



Neutral Citation Number: [2020] EWHC 173 (Comm)

Case No: CL-2017-000600

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**BUSINESS AND PROPERTY COURTS**  
**OF ENGLAND AND WALES**  
**COMMERCIAL COURT**

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

Date: 04/02/2020

**Before :**

**THE HONOURABLE MRS JUSTICE MOULDER**

-----  
**Between :**

**YUKOS HYDROCARBONS INVESTMENTS  
LIMITED (into which Fair Oaks Trade & Invest  
Limited has merged)**

**Claimant**

**- and -**

**(1) CLEANTHIS GEORGIADES**

**(2) GE.LAW SERVICES LIMITED**

**Defendants**

-----  
**Mr Jamie Goldsmith and Mr Stephen Donnelly (instructed by CMS Cameron McKenna  
Nabarro Olswang LLP) for the Claimant**

**Mr Paul Wong Chun Yi (instructed by Humphreys & Co.) for the Defendants**

Hearing dates: 25-28 November, 2-5, 11 and 12 December 2019  
-----

**Approved Judgment**

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

.....

**THE HONOURABLE MRS JUSTICE MOULDER**

## **Mrs Justice Moulder:**

### Introduction

1. This is in essence a claim brought by the claimant, Yukos Hydrocarbons Investments Limited (“YHIL” or the “claimant”) against one of its former directors, Cleanthis Georgiades (“CG” or “Mr Georgiades”) and his company, GE Law Services Limited for alleged breach of his fiduciary duties.

### Background

2. YHIL is a company incorporated in the British Virgin Islands. It is a subsidiary of Financial Performance Holdings BV (“FPH”) which in turn is owned by Stichting Administratiekantoor Financial Performance Holdings (the “Armenian Foundation”). The companies within this group including YHIL were formed as a result of a restructuring of the overseas subsidiaries of Yukos Oil, the Russian oil and gas company (“Yukos Oil”). This was initiated in April 2005 by the senior management of Yukos Oil based outside Russia and followed steps taken by the Russian state/Rosneft against Yukos Oil culminating in the bankruptcy and dissolution of Yukos Oil. Yukos Oil’s assets outside Russia were placed directly and indirectly into the Armenian Foundation and another Dutch Stichtingen (the “Dutch Foundation”). The purpose of the various companies within the Yukos Foundations (the “Yukos Group”) is to collect in and safeguard assets by engaging in legal proceedings around the world to seek to recoup monies and assets which they assert have been wrongly misappropriated and to distribute assets to former shareholders of Yukos Oil. Historically the Yukos Group had entities and operations in Cyprus due to “tax efficiencies”.
3. In 2005 the corporate services firm, Abacus Secretaries Limited (“Abacus”), part of PricewaterhouseCoopers, which was assisting YHIL in carrying out corporate functions ceased to act for YHIL and the two representatives of Abacus resigned as directors of YHIL.
4. The Second Defendant (“GE Law”), a Cypriot company, is registered as a provider of corporate services with the Cyprus Bar Association and provides, amongst other things, shareholders and nominee directors. Mr Georgiades was and is a director and shareholder of GE Law. The two main employees of GE Law at the relevant time were Renata Paretti and Marios Epaminondas.
5. In September 2005 YHIL appointed CLS Aliens and Consulting Services Limited (“CLS”) as secretary of YHIL. CLS is a firm owned by Mr Georgiades and his sister. Also in September 2005 YHIL entered into a professional services agreement with GE Law.
6. On 10 August 2006 a further professional services agreement was entered into between GE Law and YHIL and on the same day Mr Georgiades was appointed as a director of YHIL.
7. For the majority of the period whilst Mr Georgiades was a director of YHIL, the other directors of YHIL were Mr Harlan Malter, Mr Daniel Feldman and Mr Sergei Ketcha.

8. Mr Georgiades was also a partner at the law firm, Demos and Lea Georgiades and Co (“Demos”), which he owned jointly with his sister. In 2014 it became an LLC from which time Mr Georgiades has been a director and shareholder with his sister.
9. Gilham International Limited (“Gilham BVI”) Gilham Trust (Cyprus) Limited (“Gilham Cyprus”) and Sunspot International Limited (“Sunspot”) provided services which were similar to those offered by GE Law but are now dormant. Mr Georgiades was the sole ultimate owner at all times of Gilham BVI and Sunspot and the 50% ultimate shareholder of Gilham Cyprus from March 2008 to at least June 2011 (when he became the sole ultimate shareholder).
10. On 12 October 2007 GE Law and YHIL entered into a further professional services agreement (the “2007 PSA”) effective from 27 July 2007. It was then extended by various amendment agreements.
11. Mr Georgiades' directorship terminated on 5 May 2011 by shareholder resolution, FPH having decided that other, longer-standing personnel were under-employed and could therefore fill the role.
12. Until the Settlement Agreement in June 2015 (referred to below), GE Law continued to provide corporate services to YHIL under the 2007 PSA.
13. In 2014 after the claimant learnt that Mr Feldman had explored setting up a proposed “unauthorised bonus scheme”, Crowe Horwath, an investigations firm, was instructed to conduct an investigation on behalf of the claimant into the bonus scheme and “any further instances of wrongdoing” (Mr Godfrey’s witness statement paragraph 83). In this regard Crowe Horwath spent over a week at the offices of GE Law (paragraph 48 of the List of Common Ground) and inspected both electronic and hard copy documents. The investigation by Crowe Horwath completed at the end of April 2015 and a claim was issued against Mr Feldman on 25 June 2015.
14. On 2 June 2015 YHIL and the defendants entered into a Settlement Agreement (the “Settlement Agreement”) which terminated the 2007 PSA. GE Law was required to return US\$600,000 of the US\$1 million which had been deposited with GE Law (the “Indemnity Fund”) to enable it to defend itself against proceedings which might be brought against it arising out of its acting for YHIL under the PSA.

#### The claims in these proceedings

15. YHIL's central complaint in these proceedings is that Mr Georgiades breached his fiduciary duty, making unauthorised profits or causing losses to YHIL. There are four main categories of profits or losses alleged:
  - i) the "Introducer Claim": YHIL alleges that Mr Georgiades received (directly or indirectly through companies owned and controlled by him) undisclosed introducer fees or commissions from a Cypriot bank, Piraeus (Cyprus) Ltd (now Astro Bank Ltd) ("Piraeus"). YHIL’s primary case is that the agreement under which these fees or commissions were paid (the “Introducer Agreement”) was with Mr Georgiades personally and that he obtained the benefit of it. The Defendants say that the Introducer Agreement was entered into with GE Law.

- ii) the “Political Donation Claim”: YHIL claims that Mr Georgiades obtained financial contributions for his political campaign in Cyprus by causing GE Law to falsely overcharge YHIL up to US\$99,000 in respect of services that were never rendered. The defendants’ case is that they were not false invoices; rather the board of YHIL agreed that GE Law would issue invoices which would include sums which Mr Georgiades had spent on his election campaign and when Mr Godfrey was informed and objected, the money was subsequently returned by reducing the amount charged by GE Law to YHIL.
- iii) the “Non-Disclosure Claim”: Had he disclosed his breaches of fiduciary duty (as required), YHIL asserts that Mr Georgiades would have been dismissed as a director and YHIL would not have continued to engage the services of Mr Georgiades pursuant to the 2007 PSA or made payment for alleged services to GE Law, Gilham BVI and Gilham Cyprus.
- iv) the “Interest Claim”: YHIL alleges that GE Law has failed to account in full for interest in respect of the US\$1m “Indemnity Fund” paid to GE Law under clause 6 of the 2007 PSA.

YHIL also claims damages for losses suffered due to GE Law’s breaches of the 2007 PSA and/or vicarious liability for the breaches of fiduciary duty by Mr Georgiades. The “Eurolink” claim is no longer pursued having been abandoned in closing submissions.

- 16. The defendants assert that all claims have been compromised on the terms of the Settlement Agreement, in particular clause 9 which the defendants assert released the defendants from any liability relating to the 2007 PSA. YHIL's primary case is that the Settlement Agreement does not compromise claims, the existence of which were known to the defendants but (to their knowledge) were not known to YHIL in circumstances amounting to sharp practice. Alternatively, the release of claims under clause 9 was expressly subject to the satisfactory completion of all terms of the Settlement Agreement by the defendants, including the return of 60% of the interest due to YHIL on the Indemnity Fund (clause 7). In the further alternative, the Settlement Agreement is liable to be set aside for fraudulent misrepresentation: (a) expressly in clause 9 of the Settlement Agreement GE Law warranted that it "was not aware of any facts or circumstances which might give rise to any claim by YHIL against GE Law arising from its performance of the [2007 PSA as amended]"; and/or (b) impliedly Mr Georgiades personally, by negotiating and signing the Settlement Agreement personally and on behalf of GE Law, warranted that he honestly believed GE Law's representation to be true.
- 17. The Defendants also take various limitation defences.

Witnesses of fact

- 18. For the claimant the court heard evidence from:
  - i) David Godfrey, currently one of the claimant’s two directors and also the sole director of FPH and a board member of the Armenian Foundation;
  - ii) Harlan Malter, director of YHIL from 30 November 2006 to 3 March 2015;

- iii) Martin Parr, director of YHIL from 30 September 2012 to 19 December 2014; director of FPH from 19 June 2008 to 10 October 2014.
19. For the defendants the court heard evidence from:
- i) Mr Georgiades;
  - ii) Marios Epaminondas, a former employee of GE Law from 2006 to 2016 (apart from a short period of about 4 months in 2010).
  - iii) Renata Paretto who initially joined Demos as a trainee lawyer in 2008 and then joined GE Law in 2009. She is now a director of GE Law.

Assessment of witness

Mr Godfrey

20. By background Mr Godfrey is a lawyer. In his current role as a director of the Armenian Foundation he manages the litigation being pursued by the Yukos Group. This includes managing the current proceedings. There were certain aspects of his evidence which affected the court's assessment of his credibility.
21. Firstly, Mr Godfrey accepted that he personally receives a bonus which is calculated by reference to amounts recovered in litigation. The amount payable to him is approximately one third of 10% of the distributions. Mr Godfrey stated that he did not see it as a "personal financial interest in the outcome of the proceedings" and that he does not litigate a particular claim on the basis that he expects it to make money for him.
22. It was surprising that Mr Godfrey was not prepared to admit that this was a "financial interest" in the outcome of the proceedings and I infer that as a lawyer, he is well aware of the conflict of interest to which this interest gives rise, notwithstanding his attempt to minimise the value of such financial interest. The court takes into account both the existence of the conflict and his denial of it amounting to a conflict, in assessing his evidence on issues in these proceedings.
23. Secondly, whether or not Mr Godfrey was influenced by the financial interest, in my view he was not wholly frank in his evidence to the court. I draw this conclusion from his stated inability to recall any detail of the issues forming the subject matter of the case brought by the claimant. Mr Godfrey accepted that he was the individual "authorised to manage and deal with these proceedings" on behalf of the claimant, yet he could not (or would not) answer questions concerning the main issues raised in the proceedings or the conduct of the proceedings. For example, when asked whether it was the position of YHIL that there was an introducer agreement with Mr Georgiades personally, Mr Godfrey replied, "I do not recall" and subsequently stated that he did not have "these kinds of details committed to memory". As will be evident below, this issue is not in my view a "detail" but one of the main issues in these proceedings. Similarly when asked whether YHIL attempted to contact Piraeus to give evidence in these proceedings, he replied, "I do not know". Asked by the court whether he was able to give the court any reason why the claimant did not call any witnesses from Piraeus Bank, Mr Godfrey replied,

“No, I am not. I do not know how that decision was made.”

Again, as is evident from the discussion below, the hearsay evidence of individuals from and on behalf of Piraeus and the absence of any live witnesses from Piraeus is a significant consideration in a number of the factual findings. As the person managing these proceedings on behalf of the claimant, it is in my view not credible that the approach to the evidence of Piraeus was not an issue discussed with, and ultimately approved by, Mr Godfrey.

24. Finally, in my view Mr Godfrey sought to downplay the significance of the investigation by Crowe Horwath. He accepted that he instructed Crowe Horwath (through his lawyers Gibson Dunn) to conduct an investigation in 2014. It was put to Mr Godfrey in cross examination that the investigation was to consider whether YHIL had any claims against any other perpetrators. Mr Godfrey’s responded that it was:

“really just best practice response to the unearthing of evidence about the bogus bonus scheme that we were not looking to do anything. We were hopeful it would produce nothing which was essentially what it produced....”

He described the investigation as:

“a bit of a non-event because it did not really uncover anything”.

He said he did not recall whether he asked Crowe Horwath to investigate Mr Georgiades or GE Law.

25. This was an investigation which commenced in around March 2014 and concluded approximately one year later in April 2015. It involved the engagement of external lawyers, Gibson Dunn, as well as forensic accountants, Crowe Horwath, and in relation to the defendants, involved visits to the offices of GE Law over a number of days and an examination of hard copy files and electronic records. To describe such an extensive investigation as merely a “best practice response” and to be unable to answer whether it involved the investigation of Mr Georgiades or GE Law stretches credibility. Moreover his evidence that the investigation “did not really uncover anything” does not in my view accord with the fact that firstly, the claimant has chosen to assert privilege in respect of that report and not to disclose even a redacted version of the report. (Only in the course of the trial did the claimant suddenly take the position that an email relating to the political donations and previously said to be privileged could be disclosed in redacted form.) Secondly, it does not accord with the fact that the proceedings against Mr Feldman followed in June 2015, very shortly after the conclusion of the investigation.
26. For all these reasons in my view Mr Godfrey was not a witness who sought to give full and frank evidence to the court and the weight which I give to his evidence on disputed issues of fact is reduced accordingly.

Mr Malter

27. Mr Malter qualified as an attorney but never practised. He works in financial services providing financial planning for individuals and small businesses. At the material time when he was a director of YHIL, he was resident in the United States and was not involved in the day-to-day business of YHIL. He met the co-directors only during board meetings which happened 3 to 4 times a year. Otherwise he was involved in the management of YHIL largely by email and he said that his primary role so far as his expertise was concerned was in relation to investment strategy. So far as he had any relevant knowledge, Mr Malter appeared to give honest evidence to the court. I note that Mr Malter was frank in relation to the political “contribution” that he was in favour of giving support to the political campaign (although his evidence was that his approval was subject to the approval of Mr Godfrey being obtained).

Mr Parr

28. Mr Parr had prepared schedules of amounts due to the claimant assuming that the commissions paid by Piraeus had been paid on all transactions (Forex, time deposits and forward contracts above the identified spread) between YHIL and Piraeus. He fairly accepted that he had no knowledge of whether the underlying assumptions were correct.

Mr Georgiades

29. It was submitted for the claimant that Mr Georgiades had “told a great many lies, repeatedly changed his evidence and sought to reinterpret clear documentary evidence”.
30. In my view there were instances where Mr Georgiades sought in his oral evidence to present his evidence in a way which suited his case, for example in my view he sought to downplay his role with Piraeus in negotiating rates for deposits for YHIL in a way which was contradicted by the contemporaneous emails. There were also examples where Mr Georgiades appeared to change his evidence: for example, in his witness statement (paragraph 135 – 142 of his second witness statement) he stated that any introducer fees were only payable where the bank made a “direct profit” from the particular transaction. However in his oral evidence his evidence was that he was never given any calculation of the introducer fees, it was not paid for every separate client and it was paid according to what the bank was aiming to attract for the transactions so there were different payments for different products.
31. However in evaluating the evidence of Mr Georgiades on any particular issue, I bear in mind the following:
- i) the passage of time: Mr Georgiades was being questioned in detail about events which occurred around 2007, that is over 10 years ago without the benefit in most cases of contemporaneous records. He was not obliged to keep records from this period given the time elapsed and given the fact that he had been, in his view, released pursuant to the Settlement Agreement from all obligations which he might have incurred as a director of YHIL; it is therefore credible in my view that his recollection of dates and events may not be accurate merely due to the passage of time;



- ii) GE Law was acting as a service provider for a number of companies and Mr Georgiades has been required in the course of cross examination to explain the reasons for specific payments, some of which were relatively minor amounts in the context of operating such a business e.g. a cheque for approximately €5,000 and a cheque of €7,500, which were paid over 10 years ago;
  - iii) Mr Georgiades has been criticised by the claimant for failing to disclose documents in particular bank statements for periods which are relevant to the dispute. Having considered the requests for disclosure sent by the claimant's lawyers, the impression is of a continuing stream of requests for disclosure made to an individual, with limited financial resources, seeking to defend himself against claims made by an extremely well-resourced and sophisticated litigant. In the circumstances and bearing in mind the passage of time, I do not find that Mr Georgiades has deliberately withheld financial information or failed to disclose documents.
32. YHIL invites the Court to draw “adverse inferences” citing *The Brillante Virtuoso* [2019] EWHC 2599 (Comm) at [445]–[446]) In my view that authority turns on its own facts and at its highest, suggests that the findings of lies were only “part of the mix when assessing the evidence as a whole”.
33. YHIL also invites the Court to resolve uncertainties against Mr Georgiades “as a fiduciary with inadequate disclosure”. YHIL rely on a number of authorities including *Ross River v Waveley Commercial* [2013] EWCA Civ 910 at [94]:
- “In general, where a person is subject to a fiduciary obligation as regards his or its dealings with assets, then it is up to that person to establish the justification for his or its dealings, if there is any contest, rather than it being for the beneficiary (i.e. the person to whom the obligation is owed) to prove that the payment was not justified.”
34. However it seems to me that the approach which applies to a fiduciary shown to be in default does not apply to the issue of whether the claimant has established its case that Mr Georgiades is a fiduciary in default. Thus, for example, to the extent the claimant's case relies on the assertion that the Introducer Agreement is with Mr Georgiades personally, it is for the claimant to prove its case. It is not for the defendants to prove that the Introducer Agreement was with GE Law.
35. There were undoubtedly inconsistencies in the evidence of Mr Georgiades in the course of his oral evidence over a number of days and apparent changes from his evidence in his witness statement. The extent to which these inconsistencies are due to the passage of time is difficult to evaluate and in assessing the weight which I give to his evidence on a particular issue, I consider whether the evidence is supported by other evidence, in particular contemporaneous documentation, as well as its inherent plausibility in the circumstances. However I do not draw any general adverse inference of the kind advocated by the claimant.

Marios Epaminondas

36. Marios Epaminondas described himself as a corporate services officer. When he was working for GE Law, he managed the cases of clients of GE Law, including YHIL, on a day to day basis, taking instructions and directions from Mr Georgiades. He no longer works for GE Law but works as a consultant for companies in Cyprus assisting with regulatory compliance. He has a Master's in Business Administration.
37. In my view Marios Epaminondas was an honest witness who admitted when he did not recall matters or was not directly involved. In my view the role performed by Marios Epaminondas at GE Law makes him well placed to give evidence both as to the way the various companies in the GE Law group performed services and the way in which introducers for banks in Cyprus were regulated. He no longer works for GE Law and there was no suggestion that his evidence was partisan. I give full weight to his evidence accordingly.

Renata Paretti

38. Ms Paretti only joined GE Law in 2009 and was involved with the work of GE Law for YHIL for a very short period when Marios Epaminondas left GE Law for around 4 months in 2010. She was not able therefore to give direct evidence on the issue of the Introducer Agreement with Piraeus or the fees payable. However she was able to give evidence as to her knowledge whilst working for GE Law of the role of an introducer for banks in Cyprus and I have no reason to doubt the veracity of that evidence.

Expert evidence

39. The court also had expert evidence as to Cypriot law in the form of reports from Mr Petros Artemis instructed by the claimant and Mr George Christofides instructed by the defendants. Due to unforeseen circumstances Mr Christofides was unable to attend the trial to give oral evidence but Mr Artemis did give oral evidence and was cross examined primarily on the issue of limitation.

BVI law

40. At paragraph 22 of the directions order of Bryan J at the CMC it was ordered that:

"No expert evidence shall be led on the issue of BVI law.  
Instead:

(1) The court shall apply the BVI Business Companies Act 2004 (as amended) and the BVI Limitation Ordinance 1961 (as amended) and interpret those statutes on the assumption that the BVI rules of statutory interpretation are the same as English rules of statutory interpretation and (in so far as the wording of these statutes is the same as an English Act) that the relevant English case law applies; and

(2) In all other respects, the court will assume (no evidence being led to the contrary) that BVI law is the same as English law."

### Issues for the court

41. In writing this judgment the court has had regard to the list of issues prepared by the parties as well as the submissions, both oral and written, made by counsel for the parties. A considerable number of issues were raised, both legal and factual, and whilst the court has considered them, the court has only addressed in the judgment those legal issues and findings of fact which in the view of the court needed to be addressed in order to resolve the claim (and in some instances, dealing with the alternative basis for the decision). Further there are instances (identified below) where the claimant sought to advance a case in submissions which went beyond the pleaded case and in relation to the introducer fees and the indemnity fund respectively, to advance a case which was not pleaded. The court has therefore formulated the issues in the light of its assessment of the matters which properly fall to be determined and these are dealt with below.

### Fiduciary duties

42. It is common ground that, as a director of YHIL, Mr Georgiades owed duties to YHIL under ss.120-21 and 124 of the BVI Business Companies Act 2004 ("BCA"), including to exercise his powers as a director only for proper purposes and to disclose breaches of his duties to YHIL.

43. The claimant submitted that "it is equally obvious" that Mr Georgiades owed:

- i) A fiduciary duty under s.120(1) of the BCA to act honestly in good faith and in what he believed to be in the best interests of YHIL;
- ii) Fiduciary duties at common law and/or in equity not to: (a) put himself in a position where his personal interest and his duty to YHIL might or did conflict; and (b) make any secret profit, in both cases without YHIL's fully informed consent.

44. The defendants' case is that Mr Georgiades nevertheless owed attenuated duties because he was merely a "nominee" director.

45. It was submitted for the claimant that this is wrong as a matter of law and fact.

46. For reasons which will be apparent from the findings below, it is not necessary for the court to resolve these issues of law and fact on the scope of the fiduciary duty owed by Mr Georgiades and the judgment assumes that Mr Georgiades owed these fiduciary duties, notwithstanding his role as a "nominee" director.

### The Introducer Claim

47. In March 2008, YHIL received substantial funds following a judgment in its favour for US\$129m plus interest. The funds were initially deposited with the Bank of Cyprus on 17 March 2018; on 26 March 2018 US\$50m was moved to Piraeus.

48. The evidence of Mr Georgiades is that the Introducer Agreement was agreed between himself on behalf of GE Law and Mr Savvas Thalassinou of Piraeus at a meeting in 2008. In his witness statement (paragraph 53) his evidence was that he was not sure whether the agreement was reduced to writing. He said:

“from memory it was reduced to writing but my inability to find a copy of any written introduction agreement from 2008 suggests otherwise.”

He said that at that time Piraeus was a new bank and they might not have had all their forms and documents set up.

49. The claimant’s case is that the Introducer Agreement covered three types of transactions: foreign exchange transactions ("Forex") entered into by YHIL with Piraeus, deposits with Piraeus ("Time Deposits") and forward contracts ("Forwards") entered into by YHIL with Piraeus. In particular the claimant asserts that:
- i) Piraeus agreed to pay a "retrocession fee of 50%" in respect of foreign exchange transactions ("Forex") entered into by YHIL with Piraeus. The claimant relies on evidence that Gilham BVI was paid €12,670, US\$44,100 and €6,024 by Piraeus in October/November 2011, following invoices from Gilham BVI for "professional introductory services";
  - ii) Piraeus had an agreement to pay a percentage of 0.2% on the balance of the deposits of their clients. The claimant relies on the evidence of two cheques: a cheque of €5,218.79 to Mr Georgiades personally and a cheque of €7,500 to Gilham Cyprus;
  - iii) Piraeus had an agreement to pay "US\$20k for US\$20m forward contracts provided that the spot to forward rate is > 60bps". The claimant relies on evidence of payments totalling \$20,000 were paid to Sunspot in around December 2010 under two invoices issued on 27 December 2010 for "professional (consultancy) services".

Was the Introducer Agreement with GE Law or Mr Georgiades personally?

50. It is the claimant’s case that Mr Georgiades entered into the Introducer Agreement with Piraeus (paragraph 26A of the Re-Amended Particulars of Claim). The defendants say the Introducer Agreement was with GE Law and not with Mr Georgiades personally (although the terms of that agreement and the amounts paid under it are also disputed).

Evidence of Mr Georgiades

51. Mr Georgiades’ evidence was that the Introducer Agreement was not made with him as an individual.
52. In his witness statement Mr Georgiades says that he telephoned Mr Thalassinos regarding the deposit of the incoming funds of YHIL and scheduled a meeting. His evidence was that at the meeting, which was only between himself and Mr Thalassinos, he told Mr Thalassinos that YHIL was a client of GE Law. He said Mr Thalassinos was previously familiar with Demos but he told him that GE Law was now to take over the corporate clients of Demos. Demos had an introduction agreement with the Bank of Cyprus of which Mr Thalassinos had previously been a director and CG said that he accepted to have the same terms and rates as Demos’s previous introduction with Bank of Cyprus. His evidence was that Mr Thalassinos

wanted have both GE Law and Demos to be the introducers to Piraeus Bank. He said that to Piraeus the introducer was the law office (Demos) and GE Law was the “parallel introducer” who took over the corporate business of Demos.

53. Mr Georgiades said that he could never have been the introducer in his individual capacity (paragraph 86). His evidence was that an introducer’s role for the bank was and is to introduce clients to the bank and certify various company and identity documents of the new client for the bank. Banks used introducers to certify documents for the bank’s compliance with anti-money-laundering regulations and “know your client” procedures. He stated that he does not have clients personally and was not engaged by any client in a personal capacity. He accepted that a person who is regulated by professional bodies such as the Law Society or chartered accountants can personally certify as an introducer to a bank but stated that there are no documents of YHIL that bear his personal certification. He stated that it would make no sense to be an introducer personally because of the tax rates for individuals.
54. It was submitted for the claimant that the introduction was “clearly personal” and that Mr Georgiades accepted in cross examination that he attended the meeting as a director of YHIL and did not “switch capacities” in the middle of the meeting.
55. Whilst clearly the opportunity to act as an introducer stemmed from the personal relationship between Mr Georgiades and Mr Thalassinos, that does not of itself cast any light on the party to the Introducer Agreement. Further it seems to me that it is not inconsistent for Mr Georgiades to enter into the Introducer Agreement on behalf of GE Law and to open the account on behalf of YHIL. The submission for the claimant in my view did not fairly reflect the evidence: asked about the meeting in cross examination Mr Georgiades said:

“but in order for a client to open an account they need an introducer, so I was introducing the company as a service provider and when I say I it was GE Law as an introducer and then I was authorised as a director to open the relation; so it is two different things.

The fact that Mr Georgiades subsequently said in cross examination that it was not “strictly separate” in the meeting does not in my view alter the inference to be drawn from his evidence. What matters is whether, when he entered into the Introducer Agreement, he was contracting personally or on behalf of GE Law.

56. In his oral evidence Mr Georgiades described himself as the “brand” and the agreement being with the “group”. His evidence in this regard was not entirely clear but obviously an agreement has to be with an identified party and the pleaded case of the defendants is that GE Law had an Introducer Agreement with Piraeus by which Piraeus agreed to pay fees to GE Law for introducing clients to Piraeus (Paragraph 50.2 of the Re-Amended Defence and Counterclaim). It is also the defendants’ pleaded case that the payments made by Piraeus pursuant to the Introducer Agreement were made “for the benefit of” GE Law who would occasionally direct Piraeus to make payments directly to other individuals or entities including Mr Georgiades, Gilham BVI and Gilham Cyprus which had provided services to GE Law and were creditors of GE Law. (Paragraph 54.1 of the Re-Amended Defence and Counterclaim).

57. In my view this was a further instance where Mr Georgiades sought in his oral evidence to present his evidence in a way which suited his case. As discussed above, in assessing the weight which I give to his evidence, I consider whether the evidence is supported by other evidence, in particular contemporaneous documentation, as well as its inherent plausibility in the circumstances.

#### Absence of Savvas Thalassinos

58. The only other person who was present at the meeting at which the agreement was made was Mr Thalassinos. He has not given evidence. In the defendants' CMIS the defendants listed him as a witness but in his oral evidence Mr Georgiades said that Mr Thalassinos subsequently refused to be a witness stating that he was retired and did not want to be involved. When asked in re-examination by his counsel to explain his answer that Mr Thalassinos said "keep me out of troubles (sic)" Mr Georgiades went so far as to say that people are afraid to go against the company.
59. It was submitted for the claimant that in circumstances where at the time of the CMC the defendants listed Mr Thalassinos as a confirmed witness, the claimant cannot be criticised for not attempting to call Mr Thalassinos as their own witness. Further it was submitted for the claimant that the explanation by Mr Georgiades in the course of cross-examination as to why the defendants did not call Mr Thalassinos was "inconsistent".
60. I do not accept that the explanations given by Mr Georgiades in his oral evidence were inconsistent. Mr Thalassinos is an old school friend of Mr Georgiades and Mr Georgiades's evidence was that Mr Georgiades had pressed him to come to court to give evidence. The explanation given that Mr Thalassinos did not want to put himself in any difficulty in light of the nature of the claimant is in my view credible given the claimant's own evidence: in his witness statement (paragraph 22) Mr Godfrey stated that since their formation, the Foundations and its subsidiaries have engaged in legal proceedings around the world and he estimated that there had been over 100 separate sets of proceedings in jurisdictions spanning the Caribbean, North America, Europe and Asia. The proceedings have included proceedings against former directors (Mr Feldman) in New York in 2015 and currently against Mr Georgiades, and against its financial manager, Mr Merinson in the English courts in 2017. The claimant is clearly well resourced and can afford to pay for leading law firms to represent it. When the claimant suspected wrongdoing on the part of Mr Feldman, the claimant engaged lawyers and forensic accountants to carry out an investigation which lasted over a year. Faced with testifying against such a litigious claimant, Mr Georgiades's explanation of why Mr Thalassinos, now retired and no longer associated with Piraeus Bank, changed his mind about giving evidence is in my view entirely credible.
61. Accordingly whilst it is clear that Mr Thalassinos could have been expected to give material evidence I am satisfied with the explanation for his absence and for that reason, I draw no adverse inference from the failure of the defendants to call Mr Thalassinos as a witness.

#### Norwich Pharmacal order-evidence of Piraeus Bank

62. The events leading up to the obtaining of a Norwich Pharmacal Order by the claimant are set out in Mr Godfrey's first witness statement (paragraph 53 – 57). In early

March 2017 the claimant learnt that Mr Merinson had been paid commissions for forex transactions placed by Yukos subsidiaries with the bank Julius Baer and Co. Ltd. Mr Godfrey's evidence is that as a result, the Yukos Group started to investigate relationships held with its banks in order to ascertain whether any other employees and/or directors had entered into similar arrangements.

63. On 30 March 2017 the claimant obtained a Norwich Pharmacal order from the district court of Nicosia in Cyprus for third party disclosure against Piraeus and Barclays Bank plc. The order provided for Piraeus to disclose any agreement between Piraeus and any third person pursuant to which payment of any amount was made for the introduction of YHIL (amongst others) to Piraeus.
64. Pursuant to that order Mr Simeou, Head of the International Affairs Department at Piraeus, made an affidavit dated 28 April 2017. In that affidavit he stated that he had searched the files of Piraeus but had not found the hardcopy file for YHIL. He disclosed certain documents but stated that no data had been found which indicated whether the payments referred to in the documents were made on the basis of a written or an oral agreement. At paragraph 5 of the affidavit he referred to 3 exhibits, the first being documents relating to the credit of approximately €6000 to the account of Gilham BVI in relation to an invoice dated 14 November 2011; the second relating to the credit of a payment of approximately €44,000 to the account of Gillham BVI in relation to two invoices dated 4 October 2011; and the third relating to a cheque to Gillham Trust (Cyprus) for €7500 and a cheque to Mr Georgiades for approximately €5000.
65. Correspondence ensued between the claimant's lawyers and the lawyers for Piraeus. In particular the claimant's lawyers noted that the affidavit indicated that the bank paid approximately €63,000 in introducer fees but did not indicate from the documents what transactions those fees were paid in respect of. The claimant's lawyers therefore asked whether the bank could search to confirm whether introducer fees were paid in respect of deposits.
66. In a letter responding to a letter from the claimant's solicitors dated 7 July 2017, the lawyers for Piraeus made the following points (so far as relevant to this issue):
  - i) the hardcopy file of YHIL had not been located;
  - ii) until April 2015 documents were stored in hardcopy form and not in electronic form;
  - iii) "as explained by Mr Stefani, who was the deposits coordinator of the Bank at the relevant time, the type of agreements mentioned in the order, were made orally and not in a written form. Therefore, in any event the missing file could not have included any written agreement of the type mentioned in the court order... since these agreements were made orally between the bank and Mr Cleanthis Georgiades." [emphasis added];
  - iv) a search of the Bank's ledger accounts by "officers of the bank" and analysis of "each and every payment" had been carried out and

“they have reached the conclusion that the only person who received payments in relation to [YHIL] was Mr Cleanthis Georgiades and/or the companies connected to him such as Sunspot International Ltd and Gilham International Limited. Please note that the only person who acted as an introducer in relation to [YHIL] was Mr Cleanthis Georgiades. Therefore the commission payments were only made to him and/or to the companies connected with him by oral agreements”. [emphasis added]

67. The claimant served a hearsay notice in relation to (amongst other things) the evidence of Piraeus, specifically:

- i) paragraph 5 of the affidavit of Mr Simeou and the documents exhibited and referred to in paragraph 5 relating to the specific payments; and
- ii) the sentence in the letter from the bank’s lawyers:

“therefore the commission payments were only made to him and/or to the companies connected with him by oral agreements”.

68. Despite the limitations in the hearsay notice as to the scope of the matters relied upon, counsel for the claimant invited the court to accept the following matters which went beyond the hearsay notice:

- i) the explanation referred to in the lawyers’ letter of Mr Stefani that agreements were made orally;
- ii) to infer that the conclusion expressed in the letter that the only person who acted as introducer in relation to YHIL was Mr Georgiades was the conclusion expressed by Mr Stefani.
- iii) that Mr Simeou entered into the 2012 agreement with GE Law in December 2012 and

“is hardly likely to have forgotten the agreement had it been relevant to the question to which he was responding”.

69. In closing submissions Mr Goldsmith for the claimant stated that the "four key persons" at Piraeus who dealt with the payment of introducer fees were Mr Thalassinis and his assistants, Mr Pelekanos, Mr Stefani and Miss Papoui. Counsel submitted that "each of them was very well-placed to have known whether the Introducer Agreement was with Mr Georgiades personally or GE Law". It was further submitted that Mr Stefani:

“was an important person, he was another one of the four key people and he is very heavily involved. We see him actually involved in the calculations about the forex commissions, his name stamp is also on the forward contract commissions. He



was then deposits coordinator, and he is now head of retail banking, he has Savvas' old job.”

70. Counsel for the claimant sought to deflect any adverse inference being drawn from the claimant not calling witnesses from Piraeus by submitting that under CPR 33.4 the defendants had the right to apply for cross-examination of the maker of the hearsay statement. Further it was submitted in effect that the defendants could have called Mr Stefani and Mr Pelekanos because Mr Georgiades works on the same street as Mr Stefani, and Mr Georgiades is still in contact with him and Mr Pelekanos works in Nicosia, the same city as Mr Georgiades.
71. In assessing the evidence which is the subject of the hearsay notice, the court has regard to the factors in Section 4 of the Civil Evidence Act. Subsection (2) of section 4 provides that the court may have regard to whether it would have been “reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness”.
72. The only reason advanced in the Hearsay Notice itself is that representatives of the bank and its lawyers are domiciled out of the jurisdiction and not employed by or under the control of the claimant.
73. At the end of his cross-examination, Mr Godfrey was asked by the court the following question:

“you said in your evidence that you are the person who was authorised to manage and deal with these proceedings on behalf of the claimant. As such, are you able to give the court any reason why the claimant did not call any witnesses from Piraeus Bank?”
74. Mr Godfrey replied:

“no, I am not. I do not know how that decision was made.”
75. I also take into account other factors to which the court may have regard pursuant to section 4(2) of the Civil Evidence Act, namely whether the original statement was made contemporaneously and whether the evidence involves multiple hearsay. Neither the affidavit nor the correspondence with the lawyers is contemporaneous with the making of the Introducer Agreement and the letter from the lawyers appears to involve multiple hearsay in referring to an explanation provided by Mr Stefani and possibly, the conclusions of certain unidentified officers.
76. Counsel sought support from the decision of the Court of Appeal in *Welsh v Stokes* [2008] 1 WLR 1224 at [25] but in my view there is little if any assistance for the present case to be derived from that authority which merely confirms that the weight of hearsay evidence is a matter for the court to assess in all the circumstances.
77. It was submitted for the claimant that one factor in its favour applying section 4 of the Civil Evidence Act is that there was no motive for any person to conceal or misrepresent matters and no attempt to prevent the proper evaluation of the evidence. [Day 9/1010] However since no representative of Piraeus gave evidence, the court has

not had an opportunity to reach a conclusion on such matter: the extent of the searches carried out by Piraeus have not been subject to cross-examination and the reasons why documents are said to be missing have not been explored.

78. I accept the evidence of the facts of the invoices and payments disclosed by paragraph 5 of the affidavit and the exhibits thereto. However to the extent that the claimant seeks to draw wider inferences from the affidavit as to the evidence of Mr Simeou, it seems to me that this was not the subject of the hearsay notice. In my view it would have been reasonable and practicable to call representatives of Piraeus. Had, for example, Mr Simeou been called as a witness, questions could have been asked about the nature of the searches carried out, the records kept by the bank and the reason why only three instances of payments were identified. Further questions could have been asked in relation to the 2012 agreement with GE Law and the significance of that agreement being with GE Law rather than an individual. The submission that the defendants could have sought to call witnesses from Piraeus does not assist the claimant in my view on the answer to the question identified in the Civil Evidence Act as to whether it was “reasonable and practicable” for the party by whom the evidence was adduced i.e. the claimant to have produced the maker of the original statement as a witness.
79. As to the sentence in the lawyers’ letter, the letter was not made contemporaneously with the relevant events and the evidence (if regard is had to the context) involves multiple hearsay. For all these reasons I attach no weight to the single sentence in the letter from the bank’s lawyers relied upon by the claimant in its hearsay notice.
80. As to the inferences which the claimant invites the court to draw from evidence which went beyond the matters identified in the hearsay notice, the position is not governed by the hearsay provisions in the Civil Evidence Act but by the established authorities as to whether the court should draw an adverse inference from the failure of a party to call a witness. The claimant submitted that Mr Stefani was an “important person” and “heavily involved”. He is now head of retail banking at Piraeus. In relation to Mr Pelekanos, the claimant relies on a very limited number of contemporaneous documents in support of its case as to the identity of the contracting party, of which one (discussed below) is an email from Mr Pelekanos dated 23 September 2008. It seems to me that as two of the four “key” people identified by the claimant, both Mr Stefani and Mr Pelekanos could have been expected to give material evidence on a key issue between the parties. Although these witnesses, being out of the jurisdiction, could not have been compelled to appear, there is no evidence to suggest that steps were taken to invite them to give evidence or to consider evidence being sought through the measures of letters rogatory. The evidence of these two individuals could be expected to go not to peripheral or uncontroversial matters, but to be material evidence on the issues in these proceedings including the identity of the contracting party to the Introducer Agreement. Accordingly, in the absence of any satisfactory explanation, the court is entitled to draw, and does draw an adverse inference from the failure of the claimant to obtain evidence from either Mr Pelekanos or Mr Stefani.

#### Evidence of invoices and payments

81. The court then looks to the evidence of the invoices and payments of the introducer fees. It is common ground that Piraeus Bank issued two cheques dated 23 September 2009, one to Gilham Cyprus for €7,500 and one to Mr Georgiades for €5,218.19.39. It

is also common ground that between 4 October and 14 November 2011, Gilham BVI sent Piraeus Bank a number of invoices (for USD 44,100, €12,670, and €6,024) for ‘professional introductory services in connection with referral of business’. Each of these invoices was signed by Mr Georgiades on behalf of Gilham BVI. They were duly paid by Piraeus to Gilham BVI

82. The evidence of Mr Georgiades (paragraph 108 of his second witness statement) is that GE Law never received the introducer fees directly due to “tax optimisation”. His evidence in his witness statement was that Piraeus staff knew that Demos, GE Law, Gillham BVI, Gillham Cyprus, Sunspot and others were all part of the same group of companies and that they recognised that for legitimate tax purposes, it might be beneficial to the shareholders and group companies for the payment to be made to a particular company. He stated in his witness statement that he would often nominate one of the BVI companies in the group to receive the payment and that that BVI company would invoice the bank. If it had been a Cypriot company invoicing Piraeus, it would have attracted VAT.
83. In written closing submissions the claimant sought to challenge the proposition that Mr Georgiades was merely trying to avoid paying Cypriot VAT: it was submitted that Cyprus was subject to the VAT directive (2006/112/EC) and that under that directive VAT is payable if services are supplied within the territory of a member state by a taxable person acting as such.
84. No evidence was before the court from the claimant as to the position in relation to Cypriot law and VAT. Mr Georgiades’ evidence was that if a Cyprus company was invoiced by a Cyprus company providing the services, there would be VAT but if it was a non-European company providing the services and a Cyprus company receiving the services then VAT did not apply. [Day 5/551] Mr Georgiades said that there was also no corporation tax payable if the money went to an offshore company. In cross-examination Mr Georgiades was asked:

“do you say that you discussed with the bank avoiding tax by having money paid to an offshore company?”

Mr Georgiades replied:

“It went, it was going without saying, everybody was doing it.”

Mr Goldsmith for the claimant asked:

“So you did not explain to the bank why you wanted the money paid to an offshore company?”

Mr Georgiades replied:

“They knew better than me.”

85. In relation to the role of Gillham BVI, it was put to Mr Georgiades that Gilham BVI had played no role at all in connection with the introduction of the transaction to Piraeus. Mr Georgiades’ evidence was that it was always considered as a group. He said:

“so if what you are trying to say is that the company received payments for the services not provided to, directly to a client, yes it is correct. The clients were receiving services from different companies of the group and then they, the payments from the bank were paid to different companies, irrespective of which company the group was providing the services.”

86. It seems to me that the claimant has not led any evidence which rebuts the evidence of Mr Georgiades that by procuring that payments of the introducer fees went to Gillham BVI he was avoiding VAT and corporation tax. Although the explanation of Mr Georgiades as to how he justified invoices being submitted for introducer fees by Gillham BVI and Sunspot (that they were a group) appears inconsistent with the pleaded case that they received payments as creditors of GE Law, there is no evidence before the court which would justify any finding by this court as to the effect of this approach from a Cypriot VAT perspective. I therefore accept his evidence that it was a means to avoid paying VAT and this seems to me the more likely explanation as to why invoices were submitted by Sunspot and Gilham BVI.
87. It was submitted for the claimant that it was Mr Georgiades who always received directly or indirectly the benefit of the introducer payments. It was submitted that it was evident that payments to the BVI companies were made on his behalf and he treated them as his personal tax-free savings. In cross-examination Mr Georgiades was taken to the bank account statements for Gillham BVI and a deposit on 19 March 2010 by Piraeus which matched an invoice for introduction fees of €16,000. It was put to Mr Georgiades that on 23 March 2010 there was a withdrawal of €10,000 in cash and that it was Mr Georgiades withdrawing €10,000 of the introducer fees paid. It was put to him that this was Mr Georgiades treating the money as if it was his own. Mr Georgiades evidence was that they were allowed to cash out and commissions were paid to different people in cash.
88. In relation to a cheque paid to him personally by Piraeus, the evidence of Mr Georgiades in his witness statement was that GE Law owed him that amount for a work-related purpose and it was practical to pay that amount to him directly instead of making two transactions, Piraeus to GE Law and then on to him (paragraph 110 of his second witness statement).
89. Although Mr Georgiades accepted that he was the sole “ultimate shareholder” of Gillham BVI and Sunspot, his evidence, both in his witness statement (paragraph 11 of his second witness statement) and in cross examination, was that GE Law was the sole shareholder in Gillham BVI and Gillham BVI was the sole shareholder in Sunspot. The fact that Mr Georgiades was the sole signatory for Gillham BVI’s account is not inconsistent with payments of introducer fees pursuant to an agreement with GE Law being paid to Gillham BVI since Mr Georgiades is a director of GE Law.
90. The evidence before the court is that the first defendant was running what might be described as a family business: the law firm, Demos had originally been founded by his parents and Mr Georgiades now ran the law firm with his sister. Mr Georgiades ran the service provider, GE Law and formed Gillham Cyprus to provide (with a third party) investment advice. It was accepted in the List of Common Ground that Gilham BVI performed record-keeping and filing services for the Claimant. Mr Georgiades

frankly admitted that he had the offshore companies in the BVI in order to avoid both VAT and corporate tax and because there were no bookkeeping obligations.

91. Against that background, the evidence that he invoiced Piraeus from Gilham BVI and Sunspot and that payments went to these companies and to Gilham Cyprus does not show that the Introducer Agreement was with him as an individual. Mr Georgiades ultimately controlled the group but to answer the factual question of which entity entered into the Introducer Agreement, the court does not look through the corporate structure (the issue of agency is considered below). In relation to the cheques paid to him personally, given the total amounts alleged to be paid by way of introduction fees this is a relatively minor amount. Mr Georgiades's explanation was that GE Law owed him money and given the way that he managed the various companies, this in my view is a credible explanation.

#### Contemporaneous documents

92. I turn then to consider the evidence before the court of the contemporaneous correspondence which is relevant to this issue.
93. It was submitted for the claimant that all documents disclosed for 2008 – 2011 point to the Introducer Agreement being with Mr Georgiades as an individual.
94. In closing submissions Mr Goldsmith for the claimant referred the court to the board resolution of YHIL authorising Mr Ketcha and Mr Georgiades to liaise with the bank's representative to establish a relationship and open a bank account with Piraeus. It was submitted that Mr Georgiades was thereby empowered to attend the meeting with Piraeus as a director and that is what he did; it was Mr Georgiades personally who was a director of YHIL.
95. This board minute does not amount to evidence that the Introducer Agreement was entered into with Mr Georgiades as an individual. The minute makes no reference to the Introducer Agreement. It is not in dispute that Mr Georgiades was personally the director of YHIL. His role as a director of YHIL is not inconsistent with the proposition that the Introducer Agreement was with GE Law.
96. In addition to the board minute, the claimant relied on three contemporaneous emails, of which two related to the payment of commission and the third was not related to the Introducer Agreement in question but was relied on, on behalf of the claimant, as evidence that the Introducer Agreement was "capable of" being with Mr Georgiades as an individual.
97. In an email of 22 September 2008 Mr Thalassinis wrote to Mr Savvides, the general director at Piraeus:

"in the context of attracting deposits it was decided that there would be a funding for lawyers/accountants (introducers) with a percentage of 0.20% on the balance of the deposits of their clients. As far as this is concerned we need your approval for the payment of the amount of \$18,806,000 as follows:

the issuance of a cheque of Euro 5000 with Cleanthis Georgiades as the beneficiary.

The deposit of the rest of the amount in US dollars in the account 33383 of the company of Mr Georgiades Gillham International Limited.

We attach relevant analysis. The funding covers the period from 2/7/2008 until 15/9/2008....” [emphasis added]

98. I have referred above to the explanation given by Mr Georgiades as to why he received a cheque of €5000 and why money was deposited in the account of Gillham BVI. In the light of this explanation and without any evidence from Mr Thalassinos himself, this email adds little further by way of evidence as to the identity of the contracting party. The reference to “lawyers/accountants” could refer either to lawyers or accountants as a firm or as individuals.
99. There is also an internal email of 23 September 2008 from Mr Pelekanos. This stated:
- “I would like to inform you that Mr Cleanthis Georgiades has informed us to pay his commission as following:”
- issue of cheque €7500 in the name of company Gillham Trust (Cyprus) Ltd
  - issue of cheque for the remaining amount in Euro in the name of Mr Cleanthis Georgiades” [emphasis added]
100. It was submitted for the claimant that the reference to “his commission” referred to his commission as an individual and not to under an agreement with GE Law.
101. I accept that this email on its face suggests that it was his personal commission. However it would appear that individuals at Piraeus were not always precise in their language in emails: for example in an email of 2 October 2018 from Piraeus Bank to GE Law headed “Introducer reassessment – GE Law Services Ltd” the Bank wrote:
- “Dear Mr Georgiades
- In the framework of the current legislative and regulatory framework as well as the bank’s policies and procedures, kindly be informed that your file as an introducer is due for its annual review.” [emphasis added]
102. It is clear that this email was sent in the context of an introducer agreement with GE Law and yet in that case the employee of Piraeus has referred to “your file”. As discussed above, the claimant has not sought to obtain evidence from Mr Pelekanos who could have been expected to have given material evidence as to the meaning of his own email and the claimant has not provided any satisfactory explanation for his absence. Given that there is doubt about the meaning of the email, the court draws an inference which is adverse to the claimant by reason of the failure of the claimant to obtain evidence from Mr Pelekanos.

103. As to the payments to Gilham Trust Cyprus and Gilham BVI, this is addressed in the evidence of Marios Epaminondas. The evidence of Marios Epaminondas (paragraph 23 of his witness statement) was that Gillham BVI, Gillham Cyprus and Sunspot were companies which provided corporate services to GE Law and/or the clients of GE Law. His evidence was that the difference between the corporate services provided by Gillham BVI, Gillham Cyprus and Sunspot and the corporate services provided by GE Law was that GE Law's corporate services included services that were more "corporate legal" in nature whereas Gillham BVI, Gillham Cyprus and Sunspot were more "corporate administrative" in nature. His evidence was that it was impossible for GE Law to function by itself. For example his evidence was that it was not possible for a company to be both a secretary and director at the same time. As referred to above, I accept his evidence and this evidence supports the explanation provided by Mr Georgiades and does not support the claimant's contention that the invoices and payments relied on show that the Introducer Agreement was with Mr Georgiades personally.
104. As discussed above Mr Georgiades explained why he received a cheque personally and that explanation is therefore not inconsistent with the defendants' case that the agreement was with GE Law.
105. The final piece of correspondence did not relate to the Introducer Agreement but is relied on by the claimant as evidence that an introducer agreement was "capable of" being entered into with an individual.
106. On 1 December 2011 Ms Papoui of Piraeus Bank sent Mr Georgiades an email:
- "Dear Cleanthis
- Further to your conversation with Mr Thalassinis kindly sign and return attached in order to be able to proceed with your approval as introducer with our bank."
- Attached to the email was a "Professional Intermediary Questionnaire on Anti-Money-Laundering and Counteracting Terrorist Financing Procedures". The name inserted on the form was that of Mr Georgiades with his profession stated as "advocate" and number of employees "zero".
107. In his witness statement (paragraph 115 of his second witness statement) Mr Georgiades said that Mr Thalassinis told him that the bank required GE Law's financial statements. This was at a time when the procedures of the bank were being made stricter. As GE Law could not deliver a financial statement to the bank, Mr Thalassinis suggested to make him an introducer while GE Law prepared and provided the bank with the financial statements.
108. It was submitted on behalf of the claimant that this explanation was a nonsense as in fact GE Law did not file its accounts until 2015. It was submitted that, contrary to the defendants' contention, this email exchange and attachment demonstrate that Mr Georgiades as an individual could have been an introducer.
109. In my view this email does suggest that it was contemplated that Mr Georgiades could be an introducer as an individual and the explanation provided by Mr Georgiades as to

the missing accounts does not appear to withstand scrutiny, although I note that it would appear from a further email dated 12 December 2011 from Ms Papoui that the questionnaire was not signed and returned and the evidence of Mr Georgiades was that he did not agree to any personal introduction agreement.

110. However even if it does indicate that an introducer agreement could have been made with Mr Georgiades personally, as to the issue of whether the Introducer Agreement was with Mr Georgiades personally or with GE Law, I have regard to the evidence of Marios Epaminondas and Ms Paretti.
111. Neither of these witnesses had direct knowledge of the nature and terms of the agreement reached between Mr Georgiades and Mr Thalassinos. However the evidence of Marios Epaminondas was that he was the employee of GE Law who primarily assisted Mr Georgiades in the work relating to YHIL (paragraph 16 of his witness statement). He said that his work relating to YHIL included all the work required to be done by Mr Georgiades for YHIL's subsidiaries and/or affiliates within the scope of the professional services agreement between YHIL and GE Law.
112. The evidence of Marios Epaminondas was that whilst he was employed by GE Law he did not see any introducer agreements between GE Law and any Cypriot bank because it was not a client document and he was mainly dealing with clients. He said that he knew introducer agreements were in place but he was not involved in signing or reviewing the agreements.
113. However the evidence of Marios Epaminondas does go to the question of whether it was likely that the Introducer Agreement was entered into with Mr Georgiades as an individual or with GE Law. His evidence was:

“where I was involved is to the checks that we have been going through as introducers, the various banks were actually visiting the premises of GE Law, the group companies, ... performing actually the usual due diligence and reviewing the procedures that we are following in order to comfort ourselves that we are fulfilling the requirements as introducers and providing us with their guidelines on how we should actually perform all the KYC due diligence according to the different banks, sometimes have different requirements. So on a regular basis they were visiting the premises and we had to go through their, let us say, inspection to make sure we are on an ongoing basis following the requirements to be an eligible introducer to the bank.”  
[emphasis added]

114. Marios Epaminondas said in cross-examination that in relation to the processes and procedures, when it comes to anti-money-laundering requirements, the banks in 2006, 2007 and 2008 were not as strict as they are now. However when it was put to him that the visits that he mentioned from banks coming to GE Law's offices were only after 2011 when the procedures became stricter, he rejected that proposition. He said:

“no that was also before. It was before. Specifically I can recall visits from Barclays and BOC and before yes it was always the case for introducers, otherwise they would not accept you, it



was the policy of the banks in order to accept you as an introducer you have to have your manuals, processes and procedures in place. And you had to prove that the personnel that you are employing, they have the knowledge to be able to go through, let us say, the first line of defence when it comes to the bank and also be able to prepare the documentation and verify the particular documentation according to the requirements of the bank to provide the bank with what is needed on their side. But it was from before yes. They had to become an introducer, it was a process that it was a KYC due diligence initially from the bank to the directors, shareholders of the companies, employees, to make sure that they fulfilled, you know, the basic initial requirements, to clean criminal record, to have what it takes to go to the next step where they had to show their manuals, processes, procedures, trainings and all the requirements they had at the time. So it was always the case to become an introducer.” [emphasis added]

115. It was put to him in cross examination that some banks were stricter than others and that Barclays were more strict than Piraeus in 2008 which had only just started business. The evidence of Marios Epaminondas in response was:

“I would not say, when it comes to KYC due diligence, which is the part I was involved, I would not say it was – I mean the requirements were applying to both banks the same way. It was under the same framework that it was just specific ... requirements for each bank which I cannot recall specifically in detail... I would say definitely some banks had different requirements but I cannot recall exactly the difference in them.” [emphasis added]

116. In cross examination Marios Epaminondas was shown the email from Piraeus to Mr Georgiades on 1 December 2011 attaching a questionnaire on anti-money laundering procedures and which had CG’s name at the top, apparently with him as the individual. Marios Epaminondas said:

“usually this questionnaire, at least as many times as I have seen it, it was with the company. That is why it was a professional intermediary and not an individual intermediary. They used to have it, it was part of their due diligence, they had a questionnaire, and they had questionnaires on an ongoing basis as well so was not just once off...” [emphasis added]

117. He was asked whether these kind of questionnaires were produced before 2011 with respect to Piraeus. His evidence was:

“I cannot be certain, but definitely, specific for a bank, but definitely I have been seeing these questionnaire since I first went to the company.”

118. It was suggested to him that the questionnaire could be completed in relation to “supervision by regulatory authority” since Mr Georgiades as a lawyer would have been registered under the Bar Association. Marios Epaminondas replied:

“as a lawyer, without being 100% sure, but could be, yes. You could not have the processes and procedures in by himself.”  
[emphasis added]

119. In re-examination Marios Epaminondas was asked what he meant and he said:

“I meant Cleanthis. All the inspections, all the inspections that we had from the Bar Association and the banks, it was the team actually going through the process. We were present as a group, not as Cleanthis. The inspection never took place on Cleanthis. We were presenting the manuals of the company, the ones that we were keeping for the company, and as employees we were all present to the inspection, providing either the Bar Association or the banks. Every time they were coming, they wanted to also interviews one by one, to explain to them individually what processes do we follow and what procedures we have in place, but I cannot recall a case where any of these, either the authorities of the banks, came specifically for an individual. They were always presenting the group manuals and processes and procedures we had in place at the time.”  
[emphasis added]

120. In my view his evidence as summarised above, is strong evidence that the Introducer Agreement was unlikely to have been entered into between Piraeus and Mr Georgiades as an individual.

121. The evidence of Ms Paretti provided some support for the evidence of Marios Epaminondas in relation to the question of whether introducers were companies. In her witness statement Ms Paretti said that:

“in my 11 years of experience working in Cyprus to date, I have not known of an individual who was an introducer to a bank. I have only known of companies or partnerships who were introducers to a bank.” (Paragraph 37 of her witness statement)

122. In cross examination she said:

“what I do know is that you have to have an introducer agreement with your company, so the bank will accept you as the company that introduces clients.”

In re-examination she was asked whether that was her understanding of the practice between 2008 and 2012 to which she replied:

“it is my understanding that it is always like that. I never heard – you have to be regulated, regulated company under Bar

Association or CYSEC.... It is an authority... And afterwards you going to apply with your company that is regulated. I do not know a person... an individual to be an introducer ever....”

123. Finally I note the evidence of other agreements between GE Law and banks including Piraeus, which although not of direct evidentiary value to the agreement in issue, provide support for the evidence of Marios Epaminondas and Ms Paretti in this regard.

Conclusion on whether the Introducer Agreement was with Mr Georgiades personally or GE Law

124. There are two contemporaneous emails which, in the absence of other evidence would tend to suggest that the Introducer Agreement was entered into with Mr Georgiades as an introducer personally.
125. However as discussed, the court does not have evidence from Mr Thalassinos and has accepted the reasons advanced by the defendants for his absence. The court does not have evidence from Mr Pelekanos or Ms Papoui, the authors of the other two emails relied upon by the claimant, or from Mr Stefani.
126. As to the evidence of Piraeus advanced by way of the Hearsay Notice, for the reasons discussed above, the court, whilst accepting the evidence that the payments were made and invoices submitted, does not accept the wider inferences which the claimant submitted should be drawn from the affidavit or the correspondence. For the reasons set out above, the court draws an adverse inference from the failure of the claimant to adduce evidence from Mr Stefani and Mr Pelekanos.
127. In assessing the likelihood of the Introducer Agreement being entered into with an individual, the court takes into account the evidence of Marios Epaminondas and Ms Paretti as to the practice in relation to introducer agreements and the way in which the banks expected policies and procedures to be in place on the part of the introducer to support the introduction of clients to the banks and the way in which banks carried out visits to check that staff were carrying out those policies and procedures.
128. As to the payments, whilst I accept that the evidence before this court is that the payments were not made to GE Law directly, I accept the explanation of Mr Georgiades that for tax reasons invoices were rendered by offshore BVI companies and payments made to offshore companies. I further take into account the evidence of Marios Epaminondas that services were provided by number of group companies as part of the corporate services provided GE Law.
129. For all these reasons on the evidence I find that the claimant has not established that the Introducer Agreement with Piraeus was entered into with Mr Georgiades personally and I find that the Introducer Agreement entered into in 2008 by Piraeus was with GE Law.

If the Introducer Agreement was with GE Law, is Mr Georgiades “personally accountable”?

130. The main thrust of the claimant’s case and its submissions in relation to the introducer fees are based on the allegation that the Introducer Agreement was entered into with Mr Georgiades personally.
131. In written opening submissions for the claimant (paragraph 55.1) there was a submission that, insofar as introducer fees were paid to Mr Georgiades’ nominee companies, such monies were at all times held for or for the benefit of Mr Georgiades and he is therefore personally accountable for them.
132. In oral opening submissions, Mr Goldsmith for the claimant submitted that, even if the Introducer Agreement was with GE Law, if Mr Georgiades personally made profits as a result of his fiduciary position then he has to account for those personal profits. He submitted that what he had said at the CMC, that it was accepted that GE Law did not owe fiduciary duties to the claimant, was confined to the defendants’ position that there was a pre-existing agreement with the second defendant, that at that time the defendants’ case was that the Introducer Agreement had been entered into in 2007 independently of and before YHIL commenced its banking relationship with Piraeus. He submitted that if the Introducer Agreement had been entered into with GE Law entirely independently of YHIL’s banking relationship it would not necessarily be a breach of fiduciary duty for GE Law to receive fees under it. But he submitted that the position is different if the Introducer Agreement was entered into because of Mr Georgiades’ introduction of YHIL’s banking business to Piraeus, in other words as a result of Mr Georgiades’ fiduciary position.
133. Two issues arise: firstly, whether this is a case which has been pleaded by the claimant and secondly, whether if it is open to the claimant to bring this allegation as part of its pleaded case, whether in fact there is liability in these circumstances.
134. I do not accept the submission that this formulation of the claimant’s case was contemplated by the Claim Form by virtue of the general allegations of breaches of fiduciary duty in paragraph 3 which makes no reference to the specific case relying on the Introducer Agreement.
135. In the amended particulars of claim at paragraph 26A there is a specific allegation that:

“in March 2008 the claimant moved part of its banking business to Piraeus bank at the suggestion of the first defendant. At around the same time and as a direct result of it, the first defendant entered into an agreement with Piraeus Bank by which he (directly or indirectly through companies owned and controlled by him) would receive fees or commissions in respect of banking transactions entered into between the claimant and Piraeus... (the “introducer agreement”).”[emphasis added]
136. In the defence at paragraph 49A paragraph 26A is denied and in particular at 49A2 it is pleaded that:

“the first defendant does not have (and did not have at any material time) an agreement with Piraeus Bank... Further for the avoidance of doubt the first defendant never received monies representing such fees or commissions from Piraeus Bank”

137. The claimant then seeks to rely in this regard on its Reply at paragraph 32 B:

“as to paragraph 49A2 it is denied that the first defendant never received monies representing introducer fees or commissions from Piraeus Bank. He received such monies from Piraeus... As set out in the re-amended particulars of claim and this re-amended reply any profits received by those companies were at all times held for or to be paid or were otherwise of benefit to the first defendant. Accordingly the first defendant is personally accountable for the money so received (whether or not the sums were in fact paid onto him by the companies).”  
[emphasis added]

138. In closing submissions Mr Goldsmith submitted that:

“the fact that all the introducer fees are paid to Mr Georgiades or his companies, as his agent or nominee, means he is personally accountable for them, whoever the agreement was with” [emphasis added]

139. Mr Goldsmith submitted that, if the payments are received by effectively agents or nominees on behalf of Mr Georgiades, then they are still received by him personally as matter of law: the court does not need to go so far as to find that the companies are his alter ego. He submitted that the money just passes through, whether or not the agreement was with GE Law, it ends up in his pockets, it only ends up there because of the use of his fiduciary position and it is a secret profit for which he has to account.

140. This appears to be an alternative case which is dependent upon the following findings of fact:

- i) that Mr Georgiades has obtained the commissions by reason of his fiduciary position as a director of YHIL; and
- ii) that the companies receiving the commissions are acting as agents or nominees on his behalf and thus Mr Georgiades was in breach of fiduciary duty in receiving the commissions, as the actual recipients of the commissions were merely his agents or nominees.

141. In written submissions (paragraph 15 of annex 2) counsel for the claimant stated that:

“a fiduciary cannot escape liability to account for secret profit by interposing a company under his control to conceal the true state of affairs. He cannot, for example conceal his profit by using it as a nominee or agent to receive the profits on his behalf. The court can and should in such circumstances “look

behind” the corporate veil to see the reality: *Prest v Petrodel* [2013] 2 AC 415 at [28].”

142. Counsel also submitted, in the final version of Annex 2 submitted with the closing submissions, that the fiduciary must account for any profit made in circumstances where the fiduciary has an actual or potential conflict and any profit made by reason or use of a fiduciary position or of opportunity or knowledge resulting from it.
143. In my view the claimant has not pleaded a case that if, notwithstanding any finding that the Introducer Agreement was entered into between YHIL and GE Law, Mr Georgiades was in breach of fiduciary duty by reason of receiving the introducer fees (and irrespective of the fact that these fees were paid to others) since the companies which received the commissions were merely agents or nominees for Mr Georgiades. Although counsel sought in oral submissions to convince the court otherwise, the absence of this case based on agency in the written opening submissions supports my conclusion that this was not a case which was pleaded even obliquely. In my view Annex 2 of the claimant’s submissions, as originally relied upon with the opening submissions, merely supported the allegation that if the Introducer Agreement was entered into personally (which was the claimant’s pleaded case), the fact that payments were made to companies controlled by him did not preclude a liability to account for such monies. There was no separate case presented in written opening submissions (and no pleaded case in my view) which asserted that Mr Georgiades was in breach of fiduciary duty even if he was not the party to the Introducer Agreement and thus was not the entity which was entitled to receive payment of the introducer fees.
144. The claimant made no application to amend its pleadings. The legal basis for its alternative case evolved even between opening and closing submissions. In my view the defendants must know the case that they are expected to meet and in relation to this alternative case that requirement was not met. Accordingly in my view the claimant is not entitled to advance the alternative case based on agency that Mr Georgiades is liable notwithstanding any finding of the court that the Introducer Agreement was entered into between Piraeus and GE Law.

#### Factual findings

145. If I were wrong to refuse to allow this alternative case to be advanced, then it would have been necessary for the claimant to establish the following matters of fact:
- i) that Mr Georgiades obtained the commissions by reason of his fiduciary position as a director of YHIL; and
  - ii) that the companies receiving the commissions were acting as agents or nominees on his behalf
- and thus Mr Georgiades was in breach of fiduciary duty in receiving the commissions, as the actual recipients of the commissions were merely agents or nominees.
146. In this regard counsel for the claimant relied on Lord Sumption in *Prest* at [31]:

“In *Gencor ACP Ltd v Dalby* [2000] 2 BCLC 734 , the plaintiff made a large number of claims against a former director, Mr Dalby, for misappropriating its funds. For present purposes the claim which matters is a claim for an account of a secret profit which Mr Dalby procured to be paid by a third party, Balfour Beatty, to a BVI company under his control called Burnstead. Rimer J held, at para 26, that Mr Dalby was accountable for the money received by Burnstead, on the ground that the latter was “in substance little other than Mr Dalby’s offshore bank account held in a nominee name”, and “simply ... the alter ego through which Mr Dalby enjoyed the profit which he earned in breach of his fiduciary duty to ACP.” Rimer J ordered an account against both Mr Dalby and Burnstead. He considered that he was piercing the corporate veil. But I do not think that he was. His findings about Mr Dalby’s relationship with the company and his analysis of the legal consequences show that both Mr Dalby and Burnstead were independently liable to account to ACP, even on the footing that they were distinct legal persons. If, as the judge held, Burnstead was Mr Dalby’s nominee for the purpose of receiving and holding the secret profit, it followed that Burnstead had no right to the money as against Mr Dalby, who had in law received it through Burnstead and could properly be required to account for it to ACP. Burnstead itself was liable to account to ACP because, as the judge went on to point out, Mr Dalby’s knowledge of the prior equitable interest of ACP was to be imputed to it. As Rimer J observed, “the introduction into the story of such a creature company is ... insufficient to prevent equity’s eye from identifying it with Mr Dalby.” This is in reality the concealment principle. The correct analysis of the situation was that the court refused to be deterred by the legal personality of the company from finding the true facts about its legal relationship with Mr Dalby. It held that the nature of their dealings gave rise to ordinary equitable claims against both. The result would have been exactly the same if Burnstead, instead of being a company, had been a natural person, say Mr Dalby’s uncle, about whose separate existence there could be no doubt.” [emphasis added]

147. It is important to put this in context: Lord Sumption set out the position as follows at [27]-[28]:

“27. In my view, the principle that the court may be justified in piercing the corporate veil if a company’s separate legal personality is being abused for the purpose of some relevant wrongdoing is well established in the authorities...

“28. The difficulty is to identify what is a relevant wrongdoing. References to a “facade” or “sham” beg too many questions to provide a satisfactory answer. It seems to me that

two distinct principles lie behind these protean terms, and that much confusion has been caused by failing to distinguish between them. They can conveniently be called the concealment principle and the evasion principle. The concealment principle is legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant. In these cases the court is not disregarding the “facade”, but only looking behind it to discover the facts which the corporate structure is concealing. The evasion principle is different. It is that the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company’s involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement. Many cases will fall into both categories, but in some circumstances the difference between them may be critical. This may be illustrated by reference to those cases in which the court has been thought, rightly or wrongly, to have pierced the corporate veil.” [emphasis added]

148. On this alternative case the Introducer Agreement is with GE Law and thus it is GE Law which is contractually entitled to the payments. In my view, on the evidence, in acting as introducer (and thus receiving fees), GE Law was not acting as a mere nominee or agent for Mr Georgiades. GE Law was the party to the Introducer Agreement for good reason: it had the employees who could carry out the necessary work and had the procedures in place to carry out the anti-money laundering checks. GE Law was not merely interposed to conceal the real actors but was a separate business providing corporate services to a number of clients (of whom YHIL was just one) and regulated as such by the Cyprus Bar Association.
149. Although the commissions were actually paid to Gillham BVI/Sunspot, these were payments to which GE Law was entitled as the party to the Introducer Agreement and thus Gilham BVI and Sunspot received these payments on behalf of GE Law. On the evidence, GE Law and Gilham BVI/Sunspot did not receive the payments as nominee or agent for Mr Georgiades. The evidence before the court is that Gilham BVI and Sunspot were themselves separate businesses which provided corporate services to support GE Law and more significantly, as discussed above, the evidence which I have accepted is that the payments for services otherwise due to GE Law were made to offshore companies to avoid tax. It was common ground that Gilham BVI performed record-keeping and filing services for the claimant (paragraph 50 of the List of Common Ground). I also have regard to the evidence of Mr Epaminondas that Gilham BVI, Gilham Cyprus and Sunspot were all companies which provided corporate services to GE Law and/or the clients of GE Law. He said that the difference between the corporate services provided was that GE Law’s corporate services included services that were more “corporate legal” in nature whereas Gilham BVI, Gilham Cyprus and Sunspot were more “corporate administrative” in nature. (Paragraph 23 of his witness statement)



150. On the evidence I do not accept that Gillham BVI and Sunspot can be described merely as “offshore bank accounts essentially in a nominee name” or as expressed in *Gencor* “simply a creature company used for receiving profits” such that as a matter of law, Mr Georgiades is liable to account for payments received by them. The fact that Mr Georgiades is the ultimate shareholder of Gilham BVI and Sunspot is not enough to characterise a company as his nominee or agent. In my view this is not a case where on the evidence, it can be said that these companies have been interposed so as to conceal the identity of the real actors.

#### Conclusion

151. For these reasons, had it been necessary to make a finding of fact on this issue, I would have held that the claimant has not established that the recipients of the commissions were merely agents or nominees for Mr Georgiades such that the “concealment principle” (as set out in *Prest*) applies.

#### Quantum of Introducer fees

152. In the light of the findings above, the issue of the quantum of fees paid pursuant to the Introducer Agreement does not arise for determination.

#### Political Donations Claim

153. In early 2011, Mr Georgiades ran as a prospective member of the Cypriot House of Representatives in elections in Cyprus. The defendants’ case (as set out in the Defence) was that the board of YHIL agreed that the claimant should financially support his election campaign and it was agreed that GE Law would issue invoices to YHIL which would include sums which Mr Georgiades had spent on his election campaign. In the Defence the defendants pleaded that in June 2011 Mr Godfrey was informed that YHIL had been financing the first defendant’s election campaign and Mr Godfrey informed the board of YHIL that it was group policy not to get involved or financially support political campaigns. The Defence case was that the board of YHIL agreed that the money should be returned by GE Law setting off the relevant sums from future invoices and Mr Georgiades then used his discretion to reduce the amount of time charges charged to YHIL to return the amount which had been paid by way of support of €60,000.
154. In his oral evidence Mr Georgiades said that he had spoken to Mr Ketcha after he had prepared his witness statement and that he had learnt that the meeting with Mr Godfrey was in November 2010 (not June 2011) and that the payments were a payment for future services to be rendered by GE Law (even though this was not evident from the invoices which referred to actual services having been rendered).
155. In an email dated 24 June 2011 to Mr Daniel Feldman responding to a query about the expenses of YHIL, Mr Georgiades wrote that the reason for an increase was “the ‘indirect financial support’ to my election campaign which is known to nobody other than the 4 of us...” .

Was the political “contribution” agreed by the board of YHIL and/or repaid?

156. The evidence of Mr Ketcha in a deposition in August 2016 in the proceedings against Mr Feldman was:

“I understand that Mr Feldman has also been accused of causing YHIL to make a “campaign contribution” to fellow director Cleanthis Georgiades. In reality, there was no such campaign contribution. Mr Georgiades simply requested that the Board approve payments of invoices for the professional services provided by GE Law Services Limited to YHIL on account of the next future months. If my recollection is correct, Mr Georgiades (on behalf of GE Law Services Ltd) requested for a prepayment for the two-month period (February and March 2011)... The copies of the relevant invoices for the services prepaid by YHIL under existing agreement between YHIL and GE Law Services Ltd have been properly disclosed and accounted for in the YHIL financial statements. After careful consideration, the board had approved that request of Mr Georgiades. YHIL received all the services in full at that time. Mr Georgiades personally never received any excess compensation from YHIL.” [emphasis added]

157. The evidence of Mr Malter in re-examination on this point was as follows:

“Q... What was the something that you say you approved relating to the political campaign?”

A. Cleanthis proposed a political contribution so he could try to be elected in Cyprus. As a board, we thought that was a reasonable idea, but we obviously knew we needed Mr Godfrey’s approval and we resolved for Daniel to go and speak with Mr Godfrey to see what the Foundation would say.”

Q. And do you know what in fact happened next?

A. The only thing I knew next was that it was disapproved by the Foundation.

Q. So what did you expect to happen with respect to the subject of Cleanthis’s political campaign donation

A. I would assume if it was disapproved by the Foundation it would not have been made.”

158. The evidence of Mr Malter is that he was unaware of the proposed “contribution” being structured as a prepayment, although he accepts that the board (and he personally) was in favour of supporting the political campaign. This evidence is at odds with the email in June 2011 which suggests that all four directors were aware of the “indirect financial support” but Mr Malter was not a party to that email. The evidence of Mr Ketcha was given in other proceedings, namely in support of Mr

Feldman, at a time when Mr Feldman was himself being sued by YHIL. The evidence was given by way of a deposition under penalty of perjury but the court cannot form a view as to whether or not the evidence of Mr Ketcha was motivated by a desire to assist Mr Feldman and in the absence of Mr Ketcha in these proceedings, the weight which this court gives to that evidence is reduced

159. It is particularly notable that the evidence of Mr Georgiades has changed in the course of the proceedings from the payment being characterised as an advance which he then repaid to a prepayment for future services rendered. Whilst given the number of years elapsed, Mr Georgiades may have failed to recollect the date of the meeting with Mr Godfrey, it is inherently not credible in my view that he would have made reference to actual services rendered on the invoices (as he identified in his evidence) if in fact it had been agreed that the contribution would be made by way of payments on account of future services
160. Further it is impossible from the narrative on the invoices to identify the prepayments, and thus there is no evidence in the contemporaneous documentation to support the alleged nature of this “contribution” as prepayments.

#### Conclusion on political “contribution”-factual finding

161. On the balance of probabilities, I find on the evidence that the political “contribution” was not approved by the board of YHIL and was not in the form of a prepayment for future services of GE Law which was then repaid by future reductions in amounts billed.
162. I deal below with the consequences of this finding: for the reasons set out below, in my view any liability of the defendants arising out of the Political Donations Claim is released by the Settlement Agreement.

#### Claim for interest on \$1m deposit

163. Clause 6 of the 2007 PSA provided (so far as material):

“...it is agreed that the interest accrued on the amount made available by [YHIL] to [GE Law’s] segregated bank account will be kept in trust and accounted for by [GE Law] for the benefit of [YHIL].”

164. The 2007 PSA is governed by the law of Cyprus but it was not disputed that Cypriot law follows English law on matters of equity unless otherwise specifically provided by Cypriot law (paragraph 12 – 13 of the report of Mr Artemis dated 3 September 2019).
165. The claimant’s pleaded case (paragraph 60 of the amended particulars of claim) is that:

“the second defendant has failed to account fully for interest on the US \$1 million indemnity fund held on trust for the claimant under clause 6 of the 2007 PSA”

166. At paragraph 61 it is pleaded that:

“the first defendant reported on 31 December 2013 that he had achieved an average rate of interest of approximately 0.75% year over the preceding five years.”

The pleaded case is that “the claimant believes that this interest rate is too low”.

167. In the Amended Particulars of Claim at paragraph 61A the claimant stated:

“In... Mr Georgiades’ fourth witness statement dated 18 June 2019 he disclosed that instead of keeping the indemnity fund in a segregated account as required under clause 6 of the 2007 PSA (a) the defendants provided all or part of it to unspecified persons... (b) to hold in unspecified fixed deposits at unspecified banks for the Second Defendant’s benefit and (c) which were moved through different unspecified vehicles yearly. ... The defendants are put to proof that they did not earn any interest (for which they have not accounted to the claimant) or other money from such arrangements with the third parties in question.” [emphasis added]

168. The claimant seeks an account of all unpaid interest or other money earned on sums held on trust for the claimant as well as their traceable product or proceeds.

169. In its defence (paragraph 95) the defendants denied the allegations in paragraph 60. The defence stated that the second defendant reported to the auditors and the board of the claimant annually as to the interest rate accountable on the US\$1 million held by the second defendant, as well as details of the balance and the interest paid to date. At no stage did the claimant suggest that the interest rate was too low and/or that the second defendant should seek a higher interest rate.

170. As to paragraph 61, it was said (paragraph 96 of the defence) that if the claimant alleged that the defendants have earned interest on the monies then the onus is upon the claimant to prove that and the claimant is not entitled to put the defendants to proof.

171. The claimant has not pleaded any particulars that the defendants earned interest on the US\$1 million indemnity fund for which it did not account. The pleaded case merely put the defendants to proof that they did not earn any interest when moving the fund through various accounts.

172. The Amended Particulars of Claim were dated 5 September 2019. The fourth witness statement, to which the claimant refers at paragraph 61A, is dated 18 June 2019. The claimant obtained an order for specific disclosure on 21 June 2019 which extended to bank statements for Gilham BVI. Mr Georgiades made a witness statement in response to the order dated 19 July 2019.

173. In its skeleton for trial however the claimant produced a table which the claimant stated recorded the information provided by the defendants purporting to account for the total interest earned and the information in the defendant’s bank statements which it was submitted “show that there was already US\$28,637.34 in interest missing as at 3 September 2009”.

174. This appears to be the first time that this particular allegation was put to the defendants. In cross-examination Mr Georgiades was asked about the transactions in the bank statements of Gilham BVI to which this allegation relates. The first transaction relied upon the claimant and shown on the face of the bank statement is on 29 July 2009, an entry which had a description of “maturity” and a credit of 1,043,990.95 and then a transfer to a new fixed term deposit of only 1,026,315. On 2 September 2009 the amount of 1,026,807.15 is shown as maturing and then a transfer of 1,015,853.37. From this the claimant asserts that the defendants had taken the interest and kept it.
175. In cross-examination Mr Georgiades suggested that he could not remember but probably the difference was due to the tax which was applied called a “defence tax”.
176. Counsel for the claimant submitted in his written closing submissions that “Mr Georgiades's *ex tempore* explanation that he had retained some of the interest on the Indemnity Fund to pay a Cypriot defence tax was patently untrue.”
177. In my view the reason why Mr Georgiades was forced to give an “*ex tempore explanation*” is that the allegations concerning these particular deposits were not particularised in the pleadings and were put to him for the first time in cross-examination. In such circumstances it lies ill in the mouth of the claimant to criticise the “*ex tempore*” explanation.
178. No explanation has been given as to why, if the claimant sought to rely on these particular allegations, no reference was made in the pleadings. There has been no application to amend the pleadings. Had such an application be made, the court would have had to consider whether to give permission to amend the statement of case by having regard to the overriding objective and the case law setting out the principle with regard to (late) amendments to the statement of case, including whether the late amendment would place the parties on an unequal footing. No such course was adopted and instead Mr Georgiades was asked in cross-examination to explain receipts into bank accounts in July 2009 and September 2009, some 10 years ago.
179. In my view, if the claimant wished to advance its case in relation to interest relying on these particular payments in the bank accounts, the claimant should have sought to amend its pleadings. On the current pleadings the claimant is not entitled to rely on these allegations. To allow the claimant to do so, would be to circumvent the rules and principles which apply to late applications and would be contrary to the overriding objective to ensure that parties are so far as possible on an equal footing. The defendants were forced to give *ex tempore* explanations and were not given a proper opportunity to answer the allegations.
180. I therefore consider only the pleaded case and the evidence relating thereto in relation to the issue of the interest.
181. The evidence of Mr Parr makes reference to a document provided by Mr Georgiades in 2013 to YHIL stating that over a five year period he had obtained a return amounting to 0.75% per year. For the period 2014 to June 2015 Mr Parr calculated that the amount which the defendants imply they have received was an effective interest rate of 0.13% per annum.

182. It was submitted for the claimant that the evidence was that GE Law had earned “a surprisingly low average return”. In fact the claimant has led no evidence as to the returns which could have been expected and there is no evidence that YHIL objected at the time that the interest which was reported to it as having been earned was “surprisingly low”.
183. It was also submitted for the claimant that “the inference that GE Law has failed to account for all interest earned on the Indemnity Fund” is all the stronger because the Defendants have failed to disclose all the necessary bank statements showing where, when, and at what rates of interest the Indemnity Fund was routed between 26 November 2007 and the return of 60% of the principal and (alleged) interest under the Settlement Agreement on 18 June 2015: there is no information available between 27 November 2007 and 28 July 2009 or between 22 September 2009 and 27 October 2011 or between 29 October 2011 and 11 March 2015.
184. I note that the complaints as to the periods identified relate to the specific accounts of Mr Georgiades/GE Law and not to all the companies in respect of which the claimant has sought disclosure and have in mind my general finding set out above, on the alleged disclosure failings by the defendants.
185. It was submitted for the claimant that Mr Georgiades gave “flatly inconsistent” evidence as to what happened to the indemnity fund and lied that the money was held at all times by third parties over whom GE Law had no control. It was submitted that his oral evidence of trying to hide the indemnity fund from the Russians was also “nonsense”.
186. In his fourth witness statement dated 18 June 2019 the evidence of Mr Georgiades was that:

“due to the nature of the claimant company, in order to avoid the possibility that the indemnity fund might be frozen by the Russian authorities and/or Russian creditors of OAO-Yukos Oil company,”

the second defendant withdrew the \$1 million from the Bank of Cyprus account and deposited it in several fixed deposits which were held in trust by companies over which the defendants had no control, for the second defendant’s benefit.

187. His fifth witness statement dated 19 July 2019 was made in response to the specific disclosure order dated 21 June 2019. His evidence was that he was unable to recall the bank accounts or fixed deposits that held the indemnity fund because it had been so many years since the indemnity fund was paid over and any documentary records would have been destroyed as it is more than six years ago. He said that the companies that held the money on trust may have been GE Law itself, Gilham BVI and Sunspot and that it was possible that he also held the monies personally “for a brief moment” for the purpose of transferring it onto another account.

188. His evidence in that witness statement was:

“further, the way in which the indemnity fund was held makes it difficult for me to trace down such bank accounts or fixed

deposits. As explained in [his fourth witness statement] the indemnity fund had to avoid being identified and frozen by the Russian authorities and/or Russian creditors of the claimant. As such, the indemnity fund was constantly moved through accounts with little written record in order to avoid detection...”

189. Asked about this apparent change in his evidence, CG said:

“but I am correctly saying that because all these years passes, I could not be sure what I was trying to find without having any paper just to recall by memory, it was this. And I still cannot remember if money was moved outside my control, let us put it.”

190. I do not accept the submission that the explanation provided by Mr Georgiades for moving the fund was “nonsense” (nor was it an explanation that was only advanced at trial, the relevant passages in the witness statements being referred to above). The claimant admits that in around 2006 – 2007 the Yukos group agreed to grant indemnities to the directors and secretaries of various companies in the Yukos group in order to recognise the increased risk of proceedings being brought against them as well as the increased difficulty in YHIL obtaining “D&O” insurance given “the ongoing actions of the Russian state”. In referring to the events which led up to the appointment of GE Law and Mr Georgiades, the evidence of Mr Godfrey (paragraph 31 of his witness statement) was that:

“I do recall it was problematic at this time to locate third parties who would be interested in taking appointments with Yukos. I believe people were worried about reprisals from Yukos’s adversaries and I consider the comments raised by the defendants at ADCC 12.1 and 12.2 to be fair. ”

191. Those paragraphs in the Amended Defence referred to by Mr Godfrey read:

“[12.1] there was a substantial risk that the Russian state or its agents (and/or OJSC Rosneft) would seek to bring legal proceedings against the claimant and/or those individuals and entities retained by or acting for the claimant (including anyone acting as a director, officer, manager or company secretary of the claimant);

[12.2] there was a substantial risk that the Russian state or its agents (and/or OJSC Rosneft) might obtain control of the claimant (or its parent companies) and seek to bring claims against the claimant’s officers and directors;”

192. In the light of this evidence it seems to me entirely credible that Mr Georgiades/GE Law would take steps to ensure that it had access to the indemnity fund if it proved necessary to defend itself against proceedings and to ensure that such fund was not frozen at the very point at which they might need to have recourse to it.

193. It was put to Mr Georgiades in cross examination that he simply kept back twice substantial parts of the interest. He replied:

“no everything was reported every year. It was calculated and no disputed.”

Conclusion on failure to account fully for interest on the Indemnity Fund

194. In my view the claimant has not made out its case that the second defendant has failed to account fully for interest on the US \$1 million indemnity fund:

- i) the interest accrued was reported to the auditors as well as details of the balance and the interest paid to date and no complaint was made at the time that the interest earned was low;
- ii) no evidence has been adduced as to what interest rates applied at the relevant time;
- iii) it is in my view understandable that in the circumstances Mr Georgiades cannot recall the details of the account movements which occurred over 10 years ago and has not kept records for that period;
- iv) I draw no adverse inference from missing bank statements given the observations above concerning disclosure.

195. It seems to me that the claimant has sought to create a case in relation to interest out of speculation and inference which in reality has very little substance to support it other than two unexplained transactions, which for the reasons discussed I do not take into account.

Use of the Indemnity Fund

196. In written closing submissions (paragraph 3.3) counsel for the claimant sought to make submissions on a wholly new case which was not pleaded at all:

“Mr Georgiades used the US\$1m Indemnity Fund for his personal benefit, by skimming off tens of thousands of dollars of interest, using the Indemnity Fund itself as collateral for his personal loans and then spending around US\$650k of it to repay those loans.”

197. As this was not the pleaded case (and no application was made to amend the pleaded case), I propose to ignore the allegations concerning the use of the Indemnity Fund and have addressed (above) solely the pleaded case that the second defendant has failed to account fully for interest on the US \$1 million indemnity fund.

Claims against GE law

198. The first allegation in relation to GE Law related to the alleged failure “to account fully” for interest earned on the Indemnity Fund. For the reasons set out above, the court has found that this has not been established.



199. The second allegation is that Mr Georgiades' breaches of fiduciary duty also gave rise to breaches of the 2007 PSA.
200. It is common ground that the 2007 PSA is governed by Cypriot law and the expert evidence is that there is no material difference between English and Cypriot law regarding rules of contractual interpretation.
201. The alleged breaches of fiduciary duty relied upon are "Eurolink" (which is no longer pursued), the fees and commissions paid under the Introducer Agreement and the political "contributions" (paragraph 49 of the APOC). In the light of the court's findings on the alleged wrongdoing, the issue of the liability of GE Law only arises in relation to the "political contributions".
202. To establish liability on the part of GE Law, the claimant relied on (amongst other things) clause 5 and clause 15 in the 2007 PSA. Clause 5 provided:
- "the firm will act in good faith and with due diligence and shall not be liable for any loss to the client, however arising, provided that such loss has not arisen as a result of the firm's gross negligence or wilful misconduct."
203. Clause 15 provided:
- "the firm warrants to the client that all services performed by it will be of such quality conforming to general accepted professional practices and standards..."
204. It was submitted for the claimant that GE Law did not "act in good faith and with due diligence". So far as this obligation is concerned, it seems to me that in the light of the findings above in relation to the political contributions and the submission of the invoices, the claimant has established a breach of clause 5.
205. It seems to me that the limitation of liability in clause 5 does not avail the defendants. It was submitted for the defendants in written openings that the conduct of GE Law was not "wilful misconduct". However it was accepted in those submissions that "wilful misconduct" is an act that is done deliberately. The submitting of the invoices was an intentional act. The authorities on recklessness referred to in the submissions do not therefore assist the defendants.
206. Further, contrary to the defendants' submissions, I find that the claimant did suffer a loss as a result of this wrongdoing in that it paid for services which were not rendered. As discussed above, the evidence before the court does not establish that the amounts invoiced and paid were subsequently returned.
207. In the light of this finding it is not necessary for the court to consider the alternative bases on which GE Law was alleged to be liable in this regard: the claimant alleged that GE Law was vicariously liable for the actions of Mr Georgiades (including his failure to disclose his breach of fiduciary duty) and that it received the amounts knowing that they were traceable to a breach of fiduciary duty.

208. However, any liability of GE Law in respect of the Political Donations Claim is subject to the court's findings on the effect of the Settlement Agreement set out below.

### Settlement Agreement

209. In the light of my findings above, the effect of the releases in the Settlement Agreement arises only in respect of the Political Donations Claim. However, in case I am wrong on the claims for the introduction fees and the interest on the Indemnity Fund, I will consider the effect of the Settlement Agreement in respect of all the claims.

210. YHIL's primary case is that the Settlement Agreement is not binding on it with respect to its claims of which the Defendants were aware and which (to their knowledge) YHIL was not, as this would amount to sharp practice.

211. The Settlement Agreement was entered into on around 2 June 2015 between YHIL, GE Law and CG. The Settlement Agreement is governed by English law. The key provisions, in summary, were that:

- i) the 2007 PSA was terminated on 31 May 2015;
- ii) CG released YHIL and the other companies in the Yukos Group from the indemnities granted to him by the Yukos companies including the indemnities in clause 6 and 7 of the 2007 PSA;
- iii) GE Law agreed to return US\$600k plus interest thereon accrued since the date of transfer to GE Law of the US\$1m Indemnity Fund;
- iv) the balance of US\$400k (plus interest) was released to GE Law;
- v) YHIL released GE Law and CG from liabilities relating to the 2007 PSA.

212. More specifically, Clause 9 provided:

“Subject to the satisfactory completion of all terms of this Agreement by GE Law and Cleanthis Georgiades, YHIL hereby irrevocably releases and discharges GE Law (including partners, associates, agents, officers or employees) and Cleanthis Georgiades from all liabilities for damages, loss or injury, however arising, present or future, known and unknown at this time relating to the [2007 PSA]. GE Law hereby warrants and represents that it is not aware of any facts or circumstances which might give rise to any claim by YHIL against GE Law arising from its performance of the [2007 PSA]” [emphasis added]

213. Whether clause 9 is broad enough to release the defendants from the claims in these proceedings is a matter of construction of the clause applying the recognised principles of contractual interpretation. The claimant did not seek to argue that the clause was not broad enough to release the defendants as a matter of construction but

relied on three submissions as to why the release in clause 9 of the Settlement Agreement was not binding/effective to release the defendants:

- i) the principle of “sharp practice”;
- ii) that the defendants could not take the benefit of the release when they had failed to fulfil a condition precedent namely the payment of the interest on the \$1m;
- iii) fraudulent misrepresentation.

“Sharp practice”

214. It was submitted for the claimant that the Settlement Agreement was not binding on it with respect to its claims of which the defendants were aware and which to their knowledge YHIL was not, as this would amount to “sharp practice”. The claimant cited Lord Nicholls and Lord Hoffmann in *BCCI v Ali* [2002] 1 AC 251 in particular Lord Nicholls who noted that the law would be “defective” if it did not provide a remedy in such circumstances and Lord Hoffmann who referred to the principle that a party to general release cannot take advantage of what would ordinarily be regarded as “sharp practice”.
215. It was submitted for the defendants that the comments of Lord Nicholls and Lord Hoffmann were obiter and that the doctrine, if it exists at all, does not impose a duty of disclosure where parties are negotiating a settlement on commercial terms.

Relevant law

216. In *BCCI v Ali* the facts were that Mr Naeem was employed by the bank, BCCI, the bank embarked on an extensive reorganisation of its worldwide business which made a number of its UK employees including Mr Naeem redundant. Mr Naeem signed an agreement as follows:

”The Applicant [Mr Naeem] agrees to accept the terms set out in the documents attached in full and final settlement of all or any claims whether under statute, Common Law or in Equity of whatsoever nature that exist or may exist and, in particular, all or any claims rights or applications of whatsoever nature that the Applicant has or may have or has made or could make in or to the Industrial Tribunal, except the Applicant’s rights under the Respondent’s [the bank’s] pension scheme.”
217. It became clear that BCCI was and had for some years been seriously insolvent and that a significant part of its business had been carried on in a corrupt and dishonest manner. Lord Bingham stated that a party may, in a compromise agreement supported by valuable consideration, agree to release claims or rights of which he is unaware and of which he could not be aware, if appropriate language is used to make plain that that is his intention. But, in the absence of clear language, the court will be very slow to infer that a party intended to surrender rights and claims of which he was unaware and could not have been aware. As a matter of construction he concluded that the

parties could not have intended to provide for the release of rights and the surrender of claims which they could never have had in contemplation at all.

218. In his judgment Lord Nicholls said at [27]– [29]:

“[27] That said, the typical problem, as I have described it, which arises regarding general releases poses a particular difficulty of its own. Courts are accustomed to deciding how an agreement should be interpreted and applied when unforeseen circumstances arise, for which the agreement has made no provision. That is not the problem which typically arises regarding a general release. The wording of a general release and the context in which it was given commonly make plain that the parties intended that the release should not be confined to known claims. On the contrary, part of the object was that the release should extend to any claims which might later come to light. The parties wanted to achieve finality. When, therefore, a claim whose existence was not appreciated does come to light, on the face of the general words of the release and consistently with the purpose for which the release was given the release is applicable. The mere fact that the parties were unaware of the particular claim is not a reason for excluding it from the scope of the release. The risk that further claims might later emerge was a risk the person giving the release took upon himself. It was against this very risk that the release was intended to protect the person in whose favour the release was made. For instance, a mutual general release on a settlement of final partnership accounts might well preclude an erstwhile partner from bringing a claim if it subsequently came to light that inadvertently his share of profits had been understated in the agreed accounts.

[28] This approach, however, should not be pressed too far. It does not mean that once the possibility of further claims has been foreseen, a newly emergent claim will always be regarded as caught by a general release, whatever the circumstances in which it arises and whatever its subject matter may be. However widely drawn the language, the circumstances in which the release was given may suggest, and frequently they do suggest, that the parties intended or, more precisely, the parties are reasonably to be taken to have intended, that the release should apply only to claims, known or unknown, relating to a particular subject matter. The court has to consider, therefore, what was the type of claims at which the release was directed...

[29] This approach, which is an orthodox application of the ordinary principles of interpretation, is now well established... the constant theme is that the scope of general words of a release depends upon the context furnished by the surrounding circumstances in which the release was given. The generality of

the wording has no greater reach than this context indicates.”  
[emphasis added]

219. He then went on to consider “sharp practice” and observed:

“[32] Thus far I have been considering the case where both parties were unaware of a claim which subsequently came to light. Materially different is the case where the party to whom the release was given knew that the other party had or might have a claim and knew also that the other party was ignorant of this. In some circumstances seeking and taking a general release in such a case, without disclosing the existence of the claim or possible claim, could be unacceptable sharp practice. When this is so, the law would be defective if it did not provide a remedy.” [Emphasis added]

220. Lord Hoffmann at [70]-[71]:

“[70] In principle, therefore, I agree with what I consider Sir Richard Scott V-C [2000] ICR 1410, 1421 to have meant in the passage in paragraph 30 of his judgment which I have quoted (ante, paragraph 11), and with Chadwick LJ, that a person cannot be allowed to rely upon a release in general terms if he knew that the other party had a claim and knew that the other party was not aware that he had a claim. I do not propose any wider principle: there is obviously room in the dealings of the market for legitimately taking advantage of the known ignorance of the other party. But, both on principle and authority, I think that a release of rights is a situation in which the court should not allow a party to do so. On the other hand, if the context shows that the parties intended a general release for good consideration of rights unknown to both of them, I can see nothing unfair in such a transaction.

[71] It follows that in my opinion the principle that a party to a general release cannot take advantage of a suggestio falsi or suppressio veri, in other words, of what would ordinarily be regarded as sharp practice, is sufficient to deal with any unfairness which may be caused by such releases. There is no need to try to fill a gap by giving them an artificial construction.” [emphasis added]

221. The court was referred to two first instance decisions where the principle of “sharp practice” based on the remarks in *BCCI v Ali* was addressed: *Elite Property Holdings Ltd v Barclays Bank plc* [2016] EWHC 3294 and *Tchenguiz v Grant Thornton UK LLP* [2016] EWHC 3727 (Comm). I bear in mind that these were decisions on applications for strikeout/summary judgment and did not need to decide the issue. In *Elite Property* the judge proceeded on the basis that the doctrine applied but found that it was not made out on the facts. At [36]:

“The Claimants’ case that the bank was arguably guilty of some form of sharp practice is in my judgment hopeless. In my judgment, given that the claim which the bank (on the Claimants’ case) ought to have revealed is one that the Claimants brought to the bank’s attention the argument does not get off the ground. Dealing with the 3 questions posed at paragraph 28 above, the bank knew about the claims because the Claimants raised them, the Claimants were therefore obviously aware of the claims and the bank knew that to be the case”

222. In *Tchenguiz* the judge held as follows:

“[57] I am still left with the need to reach a conclusion on whether the present case is arguably of the type Lord Nicholls and Lord Hoffmann described. My conclusion remains that it is not. Lord Nicholls and Lord Hoffmann were referring to general releases not because of context but because that was where the law might have to recognise a limit, effectively to freedom of contract. Lord Hoffmann expressly did not propose any wider principle than one that engaged where there was a release in general terms. “A transaction in which one party agrees in general terms to release another from any claims upon him has special features” (Lord Hoffmann, above).

[58] The present case is one of a specific release of claims. So far as is material for these proceedings, the parties to the Settlement Agreement focussed on areas to which they applied the term “Specified Disputes”, and of which investigations and actions by authorities was one. Each party, with the benefit of legal advice, took the risk that they might be giving up a claim that another party knew of but they did not. The law allows that freedom where the release is not a general release. The bargain that is the Settlement Agreement stands in accordance with its terms.” [emphasis added]

### Discussion

223. The key phrase in my view of Lord Nicholls is as follows:

“In some circumstances seeking and taking a general release in such a case, without disclosing the existence of the claim or possible claim, could be unacceptable sharp practice.”

From this (and having regard to the statements of Lord Hoffmann) I derive the following propositions:

- i) where there is a general release the principle of “sharp practice” may apply;
- ii) however even where there is a general release, the principle of “sharp practice” does not apply in all circumstances;

- iii) a general release without disclosing the existence of a known claim “could” be unacceptable if the law would be defective if it did not provide a remedy.
224. Applying that to the present case, the terms of the release was from “*all liabilities for damages, loss or injury however arising*” relating to the 2007 PSA. I assume (though not entirely free from doubt) that this is to be regarded as a “general release” containing as it does widely drawn general words releasing all claims one party may have against the other, albeit limited to liabilities relating to the 2007 PSA.
225. However the language of the release in clause 9 makes expressly releases the defendants from all liabilities “*however arising, present or future, known and unknown at this time*” (emphasis added). To determine whether the principle of “sharp practice” applies, notwithstanding this clear language, the court has regard to the evidence as to the circumstances surrounding the execution of the Settlement Agreement:
- i) YHIL wanted to move the centre of its operations from Cyprus to California and Amsterdam (paragraph 45 of the List of Common Ground) and in order to do this it needed to terminate the relationship;
  - ii) This is an agreement the terms of which were agreed between Mr Godfrey for YHIL and Mr Georgiades (for himself and GE Law), both of whom are lawyers;
  - iii) the agreement was negotiated over a period of weeks and the claimant instructed an external firm of lawyers (Edwin Coe LLP) to draft the document (paragraph 89 of Mr Godfrey’s witness statement);
  - iv) it was at the suggestion of the claimant’s lawyers, that the express warranty was included; and
  - v) the execution of the Settlement Agreement followed shortly after the conclusion of the investigation by Crowe Horwath.
226. It was therefore an agreement reached between sophisticated parties, who were free to reach a commercial agreement as to the allocation of risk and drafted with the benefit of legal advice. It was an agreement for valuable consideration. YHIL were in a position of (at least) equal bargaining strength with GE Law and there is nothing to suggest that YHIL could not have sought a different allocation of risk.
227. It is to be inferred from the circumstances of this case that, with the benefit of the outcome of the Crowe Horwath report, YHIL were prepared to take the risk of unknown claims in return for the early termination of the 2007 PSA, thereby saving the cost of the annual fees payable under the 2007 PSA as well as receiving back a substantial portion of the \$1 million deposit and being released from the indemnities.
228. Further, YHIL did apparently seek to address the risk of unknown claims by requiring the addition of a warranty from GE Law (and YHIL say thereby a personal warranty from Mr Georgiades) that it was not aware of any facts or circumstances which might give rise to a claim. The presence of this specific warranty would suggest that this is not a case where the courts need to intervene in the freedom of contract and create a

remedy failing which the law would be defective. The agreement already contains a remedy if there is shown to be an (actionable) misrepresentation as to the existence of claims.

Conclusion on applicability of “sharp practice”

229. For all these reasons it seems to me that this is not a case where the court should intervene to override the clear contractual bargain which released both “present or future, known and unknown” claims relating to the 2007 PSA and apply any principle of “sharp practice”.

Sharp practice-Was this a case where the defendants knew that YHIL had a claim and knew that YHIL was not aware that he had a claim.

230. If I were wrong on the above, both as to the existence of the claim for fiduciary duty in respect of the introducer fees and for interest on the Indemnity Fund, and in relation to the claims generally, the principle of “sharp practice”, then the effectiveness of the release under the Settlement Agreement would be dependent on the factual finding of the court as to whether the defendants knew that YHIL had or might have a claim and knew also that the YHIL was ignorant of this.

231. Mr Wong for the defendants submitted that

- i) they had told YHIL about the Piraeus Bank commissions and the political donation;
- ii) they honestly did not believe that those matters gave rise to claims against them which YHIL did not know about.

Introducer fees

232. In the light of my findings above on party to the Introducer Agreement and the personal liability of CG for fees and commissions, this does not arise. If I were wrong on this, I will consider the position of knowledge in relation to the claim relating to the introducer fees and “sharp practice”.

233. It is submitted that the defendants had told YHIL about the commissions paid by Piraeus.

234. The claimant says it was not aware of the claims at the time it entered into the Settlement Agreement: Mr Godfrey in his witness statement (paragraph 96 and 97) said:

“...YHIL would not have entered into an agreement to obtain releases from indemnities in preference to making the claims that are the subject of these proceedings. The Yukos Group simply does not tolerate wrongdoing of this nature and had it known, the settlement agreement would not have been concluded.

Mr Georgiades and GE Law failed to disclose any of his wrongdoing prior to entering into the settlement agreement or



afterwards until we received the documents from Piraeus Bank in April 2017. I was not aware of any such wrongdoing at the time of entering into the settlement agreement and have no reason to believe that any other director of YHIL did...”

235. Mr Georgiades' evidence is that Mr Feldman told him in 2011 that Mr Godfrey had said at a meeting of the Armenian Foundation's board that "GE Law was receiving introducer fees from Piraeus" (paragraph 122 of his second witness statement). The evidence of Mr Georgiades was that:

“This topic came up because Bruce Misamore...was worrying about Piraeus Bank because of the low rating of the bank and he was of the view that YHIL should leave Piraeus Bank... Mr Godfrey mentioned GE Law’s introducer fees as an added reason to leave Piraeus Bank. [Mr Merinson] was also present at this meeting...”

236. The evidence before the court supports the evidence of CG that in 2011 given the financial position of banks in Greece, the board of the Stichting was concerned about the financial standing of Piraeus. However the account provided by CG that the fees were also mentioned was rejected by Mr Godfrey.

237. In relation to the introduction fees Mr Godfrey stated (paragraph 65 of his first witness statement):

“I understand that the defendants allege that YHIL’s board and that the members of the Yukos Foundation knew Mr Georgiades had entered into commission agreements with Piraeus and/or it was common practice for financial institutions to pay commissions in Cyprus and that YHIL must have known this. I confirm that: (a) I was never informed any such agreement been entered into and (b) I did not know of this practice. I have discussed this with the other board members of the Foundations who were equally unaware of such arrangements.” [emphasis added]

238. It was put to Mr Godfrey in cross examination that the allegation of the defendants was that YHIL knew that GE Law had entered into commission arrangements, not CG. Mr Godfrey’s response appeared to be that he did not write his witness statement but it was not an error; it was in response to the evidence that it had been disclosed at a meeting of the Foundation to which he said to refer to GE Law or even CG would not have meant anything to the Foundation board members. His evidence was:

“there is absolutely no way we were aware there was some kind of agreement between GE Law Services about which no one really paid any attention, no one had even heard of, apart from maybe me, maybe Bruce if that had even been uttered at a meeting, it would have fallen on complete looks of astonishment, nobody knew what that was. So it would have been told to us in a different way.”

239. It is not clear what he meant by the last sentence quoted above and counsel did not ask him to explain this remark.
240. In his second witness statement Mr Godfrey stated that he did not know that GE Law or Mr Georgiades or any of his connected entities were receiving introducer fees from Piraeus. He stated that Mr Misamore, Mr Fleischman and Mr Theede (members of the Foundation's board at the time) had all confirmed to him that they did not know either and referred to emails exhibited to his witness statement from Mr Theede, Mr Fleishman and Mr Misamore.
241. The claimant served a hearsay notice in relation to these emails from Messrs Theede, Fleischman, and Misamore. The emails sent in May 2019 are in identical form and stated:
- “I understand Mr Georgiades has alleged in the English proceedings YHIL has commenced against GE Law and him that the members of the board of the Foundations knew that:
1. Piraeus Bank paid commissions to his connected entities and him for transactions which YHIL placed with the bank...
- “I confirm I did not know either of the above” [emphasis added]
242. The explanation for relying on these emails as hearsay was stated to be that all three individuals were domiciled out of the jurisdiction and in the case of Mr Theede and Mr Misamore were not employed by or under the control of the claimant. This begs the question as to whether or not these individuals are employed in or under the control of the wider Yukos Group even if they are not employed by or under the control of YHIL: the evidence of Mr Godfrey in cross examination was that he could have asked them to provide a witness statement but it would have been an “imposition” to have them attend the trial. No such statement is made in respect of Mr Fleischman of whom it is said it would be “disproportionate and not in the spirit of the overriding objective” for him to be called to provide evidence.
243. At a time when the court regularly accepts evidence by video link for individuals based overseas, it seems to me that it would have been reasonable and practicable for the claimant to have produced at least one of these witnesses. As none of these individuals was called to give evidence, the court has not had the benefit of hearing whether, despite the fact that the emails correctly refer to proceedings having been commenced both against GE Law and CG, the emails deliberately dealt with the question of whether the board members knew that Piraeus paid commissions to CG whereas in fact the assertion by the defendants is that the board members knew that Piraeus paid commissions to GE Law. In determining the weight to be given to this hearsay evidence, I take into account the following factors:
- i) the identity of the party to the Introducer Agreement and the knowledge of the shareholders of the alleged secret commissions are central issues in the claim as advanced by YHIL and the evidence of these witnesses cannot be said to be peripheral;

- ii) the emails were prepared for these individuals in draft, and it seems likely that they were drafted or approved by the claimant's lawyers; thus it can be inferred that they were drafted carefully having regard to the issues and the responses may have been drafted for a particular purpose namely to suit the claimant's case;
- iii) it would have been reasonable and practicable for at least one of these witnesses to have been produced via videolink.

I therefore conclude that it could be a deliberate omission for the emails not to confirm that the board member was unaware of commissions being paid to GE Law and in relation to the issue which is addressed in the emails, namely absence of knowledge that commissions were paid to CG, in the circumstances referred to above, I do not accept this hearsay evidence as reliable.

- 244. Mr Feldman stated that he was unaware that Mr Georgiades was the beneficiary of any Introducer Fees from Piraeus. However that was in the context of his evidence in October 2017 in US proceedings brought against him by YHIL and it is unknown whether what answer he would have given if asked about an agreement between Piraeus and GE Law.
- 245. The evidence of Mr Malter (one of the YHIL directors in 2008-2011) is that he was unaware of the Introducer Agreement or any Introducer Fees (paragraph 9 of his first witness statement and paragraph 3 of his second witness statement).
- 246. Mr Parr also makes clear that he was not aware of the Introducer Fees paid to Mr Georgiades and his nominee companies until receipt of the NPO documentation in 2017 but he was not a director at the time in 2011.
- 247. The investigation by Crowe Horwath arose out of the bonus scheme which Mr Feldman had considered setting up (paragraph 82– 83 of Mr Godfrey's witness statement). Mr Godfrey's evidence is that that investigation was put in train in early 2014 to conduct an investigation to identify evidence regarding what he termed the "Bogus Bonus Scheme" and "any further instances of wrongdoing".
- 248. It is possible that "any further instances of wrongdoing" extended to an investigation into commission payments although I note that the investigation in relation to Mr Merinson into the payment of commissions to him did not start until March 2017 (paragraph 53 – 56 of Mr Godfrey's witness statement). Mr Godfrey's evidence was that after Yukos was informed about the arrangements which Mr Merinson had entered into with Julius Baer, the Yukos Group started to investigate the relationship it held with its banks to ascertain whether any other employees and/or directors had entered into similar arrangements. Similarly it was only in March 2017 that YHIL (with others) issued its application for a Norwich Pharmacal order against Piraeus and Barclays Bank.
- 249. Although the court does not have the benefit of the report, the investigation by Crowe Horwath into the conduct of GE Law and Mr Georgiades would appear to be thorough. Crowe Horwath spent over a week at the offices of GE Law and inspected both electronic and hard copy documents. In cross examination it was suggested to CG that he had done a pre-review of the documents and sought to check the

documents first make sure there was nothing incriminating. CG denied this. It was also put to him that Crowe Horwath were only given access to a segregated part of the server. CG's evidence was that so far as he remembered they had access to everything even the computer that was not working they made it work. It was put to him that in the second witness statement of Mr Godfrey he stated that no copies of the introducer fee invoices from Sunspot were found amongst the documents collected by Crowe Horwath. CG's evidence was that everything was available to them. I note the evidence of Marios Epaminondas in his witness statement that:

“[2 women and a man from Crowe Horwath] were given access to all of GE Law's files (both electronic and hardcopy). My instructions by Cleanthis were to provide them and guide them to the files we had. I was told by Cleanthis to provide them with support fully. There were no instructions given to me to restrict their access to GE Law's files in any way. I did not know why they were there and they did not tell me. I saw them copy various electronic files onto their hard drives and USB's....”

This evidence as to unrestricted access to the files was confirmed in his oral evidence and supports the evidence of Mr Georgiades.

#### Conclusion -Sharp practice: Introducer fees

250. The factual circumstances in which the principle referred to above in *BCCI v Ali* will operate are not spelt out in the dicta, bearing in mind that this was not the principle which was relied upon in reaching the decision in that case and that the remarks were obiter. In my view for the principle to apply, there would have to be a finding that when entering into the release the party being released has deliberately withheld details of the existence of the claim. This I infer is what is meant when the term “*suppressio*” is used. In my view on the evidence before the court, the evidence does not establish that there was such a deliberate withholding by the defendants. If it had been necessary to decide the issue, I would have found on the evidence before the court that, on the balance of probabilities, the claimant was unaware of the claim for introducer fees at the time it entered into the Settlement Agreement but in my view that is not enough for any principle of sharp practice to be invoked and in my view, the evidence does not establish that this was a case where the defendants deliberately withheld the fact of a claim. In my view, on the evidence, CG believed that GE Law was entitled to commissions as an introducer (and has advanced its defence on this basis at trial) and although he did not know the scope of the Crowe Horwath investigation or the results of the investigation, he had not sought to conceal any wrongdoing but had given them full access to all the files. Thus, even if the claimant was in fact unaware of the potential claim, in my view the defendants did not enter into the release having deliberately not disclosed a potential claim in respect of the commissions.
251. For these reasons I find that even if the principle of “sharp practice” could apply, it does not apply in the circumstances to the claim for introducer fees.

“Sharp practice”- Political Donations Claim

252. If I am wrong and the principle of “sharp practice” does apply in this case, I set out below my findings on whether YHIL knew of the political contribution prior to entering into the Settlement Agreement.
253. In the course of the trial the claimant disclosed a redacted email exchange. The emails disclosed were an email on 15 June 2015 in which Mr O’Sullivan, a lawyer with Olswang, wrote to Mr Godfrey:
- “Below is a short report on what we have learned from the emails that Feldman gave to Crowe so far....
- “4. In June 2011 you queried a £233k increase in quarterly expenses of YHIL. We are still looking at this but Cleanthis said that the actual reason for the increase is the *indirect financial support to my election campaign, which is known to nobody else other than the four of us*. Were you ever told about that?”
254. Mr Godfrey responded on 16 June 2015 to Mr O’Sullivan, the unredacted part reading as follows:
- “I recall that Cleanthis raised this issue i.e. a request for political contribution and I raised it with the board who declined.”
255. Apparently in the same email exchange (although it is not entirely clear given the redactions), was an email from Samantha Cumming, a lawyer acting for YHIL at CMS, on 12 June 2015 headed “summary of main issues from Feldman review” in which she stated:
- “Please see a brief summary of the main issues arising from our review of Feldman’s emails...”
- “a. there is direct evidence of several of the directors of YHIL claiming expenses fraudulently:
- “in June 2011 David Godfrey repeats the request for report on YHIL expenditures. Sergei Ketch (sic) puts the total figure at \$233K for the first quarter of 2011 for the Armenian group to DF. DF queries the reason for the increase in the figure, to which Cleanthis responds “the actual reason of the increase is the *“indirect financial support to my election campaign, which is known to nobody else other than the four of us.”*”
256. Mr Godfrey’s evidence in cross examination was that he only learnt about the email of June 2011 when he saw the email of 16 June 2015.
257. At paragraph 77 of his first witness statement Mr Godfrey said that he did not recall the first time he saw the email but that it was after he signed the Settlement Agreement. Even in his most recent witness statement made on 20 June 2019 Mr

Godfrey made no reference to the email of 16 June on which he now relies to establish the date of his knowledge, and which he disclosed in the course of the trial.

258. In this regard the court also had before it part of the evidence given by Mr Godfrey in his deposition in June 2016 in the United States District Court in the proceedings against Mr Feldman. In the deposition Mr Godfrey was asked about the email from Mr Georgiades concerning the indirect contribution to his political campaign. His evidence was that he learnt about the political contribution “sometime after [Mr Feldman] left the company”. In response to the question “so that is sometime after 2012?” Mr Godfrey responded:

“Well definitely sometime after 2012 but I believe sometime after 2014”

Initially in that evidence Mr Godfrey said that it might have been Martin Parr that told him about it. Later in his evidence Mr Godfrey said that it was “found or understood or developed by our lawyers”.

259. Although Mr Godfrey was not specific in the deposition referring only to “sometime after 2014” he did not say that it was after the conclusion of the Crowe Horwath investigation.
260. In assessing whether it is likely that the claimant was aware of the Political Donations Claim, I have regard to the following:
- i) the evidence of Mr Godfrey (paragraph 13 of his second witness statement) that he did not consider it “financially viable” to commence proceedings once he discovered the political contribution as “in isolation the amount concerned would have been outweighed by the legal costs of proceedings”.
  - ii) the fact that the claimant in its pleadings (paragraph 74 of the Reply) denied knowing about the claims (including the political donations) but only chose to disclose the redacted email of 16 June to support that pleading in the course of the trial; even if the Crowe Horwath report is privileged it is unclear why given that this was a key issue, the claimant did not reach the conclusion that it could be disclosed in redacted form prior to the commencement of the trial;
  - iii) the fact that proceedings were brought against Mr Feldman, including this claim in relation to the political donation, just over a week after the email of 16 June 2015 which would tend to suggest that this must have been known about prior to 16 June 2015;
  - iv) the general observations made above in relation to the weight which the court places on the evidence of Mr Godfrey.

Conclusion -finding of fact on knowledge of political contribution

261. Accordingly if I am wrong and the principle of “sharp practice” does apply to the Political Donations Claim, I find on the evidence that the claimant was aware of the Political Donations Claim prior to signing the Settlement Agreement and thus the

principle of “sharp practice” would not apply to any claim in respect of the political donations/ contributions against either Mr Georgiades or GE Law.

Sharp practice: Interest claim

262. It seems to me that (even if I were wrong in respect of the operation of the principle in relation to the other claims) the principle of “sharp practice” does not operate in the circumstances to prevent the release in the Settlement Agreement in respect of any claim for additional interest on the Indemnity Fund. Interest was being earned on a fixed sum and the amount of interest said to have been earned was reported to YHIL and included in the audited accounts. It was open to YHIL to check or challenge the amount reported as earned if as they assert it was low. If it were the case that the full amount of interest had not been accounted for, nevertheless the evidence does not establish that this was a case where the defendants deliberately withheld the fact of a claim or potential claim and accordingly it is not a situation where the principle of “sharp practice” falls to be applied in relation to the release.

Condition precedent

263. It was submitted for the claimant that the defendants cannot take the benefit of the release in circumstances where they have not satisfactorily completed all the terms of the Settlement Agreement. It was submitted that this was an express condition precedent to the release in clause 9 and should be given effect. It was submitted that GE Law failed to comply with clause 7 of the Settlement Agreement because it did not account in full for the interest earned on the US\$1 million indemnity fund. As such it was submitted that the defendants cannot take the benefit of the release of claims in clause 9.

264. In the light of my finding above in relation to the claim for interest, this issue does not arise and cannot operate to prevent the release in clause 9 being effective. However, if I were wrong on the claim for interest, in my view the language in the clause does not operate as a condition precedent.

265. Clause 9 reads (so far as material):

“Subject to the satisfactory completion of all terms of this Agreement by GE Law and Cleanthis Georgiades, YHIL hereby irrevocably releases and discharges GE Law (including partners, associates, agents, officers or employees) and Cleanthis Georgiades from all liabilities... [emphasis added]

266. The court was referred to Lewison *Interpretation of Contracts* (6th edition) at 16.02:

“A condition precedent is a condition which must be fulfilled before any binding contract is concluded at all. The expression is also used to describe a condition which does not prevent the existence of a binding contract, but which suspends performance of it or an obligation under it until fulfilment of the condition; or to describe a contractual obligation that must be performed by one party before another contractual obligation of the counter-party arises.”

267. Counsel for the claimant relied on the following passage:

“A condition may be such as not to prevent a binding contract from coming into existence, but to suspend immediate performance of the obligations it creates until fulfilment of the condition. Thus in *Bank of Nova Scotia v Hellenic Mutual Ltd (The Good Luck)* [1992] 1 A.C. 233. Lord Goff of Chieveley described the “classical sense” in English law of a condition precedent as being a provision:

“under which the coming into existence of (for example) an obligation, or the duty or further duty to perform an obligation, is dependent upon the fulfilment of the specified condition.”

268. Counsel also cited the following extracts:

“The expression “condition precedent” is also used to describe a contingency which must be fulfilled in order to bring a particular contractual obligation into operation. That contingency may be the performance by one party of a contractual obligation of his own, or may be some other event (such as the giving of a notice).”

“*In AstraZeneca UK Ltd v Albemarle International Corp* [2011] EWHC 1574 (Comm), Flaux J. said:

“Whilst it is clear that, for performance of a provision in a contract to be a condition precedent to the performance of another provision, it is not necessary for the relevant provision to use the express words ‘condition precedent’ or something similar, nonetheless the court has to consider whether on the proper construction of the contract that is the effect of the provisions.”

269. As is clear from the above extract from *AstraZeneca*, whether a provision is to be interpreted as a “condition precedent” it is not necessary to use the express words but the court has to consider whether on the proper construction of the contract that is the effect of the provisions.

270. In relation to the language that was used, the words “Subject to the satisfactory completion of all terms of this Agreement” are capable of being interpreted as a condition precedent to the release in clause 9 becoming effective. However in accordance with established principles of contractual construction, the court has regard not only to the language used but also to the context to determine the objective meaning of the words:

- i) I take into account the fact that this agreement was drafted by the claimant’s external lawyers who can be expected to understand the need for clear language if it was intended that this phrase should operate as a condition precedent.



ii) I have regard to the fact that Flaux J in *AstraZeneca* also said:

“... in the absence of an express term, performance of one obligation will only be a condition precedent to another obligation where either the first obligation must for practical reasons clearly be performed before the second obligation can arise or the second obligation is the direct quid pro quo of the first, in the sense that only performance of the first earns entitlement to the second.” [emphasis added]

271. The language used is “*satisfactory completion of all terms of this Agreement*”. The terms of the agreement binding on CG and GE Law are in summary:

- i) For CG to ensure that CLS Aliens and Consulting Services Ltd provides signed letters of resignation as company secretary of Luxtona Ltd and as company secretary of YHIL (clause 1);
- ii) For GE Law to deliver all documents currently in the possession of GE Law, having retained copies of the same other than in the case of Luxtona where GE Law is to provide an index of all documents returned (clause 2);
- iii) For GE Law to return the sum of \$600,000 plus interest accrued (clause 7);
- iv) For GE Law and CG to perform all such further acts and things and execute and deliver such further documents as may be reasonably required to implement or give effect to the actions and agreements contemplated herein (clause 10).

272. All of these are “*terms of the agreement*” and therefore on the claimant’s interpretation, a failure to comply with any of them would prevent the release in clause 9 from being operative. Thus if the claimant is correct in its interpretation, the failure of GE Law to provide an index of all documents returned in the case of Luxtona would prevent the release from liability of CG and GE Law from becoming operative. Similarly the failure to return a single document would be a failure to return “all documents” held on behalf of YHIL and would have the effect of preventing the release in clause 9 from being operative. In my view it is commercially unlikely that failure to comply with any of these terms was intended by the parties to prevent those provisions becoming operative. In my view it was not the intention that only the performance of all other terms of the Agreement, regardless of how minor in the overall context, suspended or prevented the operation of the release in clause 9. The context in which this Settlement Agreement was entered into is that the claimant wanted to move the centre of its operations from Cyprus, and thus to end its relationship with its service provider. As an integral part of ending the relationship it wished to terminate the indemnities early and recover part of the sum of \$1 million. Viewed objectively, it seems to me that the primary purpose of the agreement was to end the relationship and specifically the PSA and the parties did not intend for the release of CG and GE Law which was the “quid pro quo” for the ending of the relationship and the giving up of the indemnities by CG and GE Law to be thwarted due to non-compliance with a minor term. There is no basis on the language of clause 9 to distinguish between what might be said to be “key” or “major” terms and more minor terms.

273. The court hesitates to find that language drafted by lawyers adds nothing to the meaning of a clause, however I note that the same wording “subject to the satisfactory completion of all the terms of this agreement” appears in clauses 4 and 5 in relation to YHIL. Thus clause 4 states that GE Law releases YHIL from its indemnity only subject to satisfactory completion of all the terms of the agreement by YHIL. However there does not appear to be any terms to be completed by YHIL, other than the requirement under clause 10 to perform all such further acts and things and execute and deliver such further documents as may be requested to implement or give effect to the actions and agreements. If the claimant’s interpretation in relation to clause 9 were correct, there would be no reason to give a different interpretation to this phrase in clauses 4 and 5, and thus a failure by YHIL for example to deliver a document in connection with this agreement under clause 10 would have the effect that YHIL not been released from its indemnities under the 2007 PSA or under the 2008 indemnities. That reinforces my conclusion that this phrase was not intended in this contract to operate as a condition precedent in clause 9.

#### Conclusion on Condition precedent

274. If it had been necessary to decide this issue, for the reasons set out above, I find that the phrase “*subject to the satisfactory completion of all the terms of this agreement*” in clause 9 is not a condition precedent which by reason of a failure to return the full amount of interest earned would have operated to prevent the release in clause 9 from coming into effect.

#### Fraudulent misrepresentation

275. In the light of my findings above on sharp practice and condition precedent, it is necessary to consider the alternative basis advanced by the claimant for preventing the operation of the release in clause 9 of the Settlement Agreement namely that it was the result of a fraudulent misrepresentation which entitles YHIL to rescind the Settlement Agreement. In the light of the findings above however, there can be no fraudulent misrepresentation in relation to the claim for the introducer fees or the interest. However the court does have to consider the question in relation to the political donations and if I were wrong on either of the other claims, I set out my findings in relation to those claims.

276. The elements of an action in deceit were not really in dispute. There has to be (1) a representation, which is (2) false, (3) dishonestly made, and (4) intended to be relied on and in fact relied on (*AIC Ltd v ITS Testing Services (UK) Ltd (The Kriti Palm)* [2007] 1 All ER (Comm) 667 at [251])

277. In this case, the claimant alleges that there were two false representations: the express representation by GE Law in clause 9 of the Settlement Agreement and an implied representation by Mr Georgiades personally by virtue of negotiating and signing the Settlement Agreement on his own behalf as well as that of GE Law. The claimant also alleges that the statements were made dishonestly in that Mr Georgiades (whose knowledge is admitted to be attributable to GE Law) was perfectly aware of his undisclosed wrongdoing.

278. It seems to me that the key issue in the circumstances of this case, in relation to misrepresentation is whether there was reliance on the representation. I proceed to

consider this issue therefore on the assumption (but without making any finding of fact) that the representation that GE Law/CG was not aware of any facts or circumstances which might give rise to any claim by YHIL against GE Law arising from its performance of the 2007 PSA was untrue and that GE Law/CG made the representation knowing that it was untrue and on the assumption that the requirement of dishonesty is met.

Relevant law on reliance

279. The relevant principles are set out in the judgment of the Supreme Court in *Hayward v Zurich Insurance Company plc* [2016] UKSC 48. At [24] and [25]:

“[24]...Lord Mustill said in *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* (No 2) [1995] 1 AC 501 , 542A:

“In the general law it is beyond doubt that even a fraudulent misrepresentation must be shown to have induced the contract before the promisor has a right to avoid, although the task of proof may be made more easy by a presumption of inducement.”

[25] The authorities show that questions of inducement and causation are questions of fact.

[26] In this regard I agree with the judge when he said at the end of para 2.5 that Clerk and Lindsell's statement in the previous edition fits the case better. It simply said, “The claimant must have been influenced by the misrepresentation”. That is a sub-heading to para 18-34 in the 21st ed. In para 18-35 the editors say that, although the claimant must show that he was induced to act as he did by the misrepresentation, it need not have been the sole cause...”[emphasis added]

280. There is a rebuttable presumption that the misrepresentation has induced the contract:

“[36] As to sub-para (iv), rebutting the presumption of inducement, the authorities are not entirely consistent as to what is required to rebut the presumption. However, it is not strictly necessary to address those differences in this case because, however precisely the test is worded — whether what must be proved is that the misrepresentation played ‘no part at all’ or that it did not play a “determinative part”, or that it did not play a ‘real and substantial part’ — I would accept the submission made on behalf of Zurich that the presumption is not rebutted on the facts as found in this case. There can be no doubt on the judge's findings of fact that, if Zurich had known the true position as to Mr Hayward's state of recovery, it would not have offered anything like as much as it in fact offered and settled for in October 2003.”

“[37] Since the issue was touched on in argument, I would simply say that the authorities seem to me to support the conclusion that it is very difficult to rebut the presumption. As it seems to me, the orthodox view is contained in *Sharland v Sharland* [2015] 3 WLR 1070 . In *Smith v Kay* (1859) 7 HLC 750 , 759 Lord Chelmsford LC asked this question in a rescission case based on an allegation of fraudulent misrepresentation:”

“can it be permitted to a party who has practised a deception, with a view to a particular end, which has been attained by it, to speculate upon what might have been the result if there had been a full communication of the truth?”

In *Sharland v Sharland* Baroness Hale observed of *Smith v Kay* that it indeed held that a party who has practised deception with a view to a particular end, which has been attained by it, cannot be allowed to deny its materiality or that it actually played a causative part in inducement.”

281. Whilst accepting that it is very difficult to rebut the presumption of inducement, the court has to consider the facts of this particular case.

282. The evidence of Mr Godfrey in his first witness statement (paragraph 92) was that when he executed the Settlement Agreement he relied on the truth of the representation in clause 9 and that if GE Law had not given this representation or he had known it was untrue:

“I would not have agreed to the terms of the Settlement Agreement on YHIL’s behalf.”

283. He also stated that (paragraph 94 and 96):

“I accept that in deciding to enter into the Settlement Agreement on behalf of YHIL, I also relied on the absence of any wrongdoing by Mr Georgiades found by Crowe Horwath. I also wished for the balance of YHIL’s USD 1 million indemnity to be returned to it. Notwithstanding this, the representations by the defendant were important reasons why I signed the Settlement Agreement on YHIL’s behalf.”

“...YHIL and the Yukos group take seriously any wrongdoing on the part of its directors... The proceedings against Mr Feldman and Mr Merinson set out above demonstrate that YHIL would not have entered into an agreement to obtain releases from indemnities in preference to making the claims that are the subject of these proceedings. Yukos group simply does not tolerate wrongdoing of this nature and had it known, the Settlement Agreement would not have been concluded.”

284. However in cross examination the following exchange took place:

“Q... When you signed the agreement did you even know there was this warranty clause?”

A I would have read the agreement and I would have been told by Nick [Neocleous of Edwin Coe] what was in it.

Q was it an important clause to you “GE Law hereby warrants”?

A it is a pretty important clause as it turned out.

Q at the time of the Settlement Agreement was it important to you?

A the whole matter was relatively unimportant to me but I was I mean I reviewed the contract and signed it.

Q what whole [matter] are you referring to, are you referring to the warranty?

A no no no. The whole, the Cleanthis exit, it was still a tiny minor issue in our global struggle.... We had giant fights where there were billions of dollars at stake and this was just a nuisance thing to get rid of.

Q... You just want to get rid of the whole thing you saw it as a nuisance?

A The person who drafted these that may have been drafted by Cleanthis or his lawyers but I would believe Edwin Coe and Nick Neocleous were doing their job and to them it mattered.... [emphasis added]

285. This was in my view clear evidence that, despite his witness statement which was doubtless carefully crafted with the relevant test for reliance in mind, that in fact Mr Godfrey did not rely on the warranty which (as the correspondence showed) was inserted into the draft by the lawyers for the claimant who were “doing their job” and in respect of which Mr Godfrey could not say, and did not say, in his oral evidence that it was important to him at the time.

286. Despite this, to my mind, clear evidence, counsel for the defendants subsequently returned to this topic later in his cross examination and put it to Mr Godfrey that he did not rely on the warranty to which Mr Godfrey responded:

“so if you’re asking at the moment can I remember at that time what I was thinking, it is difficult to say. But I think it is fair to say that I relied on everything in the agreement just as they would have relied on everything we agreed to.”

This later answer, set out above, is in my view less likely to be the true picture, and was in my view a tailored response designed to support the claimant’s case once Mr Godfrey had perhaps appreciated the significance of his earlier evidence.

287. This conclusion on reliance is reinforced by the evidence in relation to the Crowe Horwath investigation. In his witness statement Mr Godfrey acknowledged (paragraph 94) that in deciding to enter into the Settlement Agreement he “also relied” on the absence of any wrongdoing by Mr Georgiades found by Crowe Horwath. However he said that the representations by the defendant were “important reasons” why he signed the Settlement Agreement on behalf of YHIL. I have already discussed above the reasons why generally the court reduces the weight to be given to the evidence of Mr Godfrey. The veracity of this statement has to be weighed against the evidence of the nature of the Crowe Horwath investigation. As discussed elsewhere, it involved three people spending a week in the offices of GE Law with full access to both hardcopy and electronic files, there were follow-up investigations and the overall investigation took over a year leading to the issue of a report. In my view and bearing in mind the oral evidence of Mr Godfrey set out above, the likely position is that Mr Godfrey relied on the extensive investigation by Crowe Horwath in deciding whether to enter into the Settlement Agreement and not on the warranty which was added by the lawyers to the draft agreement apparently on their own initiative.
288. In relation to the political “contribution” I have found as a fact that Mr Godfrey was aware of the political “contribution” at the time he entered into the Settlement Agreement and therefore even if I were wrong on the conclusion to be drawn from the evidence of Mr Godfrey on the general issue of reliance on the warranty, I find that the warranty insofar as it related to the political donations (and any claim against GE Law based on the political donation) played no part in the decision to enter into the Settlement Agreement; it did not induce YHIL to enter into the Settlement Agreement and there was no reliance by YHIL in this regard.
289. As far as the additional interest is concerned, if there were a claim for additional interest, I find that the warranty did not induce YHIL to enter into the Settlement Agreement:
- i) As Mr Godfrey stated in cross examination, he regarded the “Cleanthis exit” as a “tiny minor issue”, a “nuisance thing to get rid of”; YHIL wanted to move its operations out of Cyprus;
  - ii) The claim for interest earned on the deposit is a relatively minor amount, being additional interest earned on USD1million during a period when interest rates were declining due to the financial situation in Greece. It was not financially viable to bring the Political Donations Claim and it is likely in my view that the same would have applied to the claim for additional interest.
290. For these reasons it is not credible in my view that YHIL would have not entered into the Settlement Agreement and instead left in place the PSA and the indemnities for a further period of years if it had known that the full amount of interest had not been accounted for and YHIL had a claim for such interest.

#### Conclusion on fraudulent misrepresentation

291. For the reasons discussed above, I find on the evidence that the claimant has failed to show that it was induced to enter into the Settlement Agreement by any misrepresentations as alleged.

**Conclusion on the Settlement Agreement**

292. Accordingly, I find that, to the extent that any liability attaches to the defendants in respect of the Introducer Claim, the Political Donation Claim, the Interest Claim, the Non-Disclosure Claim or the liabilities and losses which are alleged to have been incurred and suffered in relation to such wrongdoing, clause 9 of the Settlement Agreement was effective to release the defendants from any liability arising in respect of any such wrongdoing.