had called BSS twice on that day and would issue a request for a payment plan by no later than 12 noon. On 13<sup>th</sup> November 2018, Ms Cockburn said that she had paid \$6,920, leaving an outstanding balance of \$27,630.13 to be cleared by the end of December 2018. SSC agreed to this, but again the company did not pay. Mr Bell denied that the company could not pay and said that it had in the region of £120,000 in its account at the time.
47. What is certainly true is that the company had at the start of August opened a new banking facility. It had two accounts with Lloyds and a factoring arrangement with that

bank, but the factoring arrangement was terminated in July 2018. Indeed, Mr Bell's director's report contained in the report to creditors attributes the failure of the company to this cancellation.

48. The Lloyds current account statements for BSS (the "No 1 account") shows returned cheques and direct debits from 3<sup>rd</sup> April 2018. On that date it was more than £18,000 in debit, returning to credit of £4,166.42 on the following day. The balance remained fairly modest until the closure of the account, often only a little over £1,000 or even less, until the account returned to deficit on 1<sup>st</sup> August 2018 and remained overdrawn until the company's liquidation. On the occasions that the company received a substantial sum under the Lloyd's factoring agreement, it was paid out quickly. The second Lloyds account ("the No 2 account") had similarly modest sums in it for the most part.
49. Mr Bell maintained that certain of the returned direct debits were as the result of disputes with suppliers or simply administrative errors by which the wrong account had been debited and the debts would have been met had the correct account been debited. There is no evidence of the former and it does not appear that there were sufficient funds in either account to meet at least some of these debits. To take one example, there was a returned direct debit on the No 2 account on 7<sup>th</sup> June 2018 in the sum of £23,167.98, at a time when the account had a credit of only £272.67. The closing balance on the No 1 account on that day was £11,940.04. This payment could not have been met in any event.
50. Mr Bell maintained that he did not know what this direct debit, in favour of Premium Credit, was for and thought that it could be an error. Nowhere in his written evidence did he deny that these sums were due and there is simply nothing to suggest that this debit was somehow established in error. Certainly there is nothing to suggest that the debit was queried on the three occasions it was debited between June and August 2018. I find it impossible to accept that BSS would not have raised objection to these attempted debits if it was believed that they should not have been made at all.
51. If there were any doubt about that, another example can be given. On 3<sup>rd</sup> April 2018 there was returned direct debit of £658.06. The No 2 account on which this debit was drawn was overdrawn in the sum of £3,457.83. The No 1 account was overdrawn by more than £19,000. There is no dispute that this direct debit, in favour of "Leaseplan", related to the hire of a vehicle. There is no suggestion of a dispute or a mistake. The company could not meet this debt.
52. The company established another account with Counting Ltd, trading as CountingUp at the beginning of August 2018. It received two large sums from Solon Sc Limited, one of Mr Fearnall's companies. The first was £65,000 on 3<sup>rd</sup> August 2018 and the second was £35,000, on 6<sup>th</sup> August 2018. When the first sum was received on 3<sup>rd</sup> August 2018 there was only £1,227 standing to the credit of the company account with CountingUp. A couple of days previously there was only £27.47. By 17<sup>th</sup> August 2018 the sums paid by Solon, and other sums, had been paid out and the balance on this account had been reduced to £3,931.47. The highest balance thereafter was £38,159 on 30<sup>th</sup> August 2018.
53. It is quite clear to me that the company was insolvent by the start of April 2018. It was not paying its rent because it could not. Its direct debits were being returned unpaid

because there was insufficient money in its accounts to meet them. While it received an injection of monies from Solon in August, Mr Fearnall recognised that this was because it was in urgent need of cash. Mr Gale rightly described it as a bailout. Nonetheless those monies were quickly used up and the company could not meet the outstanding rent or pay other creditors, in particular SSC.

54. The report to creditors states that BSS ceased to trade in March 2019, though Mr Bell now contends that it continued in operation until November 2019. The claimant's position is that it ceased trading in October 2018. It relies on the following:
- i) payments out of the BSS bank accounts effectively ceased in November 2018;
  - ii) the last monthly salary payment was made by BSS on 31<sup>st</sup> October 2018;
  - iii) the last weekly salary payment was made by BSS on 9<sup>th</sup> November 2018; and
  - iv) the last payment made to BSS's landlord was made on 8<sup>th</sup> October 2018.
55. The staff were transferred to Manufacturing by the end of November 2018 along with much of the company's equipment. Office equipment, racking and hand tools were sold to Manufacturing, along with stock, which sale was invoiced on 26<sup>th</sup> October 2018. It is difficult to see how its business could be carried on at all. Mr Bell however maintained that the company was able to trade by subcontracting labour to BSS. He maintained that the characters "[R&D]" were inserted into the company name at this point to reflect the company's ongoing role in research and development, while Manufacturing carried out the manufacture of the company's product. He also pointed to the modest receipts into the company's account after October 2018, which he said were derived from sales to customers on 7 or 30 day terms.
56. It is right to note that there were such payments, and a large payment from HM Revenue and Customs into the company's Barclays account on 31<sup>st</sup> December 2018, but there is no evidence of continued trading activity on the part of the company in the sense of carrying on of business. It is not surprising that there may be residual payments into the account of a company that has ceased trading arising from work previously done but there is nothing to satisfy me that any of the monies received into the company's accounts derived from trade carried out by BSS after October 2018. Nor are their any intercompany invoices to show that Manufacturing's staff had provided services to BSS.
57. I am satisfied that BSS had ceased to trade by the end of October 2018. It is conceivable that it was anticipated that BSS might be used for research and development but there is no evidence to satisfy me that any such work was carried on. What is quite clear in any event is that the manufacturing operation had ceased.

#### **Sale of equipment to Engineering at an alleged undervalue**

58. In July 2018 BSS sold certain equipment to Engineering for £55,000 plus VAT, which Mr Bell explained in correspondence to the liquidator as follows:

“the Company needed a cash injection and as such MSV Properties agreed to purchase some of the assets from [the Company] to provide a cash injection and agree a lease back”.

The equipment was not leased back to BSS but to Manufacturing.

59. The lease of the equipment is made between Engineering and Manufacturing and is dated 6<sup>th</sup> October 2018. The equipment leased, which is accepted to be the same equipment as that sold to Engineering, is defined as:

“As per attached Schedule A which has an approximate value of £120,000”.

The claimant relies on this statement of value, a matter of months after the sale, as clear evidence that the equipment was sold at an undervalue. Mr Bell maintained that the value given in the lease was a “new for old” replacement value for insurance purposes.

60. The lease does indeed require Manufacturing to maintain insurance for the “full replacement value” of the equipment but I reject Mr Bell’s explanation. The lease states that the equipment itself has an approximate value of £120,000. It would have been perfectly possible to state that that was the current full replacement value but it did not. In fact there is no reason for the lease to state a spot replacement value for the equipment, which would no doubt change from time to time and over the years.
61. The lease is not professionally drafted, but it is not the only evidence of the value of the equipment. The notes to BSS’s financial statements for the year ended 31<sup>st</sup> March 2018 show a carrying amount, or book value, of £263,670 attributable to plant and machinery. The statement of affairs prepared at liquidation shows plant and equipment valued at £115,184.61, a difference from the accounts of £148,485.39. While not precisely marrying up with the value attributed to the equipment in the lease, the lease value is expressed to be approximate and there is no other explanation in evidence to explain the difference in the value of the company’s plant and machinery. Mr Bell suggested that there might have been other transactions, even acquisitions, between the date of the lease and the date of the statement of affairs but none have been identified by him and nor is there any evidence of this at all aside from the sale of the Doosan CNC machine to Mr Bell in August 2018 for the sum of £8,500, which might account for some of the discrepancy.
62. Mr Bell maintained that Mr Curran and Mr Bond had confirmed that the sale was at a fair value. Mr Bond’s unsigned witness statement, dated 16<sup>th</sup> January 2024, states that he is indeed of the opinion that the items had been sold for fair value. Appearing below the place where his signature was to be affixed are screenshots of websites showing the sale price of two pieces of machinery similar to those included in the sale, showing fairly modest value.
63. I have set out Mr Bell’s explanation of how the screenshots of the websites came to be created. I cannot accept this explanation and I do not accept this as admissible evidence of the value of the equipment. There is no permission for Mr Bond to give expert opinion evidence as to the value of any of the equipment, his statement is not signed, he did not attend for cross examination and, in my judgment, it is plainly not an independent assessment of value, having at least in part been prepared by Mr Bell. I

should say that the same is true of the statement of Mr Curren, dated 20<sup>th</sup> February 2024. The two items of equipment that appear below Mr Curren's signature do not contain the same shipping limitation, which might be explained by the fact that the seller has specified that they are for collection only, rather than delivery. However that may be, Mr Curren's statement is inadmissible opinion evidence.

64. It is of course true that the claimant has offered no valuation evidence of its own. Apparently it has been unable to find a valuer. On the basis of the evidence that I have however, I am satisfied that the equipment had a value of at least £120,000. That is the value that was ascribed to it, approximately, in the lease, and the value of the company's plant and machinery is shown to have been reduced by a sum rather in excess of that between the date of its accounts and the statement of affairs. On balance, I am satisfied that the equipment was disposed of at an undervalue of £65,000. I am similarly satisfied that the sale took place at a time when the company was insolvent and in breach of Mr Bell's duty to take proper account of the interests of creditors.
65. Mr Bell is liable to pay compensation for the loss occasioned by the sale at an undervalue.

### **Payments to Manufacturing**

66. The statement of affairs prepared at liquidation stated that BSS owed £159,973.70 to Manufacturing. This was broken down in an email from a Julian Sutcliffe (to which Mr Bell was copied) as made up of £136,947.50 shown as due to Manufacturing on an intercompany ledger and a further £23,026.20 paid by Manufacturing in respect of 'payments on lease/hire agreements'. Manufacturing's statement of affairs does not show this sum to be due to it from BSS.
67. The points of claim aver that there was a reconciliation carried out by the liquidator showed that between 28<sup>th</sup> October 2018 and 28<sup>th</sup> June 2019 the net sum of £143,139.90 was transferred to Manufacturing. Mr Bell has explained this as reimbursement of monies defrayed by Manufacturing on BSS's behalf. His statement, dated 5<sup>th</sup> April 2022, states that this was simply normal trading activity. Mr Bell's later amended defence, dated 27<sup>th</sup> September 2022, requires the claimant to prove that there were any such transactions and provides no further detail. The reconciliation is included in the bundle, together with the underlying bank statements, to which no objection was taken.
68. I am satisfied that the transactions took place and Mr Bell has not offered any explanation of them, even in outline. The only inference that I can draw is that they represented an attempt to transfer monies out of BSS and into the company that was to carry on the business formally carried on by BSS. There is no evidence that the interests of creditors were considered and I am satisfied that a intelligent and honest director would not have permitted these transactions to be entered into, having regard to those interests. Even if one were to assume in Mr Bell's favour that the transfers were payments pursuant to genuine commercial transactions they would in any event constitute preferences, the payments having been made at a time when the company was insolvent and desire to prefer being presumed in the case of a payment made to a person connected with the company. Indeed, taken in the context of a pattern of transfer of assets to Manufacturing, which inherited BSS's business, the only inference that can be drawn is that there was an intention to place it in a better position than it would have been in in the event of the BSS's inevitable insolvent liquidation. On either basis it was

a breach of the duty to take proper account of the interests of creditors to make these payments and Mr Bell is liable to pay compensation in the full amount.

### **Transfer of stock and equipment to Manufacturing**

69. BSS sold stock and office equipment to Manufacturing to the value of £138,680.16. This amounted to the entirety of the company's office and computer equipment. The invoiced sums were not paid. Mr Bell's explanation of this is that there were "contra transactions", which he puts as follows:

"It is denied that there was not a legitimate reason to account for sales or purchases to be dealt with by means of a contra transaction. Both Companies were actively trading as shown in paragraph 8.7 and contra transactions were often used to avoid the need for payments from both Companies and simplify accounting process"

As I have explained, I am satisfied that the company was not trading after October 2018 and there is no evidence of any inter-company trading giving rise to a liability that could be offset against the purchase price for these items. I am satisfied that this was, again, an attempt to move assets out of BSS and into the company that was to carry on its business. It was a breach of Mr Bell's duty to consider the interests of creditors not to secure payment for the transfer of the stock and equipment. In the event the company ended up with neither the equipment nor the purchase monies. Again, he is liable to pay compensation for this in the full amount claimed.

### **Foreign exchange and foreign travel**

70. Between 28<sup>th</sup> November 2018 and 31<sup>st</sup> December 2018 five payments were made to a foreign exchange broker and payments provider with the payment reference "HiFx". Two payments were also made to Emirates Airlines totalling £8,122.86 on 2<sup>nd</sup> January 2019. Mr Bell asserts that these were proper business expenses. In view of my determination that BSS was (a) insolvent and (b) had ceased to trade there is no proper basis on which these payments could have been made. This again appears to be no more than a loading of expenses on an insolvent company for the benefit of Mr Bell's other business interests. Even if one were to assume that BSS retained a residual research and development role, there is no evidence as to how these expenses furthered that role. Again, there is no evidence that Mr Bell considered the interests of creditors at all in incurring these expenses and, in my judgment, an intelligent and honest director would not have done so. Mr Bell must pay compensation in the sum claimed.

### **Payments to Mr Bell**

71. Between 6<sup>th</sup> April 2018 and 9<sup>th</sup> November 2018, BSS transferred £97,762.50 to Mr Bell. Some £41,352.15 was paid by Mr Bell to BSS during the period, leaving a balance in Mr Bell's favour of £56,410.35. A further credit is given in Mr Bell's favour arising from sums shown to be owing to him in the statement of affairs, leaving £50,712.24. Mr Bell contends that these sums represented £10,000 by way of dividend, paid on 5<sup>th</sup> August 2018, together with salary.

72. The accounts for the year ending 31<sup>st</sup> March 2018 state that a dividend of £10,000 was paid in that period. The accounts for the following financial year make no reference to such a payment. Mr Bell said that the payment may have been accounted for in the 2018 financial year but not paid until the following financial year. This was the first time that he had given such an explanation but, if Mr Bell were correct, it would still have been in breach of his duty to consider the interests of creditors to take a dividend properly declared in an earlier period at a time when the company was insolvent.
73. Mr Bell maintains that he was entitled to the balance of the claimed sum by way of remuneration as a director. There is no evidence of an entitlement to remuneration. No employment contract or resolution has been produced to show that Mr Bell was entitled to a salary. The liquidator's evidence confirms that she has been unable to find evidence of such entitlement. I am satisfied that there was no entitlement and the payments were made to Mr Bell in breach of duty.
74. An invoice was issued to Mr Bell for the sale to him of a CNC machine in the sum of £10,200 on 8<sup>th</sup> August 2018. Mr Bell says that this was settled against his loan account. Again this is inconsistent with the company records. The records of the company as to the director's loan account, while showing a large number of transactions in the period 1<sup>st</sup> April 2018 to 31<sup>st</sup> March 2019, show no such deduction. Mr Bell said that there must be more transactions beyond the last shown on the schedule, which is dated 8<sup>th</sup> November 2018, but the spreadsheet concludes immediately thereafter that transaction with the closing balance, indicating that that was the last transaction on the account. I am satisfied that the schedule contains a complete record of the transactions on the director's loan account and the sum due in respect of this invoice was not accounted for.
75. These sums fall to be paid.

### **BSS Australia**

76. Mr Bell is connected with BSS Australia, which owed BSS £68,000.88 as at the date of liquidation. BSS's accountants provided a breakdown of this debt much of which has been outstanding since 2017. The nature of Mr Bell's connection has been somewhat opaque but Mr Bell said that he had a 50% shareholding in this company with a Mr Pearce, although that was subsequently diluted. It was put to Mr Bell that BSS received nothing in return for the monies paid. Mr Bell explained that he regarded Australia as an emerging market. He assessed it to be about five years behind the European market and that it would generate returns. The debt is now irrecoverable.
77. It is of course possible that a UK registered company might invest in an associated company by way of capital investment or loan in the expectation of a return. There is nothing to suggest what return BSS, rather than Mr Bell personally as a shareholder, might have anticipated as a result of these advances. There is nothing to show that the best interests of BSS or, as it was insolvent from April 2018, its creditors, were considered at all in either making sums available to BSS Australia or in allowing those sums to remain outstanding. No explanation was offered to show how these advances could genuinely have been thought to be in the interests of the company, rather than Mr Bell himself, or how leaving them unrecovered for some years would serve its interests. I am satisfied that the debt was allowed to accrue in breach of duty and Mr Bell is liable to pay compensation accordingly.

### **Missing laptops and iPhones**

78. BSS purchased computer and office equipment between 14<sup>th</sup> May 2018 and 20<sup>th</sup> September 2018 for a total of £4,376.20. This included a laptop computer and two iPhones, purchased in September 2018, and a satellite telephone, purchased on in August 2018. These have not been made available to the liquidator. Mr Bell said that there were lots of computers in the company and that things could get broken and replaced. I cannot accept that explanation. These are four pieces of technology purchased following BSS's insolvency at a point when it was about to transfer its undertaking to Manufacturing. It is improbable that these brand new items would simply go missing without trace so suddenly. The inference must be that these items were transferred to Manufacturing in breach of Mr Bell's duty to the company.

### **Payments to Newcastle University**

79. On 12<sup>th</sup> December 2018 a cheque in the sum of £3,145 was drawn in favour of Newcastle University. It is not in issue that this was a payment towards Austin's tuition fees. Austin's employment was transferred to Manufacturing in November 2018 with the rest of the staff. Mr Bell maintained that Austin was working for both companies and there were invoices back and forth between them. There is no evidence of this at all. It is curious that Austin's employment contract is dated 2<sup>nd</sup> September 2018, shortly before the transfer of all employees to Manufacturing. One might have thought that so shortly before the cessation of trade of BSS it would have made more sense for Manufacturing to employ him from the start. More curiously still, the contract gives the name of the company as "BSS LED [R&D] Limited" despite the characters "[R&D]" being added to the company name on 12<sup>th</sup> October 2018. Austin's evidence is that the contract was given to him at around the time that he started university. The likelihood is that the contract was backdated and was not made on the date it bears.
80. As I have said, I do not doubt Austin's own evidence but it is clear that he did not distinguish between the companies with which his father was associated. I am satisfied that by the time the cheque was drawn his employment was with Manufacturing, and the payment of his tuition fees out of the assets of BSS was another example of Mr Bell loading expenses onto the insolvent company. There was no basis for BSS to pay the tuition fees of a person it no longer employed. That liability had passed to Manufacturing.
81. Mr Bell is liable to pay compensation in this sum.

### **Payments to Christian**

82. The payments to Christian total £40,242.44 and fall into three categories:
- i) repayments of a loan arising as a result of Christian paying invoices on the company's behalf when the company could not, as a result of an alleged problem with the Company account
  - ii) wages for the three months August, September and October 2018; and
  - iii) expenses reimbursed.



The claimant now only pursues the expenses claim, which are modest.

83. As I have said, it is not obvious that the expenses were all incurred on behalf of BSS. Christian accepted that it was “difficult to say” whether the purchase in a Los Angeles book shop was referable to BSS and, while he attempted to recall what the purpose of the other expenditure was for, I cannot be satisfied that the expenses were referable to BSS, particularly as they were incurred as that company approached the end of its trading life and its staff and business were about to be transferred to Manufacturing, and against a background of monies and property of BSS being transferred to its successor company. Proper vouchers should have been obtained from Christian and preserved among the company records and subjected to proper scrutiny before payment was authorised. I am similarly satisfied that in permitting the company to make this payment at a time when the company was insolvent Mr Bell failed to consider the interests of its creditors. Had he done so, these payments would not have been made to the detriment of those creditors. Mr Bell is liable to pay compensation accordingly in the sum claimed in relation to these expenses, being £4,888.93.

### **Disposition**

84. The claimant's claim succeeds and I will give judgment against Mr Bell in the total sum claimed, save in respect of those parts of the claim in respect of Christian that were no longer pursued. I will hear the parties as to the basis and amount of interest to be awarded, together with other consequential matters, if these cannot be agreed.