Neutral Citation Number: [2020] EWHC 1963 (Ch)

Case No: CR-2018-006183

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF GROSVENOR PROPERTY DEVELOPERS LTD
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 23/07/2020

Before :

ICC JUDGE PRENTIS

- -

Between :

1. MR PAUL ATKINSON & MR GLYN MUMMERY (Joint Liquidators of Grosvenor Property Developers Ltd)	**Applicants**
2. GROSVENOR PROPERTY DEVELOPERS LTD (IN LIQUIDATION)	
- and -	
1. MR SANJIV VARMA	**Respondents**
2. MR ARJUN KHADKA	
3. GROSVENOR CONSULTANTS FZE	
4. MR SIDDHANT VARMA	
5. MR JONATHAN ENGLAND	

- -
- -

Rory Brown and Nora Wannagat (instructed by **Gunnercooke**) for the **Applicants**
James Ramsden QC (instructed by **Keystone Law**) for the **Fourth Respondent**
The First, Second, Third and Fifth Respondents did not appear and were not represented.

Hearing dates: 16-19, 22-23, 26 June 2020

JUDGMENT

ICC JUDGE PRENTIS:

Introduction

1. The Grosvenor Hotel stands crumbling in Victoria Street, Bristol. It was built in the nineteenth century for the benefit of the voyagers from the nearby Temple Meads station. On 16 December 2016 Grosvenor Property Developers Ltd, registered number 10528987, (the "Company") was incorporated to purchase the Hotel and convert it into student accommodation. On the promise of "assured" returns of 7.5% "net" per annum for 5 years it raised £7.6m from investors. Deputy ICC Judge Addy QC wound it up on 14 November 2018 on a petition presented by one of the investors, Paul Cameron, on 26 July 2018. Liquidators, Paul Atkinson and Glyn Mummery, were appointed on 6 December 2018 by the Secretary of State (the "Liquidators"). On appointment the only existing Company asset was a nominal sum in its Santander account. It never acquired title to the Hotel. It never obtained planning permission for the conversion. Its business had been primarily a fraud.

2. Supported by a plethora of interim applications the Liquidators have already obtained judgment from Deputy ICC Judge Agnello QC on 13 May 2020 for £1.3m against the First Respondent and a further £3.1m against the First and Third Respondents jointly and severally, with compound interest at 8%. This is the trial of their claims against the remaining Respondents, technically founded on the Liquidators' 27 March 2019 application, which following application of 10 May 2019 was by order of Chief ICC Judge Briggs of 4 June 2019 amended to join the Second to Fifth Respondents. On 4 March 2020

ICC Judge Mullen acceded to the Liquidators' 29 November 2019 application to further amend by substantial additions against the Fourth Respondent, Siddhant Varma. It is only he who has attended or been represented at this trial.

3. Siddhant Varma is distinct from the other individual Respondents in that he was not involved in the management of the Company: he is joined as a recipient of the proceeds. He is distinct as well from his father, Sanjiv Varma, whose name has featured largely in previous adverse judgments and press reports. In an attempt to delineate the two I will, as suggested by his counsel, James Ramsden QC, describe Siddhant Varma as "SVJ", which derives from previous unsatisfactory nominations of him as "Mr Varma Junior". His father will be just that, or the "First Respondent".

4. The First Respondent orchestrated the fraud. Deputy Judge Agnello QC, before whom he appeared in person, found that he had at all times acted as the de facto director of the Company. His degree of involvement is revealed by her refusing to characterise him as a shadow director because "there is little evidence of Mr England actually acting as a director".

5. Jonathan England is the Fifth Respondent. He was the registered director and secretary of the Company from incorporation until 9 June 2018, from when Arjun Govind Khadka, the Second Respondent, took over. Over the same period Mr England was notified as the person with significant control, having registered in his name the 100 issued £1 shares. Mr England was bankrupted on his own petition on 13 December 2019, but there is no stay on the prosecution of these proceedings. He wrote me a polite note on the Friday

before trial, informing me that he was not going to attend as "It has not been possible for me to arrange proper representation for myself… due to lack of funds".

6. Mr England was owner and director of another company which looms large but is not a party, Casa Investments Limited, registered number 08946906 ("Casa"). This was incorporated on 19 March 2014 as Mr England's vehicle within the property business in which he had started as an estate agent in 1998. Casa's business is on his own description multi-faceted: it offers services in property consultancy and management, additional to being a sales and client search agency. According to Companies House he resigned as director of Casa on 14 February 2020, no doubt owing to his bankruptcy, and none has been appointed since.

7. Little is known of Mr Khadka. As Mr Atkinson, who has given evidence on behalf of the Liquidators, says, he "ceased contact in April 2019 and has not engaged in any way with the proceedings, despite being the subject of interim injunctions and an arrest warrant". He is possibly in India or Nepal.

8. As put by Rory Brown, counsel for the Liquidators leading Nora Wannagat, in his skeleton it is a feature of this trial that "much is not as it seems". The claim against Mr Khadka is for delivery up of jewellery which he has said belongs to the Company (the "Jewellery"), or compensation for its value of some £4m. Whether the Jewellery actually exists or not is a matter which will have to be determined without evidence from anyone who has, or ought to have, seen it. Mr England says that he acted on the instructions of a Maneet Singh, resident in India, under a declaration of trust and nominee agreement of

December 2016, and transferred monies in accordance with Mr Singh's written instructions. The Liquidators say those writings are forgeries, and rely on the findings within an expert report from Erich J. Speckin of Speckin Forensics, LLC, of Michigan and Florida USA. Deputy Judge Agnello QC remarked on the "lack of evidence" concerning the existence of Mr Singh, and it is the Liquidators' conclusion that he is a fiction. The First Respondent is portrayed as a plausible and clever individual who has said and manoeuvred whatever he thinks is appropriate at the time to camouflage the fraud, whether by way of arrangement or document. Mr England not attending, whether on his own behalf or as witness for SVJ, for whom he had in November 2019 made a witness statement containing only one page of substance, this trial will be determined without having heard evidence from any of the direct contributors to the fraud.

9. The claims are in outline:

9.1 against Mr Khadka under sections 234 and 212 of the *Insolvency Act 1986* for delivery up of the Jewellery or compensation;

9.2 against SVJ (a) under section 234 or section 238 or in unjust enrichment in respect of a Bentley Bentayga W12 (the "Bentley"); (b) under section 238 or in unjust enrichment in respect of £210,552 of Company monies transferred to him through Casa; and (c) in knowing receipt or unjust enrichment in respect of £2m of Company monies transferred to him by his father;

9.3 against Mr England under section 212 for payment away of the Company's monies.

10. By agreement between the parties, open-eyed as to the potential attendant consequences including the hampering of a true assessment of witnesses, this trial was conducted entirely remotely by Skype for Business owing to the Covid-19 restrictions. After an electronically-dismal first day, we suffered only the usual periodic deficiencies of the medium, the parties having declined the court's further offer at the end of the first day to hear aspects of the case live. No complaint as to the fairness of the process was made by any party, and none was apparent to the court. Sensible expediencies were agreed, for which the parties are to be commended, as also for their willingness to make the process effective.

The Company's operations

11. Before looking at the individual heads, they must be placed into some more elaborated background.

12. Despite having no real assets, the Liquidators have carried out impressively detailed investigations of the Company's business using their own teams, Gunnercooke solicitors, and specialist counsel, within and outside this jurisdiction. There is, though, as they acknowledge, much which they have still been unable to piece together.

13. The current figure for total investment into the Company is stated as £7,632,567, collected as initial payments on off-plan student rooms or units. While there were to be about 150 of those, they have been over-subscribed. Investments were collected between 17 February 2017 and 9 January 2018.

None was paid directly to the Company, whose Santander account was opened only on 1 August 2017 (the "Company Account"). Instead, payments were made either into Casa's HSBC account (the "Casa Account"), or, as to £6.9m between 22 May and 27 November 2017, to an account held at Kennedys solicitors.

14. I heard evidence from Dennis Ko who was until September 2017, when he moved to Boodle Hatfield, the partner at Kennedys dealing with the First Respondent. His evidence was, as one might expect, entirely honest and straightforward, notwithstanding that there is a separate claim by the Liquidators against Kennedys. He had been introduced to the First Respondent in the summer of 2016 by email from an existing client. The First Respondent had then contacted him about the Hotel in around September 2016. Following incorporation of the Company Mr Ko knew that Mr England was its sole director and shareholder, and met him a few times, always accompanied by the First Respondent with whom Mr Ko actually dealt. Mr England told Mr Ko that he held the Company shares on trust for the First Respondent. Maneet Singh was never mentioned.

15. Mr Ko thought that it was probably because Kennedys had not received the necessary know-your-client documentation from the Company that although it operated files for the Company to which investors' money was attributed, they were in the name of the First Respondent, whose details they did have. Kennedys paid £656,952 of the Company monies on to the Casa Account from 23 May to 4 September 2017; and £4.9m of them into the Company Account. Mr Ko said that "at an early stage" Kennedys had been told by the First

Respondent "that Casa was involved in the development of the Hotel", and in cross-examination thought he had been shown a document confirming this.

16. At all material times the sole signatory on the Casa Account and on the Company Account was Mr England.

17. In his Points of Defence, signed by him with a statement of truth on 17 July 2019, Mr England confirms that he "made payments out of the Casa Account either using Casa's own funds or in respect of funds held on behalf of the Company". He therefore agrees that Casa held funds on behalf of the Company.

18. I heard evidence from the entirely believable Mary Yongqing Liu, an investor who was also the frontwoman for an ad hoc group of family and friends who all invested. As she lived in Bristol she could see the lack of progress on site, and in July 2017 asked for a visit which the First Respondent refused on health and safety grounds. He instead sent them a video which purported to show interior work at the Hotel. They continued to chase the First Respondent, but became really concerned in November 2017 when contacted by a BBC journalist. Ms Liu's own initial payment of £10,000 was made into what she describes as the Company's HSBC bank account, but was in fact the Casa Account.

19. It is the Liquidators' estimate that of the £7.6m invested "at most, £542,220… might be considered to have been spent on legitimate Company expenditure". This includes £15,000 to BBA Architects for outline scoping work and £234,467 to Kennedys for fees. It also includes, although this is subject to ongoing investigation, £275,000 paid to Park Limited ("Park") as a deposit to

purchase the Hotel. There is some evidence that Park had itself exchanged contracts with the registered owner, Earlcloud Limited ("Earlcloud"), the benefit of which was then assigned to the Company. Whatever, despite the large sums invested in it, the Company has never even obtained title to the Hotel.

The claim against Mr England

20. Mr England is said in the Amended Particulars of Claim to have caused the Company to suffer loss by "making or permitting… payments in knowing breach of his fiduciary or director's duties and/ or without taking reasonable care to ensure that they promoted the success of or were for the Company or its purposes". This is now quantified at £7,090,347, said in Mr Brown's skeleton to represent monies paid into the Company and Casa Accounts of £7,786,067; less £1,078,500 of payments from the Company Account to the Casa Account; plus a payment of £925,000 on 1 July 2017 from Kennedys to the First Respondent; less the £542,220 of assumed legitimate expenses. The same figure can be arrived at through the less complicated process of taking the current figure for total investment of £7,632,567 and deducting the assumed legitimate expenses.

21. In overview, then, this is a simple claim. This was a single purpose Company. That purpose has not been fulfilled. Save for the £542,220, its monies were not applied for the purpose. Mr England was its sole de jure director. He was also sole signatory on its bank account and the Casa Account in which it collected and dealt with its monies. Mr England was bound to ensure that the

Company's assets were applied only towards its purpose. He failed to do so, causing loss to the Company in the paying away of its assets, for which he should compensate it. Primarily engaged are the duties under section 171 and 172 of the *Companies Act 2006*. The lack of reasonable care falls within section 174.

22. While the burden of proof remains on the Liquidators, as explained by Lesley Anderson QC, sitting as a Deputy High Court Judge, in *Re Idessa (UK) Ltd* [2001] EWHC 804 (Ch), [2012] 1 BCLC 80 at [28], there is an obligation on a fiduciary to account for his dealings with the assets for which he is responsible. The existence of the assets being proved, the fiduciary must meet that obligation which is an evidential burden on him. While a failure to do so does not necessarily mean that the fiduciary is liable to account, because other evidence may disclose the propriety of a dealing, the court must weigh that failure bearing in mind the fundamental nature of the obligation.

23. On this approach to the proper use of the Company assets, it is for the Liquidators first to justify their figures.

24. It may seem puzzling that the two analyses I have described in paragraph 20 match, when they are made up of different elements. They do so, it appears, because the £7,632,567 is not a primary calculation but a balancing figure. It can therefore be disregarded as a starting point. The question is what money was actually collected from investors. As to that, we have detailed evidence in Mr Atkinson's 6 May 2020 statement, corrected in a letter from Gunnercooke to Mr England of 3 June 2020 which was adopted by Mr Atkinson when he gave evidence. Mr Atkinson was not cross-examined on matters concerning

the claim against Mr England because, as Mr Ramsden pithily put it in his written opening "It is no part of [SVJ's] pleaded case or his purpose at trial to defend, excuse or seek to mitigate the conduct of the other defendants, [the First Respondent] and Mr England in particular. The fraud on the Company is clear". Mr Atkinson was a cogent witness speaking to matters of which he has no first-hand knowledge, if one with a tendency to qualify answers of which he was unsure with the phrase "but my team might know", or some variant. The letter stresses that the pictogram created by his team "with great care" and marked v3.06 (the "Investment Pictogram") "reflects the best understanding the JLs have based on the information presently available to them as to where the Company's money was spent". I will treat that phrase as extending, like the pictogram, to the Company's receipts.

25. The Company's first accounts, for the period to 31 December 2017, were due for filing by 16 September 2018. They never were. Mr England could produce no Company records to the Liquidators. His Defence states his belief that Maneet Singh has them. It also says that "key information regarding transactions made by Casa and the Company were stored on a laptop which broke down before Mr England could retrieve any data for it. The laptop was disposed of in the domestic waste over 1 year ago". His Defence puts the Liquidators to proof as to the numbers.

26. While the deposits with Kennedys of £6,910,308 I can take to be quantified from reliable records, the primary mode of quantifying those into the Casa Account is an examination of its statements. The Liquidators are experienced insolvency practitioners represented by counsel and solicitors. Mr Atkinson

describes how his team has further analysed the bank statements since the end of November 2019 to produce the current figures: "I am assured that my team have now thoroughly reconciled their figures such that they are confident that there are no mistakes"; he then describes certain of the corrections. So the quantification of the receipts into the Casa Account I am also satisfied is correct. £172,000 came direct from investors, and £629,929 through agents (I leave aside the payments from Kennedys to Casa, and those from the Company to Casa). Altogether those give investments of £7,712,237.

27. Turning to the proper use of these monies, this is a necessarily rough exercise, information being limited, Mr England not participating, and the Liquidators' investigations ongoing.

28. For the reasons just given, I am again satisfied that what is described in the Investment Pictogram as the use of the Company's monies is just that.

29. Of the monies paid to Kennedys, £275,000 was paid on to Park through Fladgate Fielder in four payments between 10 April 2017 and 26 May 2017. These were for the deposit for the Hotel. No issue is taken with this payment in the Amended Particulars of Claim, and it is one which was on the face of it for a proper purpose.

30. Perhaps related to it, because Earlcloud was the registered owner of the Hotel, are payments to that company of £259,929 on 31 August 2017 from the Company Account. Earlcloud also made a payment into the Casa Account of £300,000 on 22 February 2017. There is nothing to explain that payment in. The 31 August payments out Mr Atkinson says have "now been identified as a further gratuitous non-contractual payment" rather than, as initially assumed,

constituting exchange monies. On this bare evidence, though, this is a payment to an existing creditor of the Company, and therefore a proper purpose.

31. The Liquidators acknowledge legitimate expenditure of the £15,000 on the architects, and £24,000 to Bristol City Council.

32. The Liquidators then have various items which are currently assumed legitimate expenditure: the £234,467 to Kennedys; £199,999 to Jin H Property Ltd; £29,700 to Alesco Property Investments; £16,262 to Able Construction Ltd; £14,270 in cash withdrawals; £7,549 in "unidentified expenditure and travel"; and £973 of "unidentified expenditure".

33. Those proper purpose, or not improper purpose, payments total £1,077,149.

34. Before considering the list of alleged misappropriations, we must look at Mr England's description in his Defence of his mode of carrying out duties as director of the Company.

35. Mr England says that he has known Maneet Singh for 4-5 years, having carried out business with him, which is unidentified. Mr Singh is an Indian residing in India. In about December 2016 Mr Singh contacted Mr England "in relation to the development of the Grosvenor Hotel in Bristol into student accommodation". Mr Singh asked Mr England to act as the Company's director and shareholder as his nominee.

36. Mr England agreed, and their relationship was "governed" by two documents dated 16 December 2016 (the day of the Company's incorporation), a Declaration of Trust over the shares and a letter recording a Nominee

Agreement. By the latter Mr Singh stated that "I still intend to direct the project in 'big picture' terms so you need not worry about that. I just want you to deal with the administration etc…". Mr England was permitted to make payments of less than £5,000, but for those above that he required Mr Singh's approval and written authority. Mr Singh had to approve Company documents. Mr England was to receive £10,000.

37. As a result, Mr England regarded himself as having "extremely limited control over the business of the Company save for administrative matters".

38. Mr England's account of this relationship is not one he gave Mr Ko, who had never heard of Mr Singh, and who had been told by Mr England that the Company shares were held by him on trust for the First Respondent. It is also inconsistent with Mr Ko's extensive dealings with the First Respondent in respect of the Company.

39. As to the First Respondent, Mr England said he had known him for 10-15 years. Throughout his time as director, the First Respondent "acted as a consultant for Mr Singh and was involved with the selling and marketing of the Development to investors on behalf of the Company". Mr England did not regard the First Respondent as either a de facto or shadow director. He was unaware of the terms between the First Respondent and Mr Singh as to the First Respondent's "involvement with the Company".

40. That last remark, which addresses the averral in the Particulars of Claim that the First Respondent was "the ultimate controller and owner of the Company and its money and assets at all material times" sits uncomfortably with Mr England's characterisation of the First Respondent as Mr Singh's consultant

and with his own role as Mr Singh's nominee. Mr England gives no clue as to whether he was told that the First Respondent was Mr Singh's consultant or whether it was just his conclusion. If the former, he says nothing about how that was to affect his own role. If the latter, he says nothing about how and why he permitted it to affect his role.

41. Mr England's account is inherently implausible.

42. That conclusion is reinforced by his descriptions of how he operated the Company Account and the Casa Account.

43. "Mr Singh would call Mr England on WhatsApp to give instructions for payment… which he would then follow up with a letter to Mr England to the extent that the payments were over £5,000. The letter was sent for Mr England's own records as evidence that Mr Singh had given him the relevant instruction for payment in line with the terms of the Nominee Agreement".

44. Contrary to the Nominee Agreement, that describes Mr Singh as instructing all payments, not just those from £5,000. It also has Mr Singh as the initiator of each decision to pay. It is unexplained how he knew the intimate details of the Company's business, its monetary obligations, the state of its accounts, necessary to do that.

45. Looking at the incomplete run of purported authorisation letters, they are formulaic. Those in respect of the Casa Account are mostly in the form, to take one at random "Please can you pay Jin Property £99,999 being held by Casa Investments Ltd on behalf of Grosvenor Property Developers Ltd". It is to be noted that each contains such confirmation that it was Company monies

which were to be used (which, of course, Mr England was in a position to ensure anyway).

46. Those for expenses are in a different form. Again at random: "Thankyou for sending me the receipts and invoices for the expenses for November 2017. As these expenses were made on behalf of Grosvenor Property Developers Ltd, I hereby authorize you to deduct £4,468.57 being held by Casa Investments Ltd on behalf of Grosvenor Property Developers Ltd". Mr Singh could not have made his decision to pay these expenses only based on the receipts and invoices: he would have to know what monies were in the Casa Account. Exactly what these expenses were is unidentified.

47. Those for payments from the Company Account are again in a distinct form. At random "Please pay £126,929 to Earlcloud at your earliest convenience".

48. None of these letters refers to an earlier telephone call. None gives Mr England bank details for the recipient, or any information about the recipient other than their name. Mr England must know that from somewhere else, perhaps from the telephone call; but if so, how does Mr Singh know? If the answer to that is from the First Respondent, his consultant, why does Mr England say nothing else about the First Respondent's role in his Defence?

49. There is another inherent difficulty. At the time of disclosure of these letters Mr England was represented by the well-known solicitors Isadore Goldman. Mr Parrett of that firm sent them to Gunnercooke under cover of a letter of 19 March 2019 which confirmed that they had originally been sent by post. As Mr Atkinson observes, it is very surprising that payments were made within one or two days from the date of the letter, posted from India.

50. It follows that I am unable to accept Mr England's explanation for how he dealt with the Company's monies.

51. There is more. When Mr Speckin examined random samples of the original letters using Electro Static Detection Apparatus, which reveals impresses on paper, he found that "With a high degree of probability, the pattern of impressions identified suggests that each group of the questioned documents… were signed in a stack (one on top of another) at or near the same time".

52. The letters on which Mr England relies are a construct. Thus his account of how he dealt with Mr Singh is false: he was not transferring funds following receipt of the authorisation letters at all, even though they were a precondition under the supposed Nominee Agreement.

53. It follows that I can place no meaningful weight on what I am told by Mr England through his Defence, in which he avers his belief that (in an unparticularised way) Mr Singh had acquired the Hotel for the Company; that he "had no reason to question the genuine nature of the payments made and instructions given"; and that he "was aware of the delays to the project but was assured by Mr Singh during telephone conversations that money was being invested to mitigate any impact on the Company".

54. I am also unable to accept that it was on the instructions of Mr Singh that Casa and the Company entered a Master Agency Agreement in relation to the Hotel dated 13 January 2017 by which Casa was intended to profit from the sale of certain units.

55. Turning back to the Investment Pictogram and the alleged unauthorised withdrawals in his Defence, Mr England takes two approaches. Insofar as he accepts that it was Company monies being paid out, he confirms he did so on the instructions of Mr Singh. That can be disregarded. As to the rest, he asserts that they derived not from the Company's money, but Casa's. I have already concluded that this is wrong, a conclusion only fortified by Mr England's failure to identify why he says any of these are Casa's monies, or exactly what business Casa was carrying out over the period which founded its own receipts.

56. The alleged misappropriations are as follows.

57. From the Company Account:

57.1 £536,600 was paid to HURR Global FZE, a UAE entity. There is no explanation.

57.2 £4,296 was paid to scaffolders at an unknown location. Mr England says this is too vague a description, but gives no clue as to what this might have been for.

57.3 £2,972,841 was paid to the Third Respondent, the First Respondent says for purchase of the Jewellery. Mr England provides no details, but this was not the Company's business.

58. From the Casa Account:

58.1 £146,750 was paid to Jack Barclay Limited for the Bentley, and £210,552 to the Fourth Respondent. As I will find below, these have been

subject to repayments of £444,315. There is therefore a credit on these items of £87,012.

58.2 £150,000 was paid to the Third Respondent for the Jewellery.

58.3 £145,833 was paid to a Meenakshi Mathur on 26 May 2017. Mr England says that "Casa had introduced a purchaser to a vendor of a property in Dubai, and this payment was commission due to M. Mathur". Even on its own terms that is no explanation, but this was not the Company's business.

58.4 £10,255 was spent in Gucci, Moscow, and £15,693 in other Moscow clothiers in June 2017. Mr England says Casa bought these items and then sold them at a profit to an Andrew Lee based in Hong Kong. That is not the Company's business, and there are no payments in Casa's statements from Andrew Lee.

58.5 £12,719 was spent on nine payments for flights between May and December 2017. Mr England just says this was on Mr Singh's instruction.

58.6 There are £43,379 of "various international payments" between March and December 2017. Mr England says this is too vague, but nothing else.

58.7 £62,287 was spent in Selfridges and £49,830 in Harrods. Mr England says these were further dealings with Mr Lee. They are again unrecorded.

58.8 £15,279 was spent in London restaurants. Without giving details, Mr England says these were business development expenses of Casa; so not the Company.

58.9 £70,000 was paid to an Alexandra Panaite whose colourful CV, unrelated to the UK property industry, is in the bundle. Mr England attributes this to a loan she provided to Casa "in connection with a property investment deal in about 2015".

58.10 £9,093 was paid to Kookcha Ltd and T Farhang. The Liquidators think this was a jam start-up company. Mr England says he made the payment at the First Respondent's request, as Casa owed him money in relation to a property in Dubai: no further details, and again not the Company's business.

58.11 £55,000 was paid to Rob Harwood between June and September 2017, Mr England says on the instructions of Mr Singh and in relation to unidentified agency sales for the Company. Without more, I am unable to accept that.

58.12 £42,591 went to a solicitor, Ian Williams, Mr England says for Casa's business.

58.13 £59,000 was paid to C O Coutant, £80,000 to Itish and Tejal Popat, £123,522 to A Jain, £80,000 to Fieldfisher and £108,000 to Portner Law. Mr England says these were other payments in discharge of Casa's debt to the First Respondent.

58.14 The £26,000 to Kamesh Jain Mr England describes as a payment at the behest of Mr Singh for the benefit of the Company, so I will reject that.

58.15 £32,462 was paid to "various other individuals for unknown purposes, referencing S Varma or SV or similar". Mr England just says this is too vague.

58.16 £59,409 was paid to Mr England, which he describes as his remuneration from Casa.

58.17 £450,500 went to the First Respondent because Mr England says he was "told by Mr Singh that the Company had agreed to purchase jewellery and diamonds" from him. That has nothing to do with the Hotel.

58.18 Payments of £93,300 to a Vinay Varma Mr England says were authorised by Mr Singh as part of the Company's business; again, that is rejected.

58.19 Mr England describes as too vague the £76,388 "to various other individuals for unknown purposes", the £47,155 of "miscellaneous expenditure of an apparently personal character" and the £34,296 paid to "other legal advisers".

58.20 £114,850 in cash was withdrawn in 32 transactions between February and December 2017. Mr England says these, at the instruction of Mr Singh, were to pay Khalid Mohammed who "was a project

supervisor for the Development". There is no documentation concerning this, and what was he supervising?

59. £7,712,237 having been invested, £1,077,149 was expended on legitimate or presently presumed legitimate purposes, and there must then be applied the credit of £87,012. The quantum of the claim against Mr England is £6,548,076.

60. This sum represents plain misdealings by the Company's director with its money, expended for purposes other than its own. It is no excuse that he was at all times acting at the direction of Mr Singh, because as director of the Company he was bound to act independently in furtherance of its interests: section 173 *Companies Act 2006*. Nomineeship does not abrogate directors' duties, although it may in some circumstances properly add to the factors which should be considered in managing the company: *Re Neath Rugby Ltd (No 2)* [2009] EWCA Civ 261, [2009] 2 BCLC 427 at [32]-[33].

61. In any event, Mr England's account of being beholden to Mr Singh is, as I have described, not only inherently implausible but, even without having heard him give evidence, demonstrably false. Further proof of that comes from the letter he wrote me of 12 June, which now portrays the facts as these: "At all times I was assured by Mr Singh and particularly Mr Varma that although there were difficulties those difficulties would be resolved and I had every faith that Mr Khadka would take the project on and complete it. I have been naïve and have placed too much trust in what I was being told but while those are faults they are not crimes". The First Respondent has now assumed a prominence unrevealed by the Defence.

62. The reality was as described by Mr Ko, the Company's solicitor: "I did meet Mr England in person but no more than three or four times and only ever in Mr Varma's presence as far as I can remember. Whilst I might have spoken to Mr England on the phone, I cannot remember ever having done so. In contrast, I spoke to Mr Varma on the phone regularly… I never discussed with Mr England who was in charge. It was clear that Mr England was wholly subordinate to Mr Varma. Mr England always deferred decisions to Mr Varma. Mr England may have been 'there', in the sense he was involved as statutory director, but he would not do *anything* without Mr Varma's say so and 'guiding hand'. To the best of my recollection… all my instructions came from Mr Varma".

63. Mr Ko, it will be recalled, had never been told of a Maneet Singh. Mr England has given his implausible account of Mr Singh's role within the Company; and the documents on which he has sought to justify his actions are fabrications. The evidence is that, whatever Mr England may have believed (because I do not exclude the remote possibility that, although he has given an untrue account as to its extent, he did have contact with somebody who purported to be Maneet Singh), Maneet Singh probably never existed; he certainly performed no necessary role within these events.

64. Mr England's letter to me continued "I do apologise for my part in this unfortunate matter but I am clear that there was no complicity on my part and no intention to defraud on my part and I believe the fact that I did not benefit from all this shows that to be true. I didn't have £7m and I haven't got it now".

65. I cannot accept that. On his own account Mr England was complicit because, though director, he just did what he was told. He continues to be complicit because he has never given a full and frank exposition of his dealings.

66. Mr England was not a misled innocent. He knew the purpose of the Company. He knew that at least a substantial amount of the payments which he made from the inception of the Company's trade were not for its business. He attended meetings with Mary Liu at which he left the First Respondent to do all the talking. They concerned the Liu syndicate investment in the Hotel but also, on 28 November 2017, its growing belief that the project was a fraud.

67. I am driven to conclude that Mr England acted dishonestly throughout his directorship under the test in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67, [2018] AC 391. That is notwithstanding the lack of evidence of material benefit to him.

68. It follows that section 281(3) of the *Insolvency Act 1986* will be engaged, and he will not be released from this debt on his discharge from bankruptcy.

69. Mr England is liable under section 212 for £6,548,076. The interest rate and basis will be addressed on hand-down, and also which elements should be joint and several with other parties.

The claim against Mr Khadka

70. Mr Khadka is another indistinct figure. By 9 June 2018, when he became de jure director in place Mr England, the Company was no longer raising funds

from investors and there was no money left in either the Company Account or the Casa Account.

71. The origin of the Jewellery will be described below, in relation to SVJ. It was, apparently, placed by the First Respondent into the ownership of the Third Respondent, a Dubai company which he owned and controlled. There is an invoice with the date of 27 June 2017 signed by the First Respondent for the Third Respondent, and addressed to the Company. It lists nine items: "(1) 24 pcs Solitaire Diamond Bangles; (2) 6 pcs Solitaire Diamond Necklaces; (3) One 13.08 carat round cut loose Diamond; (4) One 8.20 carat round cut loose Diamond; (5) 3 pcs Emerald Necklaces; (6) 4 Ruby Necklace and Earrings sets; (7) 8 Diamond Necklaces and Earrings sets; (8) 2 Necklaces of Uncut Diamonds; (9) 4 pairs of Diamond Earrings". It then states "Total Amount: GBP £4,950,000".

72. Of the same purported date is a purported letter from Mr Singh to the First Respondent: "I request you to please hold on trust the jewellery and diamonds, as listed in your attached invoice of date – on behalf of Grosvenor Property Developers Ltd. I understand these will be kept at your parents' home in Mumbai where I inspected & checked the items earlier today. I confirm they are in accordance to the details mentioned in your invoice and as per valuation carried out by me last week. I will let you know as and when I need to have same collected or handed over".

73. So on the face of it the Company has bought (if not yet paid for) the Jewellery, which is held on trust for it by the First and/ or Third Respondents at the home of the First Respondent's parents.

74. Between 28 June and 26 October 2017 £3,122,841 was transferred to the Third Respondent from the Company's monies in the Casa Account. This founded the judgments in that sum against the First Respondent and the Third Respondent.

75. Next, there is a purported letter from Mr Singh to the First Respondent at the Third Respondent's Dubai address dated 9 June 2018, the same day as Mr Khadka's appointment to the Company: "Following our talk earlier today, I have asked Jonathan England to transfer all the shares of Grosvenor Property Developers Ltd- in favour of Mr Arjun Khadka- who is now the new sole shareholder and director of the company. I hereby instruct you to hand over to Mr Khadka all the assets of the company, i.e. the jewellery and diamonds, as listed in your invoice dated 27th June 2017, which you are holding on trust for the above mentioned company as per my letter dated 27 June 2017".

76. Any receipt by Mr Khadka could only be on the Company's behalf.

77. Next is a document which, as Deputy Judge Agnello QC said, raises more questions than answers. It is a settlement agreement dated 11 June 2018 between the Company and the Third Respondent. Mr Khadka has apparently signed it for the Company, which according to its terms "has asserted claims of amounts due and payable" to it by the Third Respondent, for whom the First Respondent executed it. Both signatures were witnessed on that day in Mumbai, although there is some evidence that the First Respondent was in Selfridges on that date. As "full consideration" for settlement of its claims, the Company accepted the Jewellery.

78. For these purposes, this document can be read as releasing the Company from its obligation to pay the balance of the price agreed in June 2017 and, in case there was any doubt, vests the Jewellery in the Company.

79. On 15 October 2018 Mr Khadka on behalf of the Company wrote to the petitioner's solicitors seeking an adjournment of the winding-up petition "on the basis that I have sufficient funds to discharge all of the companies liabilities. I am now seeking regulatory approval from Reserve Bank of India to transfer the monies belonging to the company from India to UK… I hope you will consent- as it will save everyone including your client a long delay- as whoever takes control of the companies assets will need to go thru the same procedure to bring the money back to the UK".

80. This refers to liquid assets held in India.

81. The next day Mr Khadka signed a document which described itself as a witness statement and averred "The contents of this witness statement are true". "In and around mid June I took possession of certain assets of the company which were being held to its order by a company in Dubai. Since that time I have liquidated those assets and hold the proceeds here in India which I believe will be sufficient to discharge the liabilities of the company".

82. The liquid assets represent the sold Jewellery.

83. On 18 February 2019 Mr Khadka emailed the Liquidators. He said he was "in process of moving my base/ home from India to Nepal to be close to my work". He said that, as he had explained to the Official Receiver "I bought the shares of the company from the beneficial owner Mr Manet Singh in

consideration of the money he owed me for a long while. Yes, I have all the assets/ money of the company as per my email to Bronwen Weatherby [a reporter at the Bristol Post]- at that stage the company was still active and not wound up. Since then the company got wound up and I still have pending outstanding issues to resolve with manet, hence I have held back sending the funds".

84. On 2 April Gunnercooke wrote to Mr Khadka asking for delivery up of the Jewellery as a possession or asset of the Company.

85. Mr Khadka's response by email of 3 April was that: "I confirm I am holding the diamonds & jewellery handed over to me by Mr Sanjiv Varma in June 11th 2018. I also confirm the value of the jewellery and diamonds is well in excess of GBP 3 million as per valuation report I had commissioned prior to taking custody of the said assets of the company… Since taking custody of the said jewellery and diamonds I have moved them to a secure location in a safe deposit box, closer to me as I have moved base and residence recently. You need to let me know if you require the jewellery and diamonds or should I sell them and send the proceeds…".

86. On 11 April Mr Khadka emailed Gunnercooke: "I am in the process of appointing a solicitor to deal with this matter, to coordinate return of the jewellery and diamonds and to give me legal advice… I shall be in touch with you shortly".

87. That was his final communication. He has not responded to these proceedings, or acted on the injunction of Birss J of 1 May 2019 ordering him to deliver up the Jewellery by 6 May 2019 and freezing his assets. Contrary to

his earlier communications, he now says that he retains the Jewellery. One or other is not right.

88. This train of correspondence may, then, be taken as not being an accurate account of the underlying transactions concerning the Jewellery. That, though, cannot count in favour of Mr Khadka, who has presented not only his correspondence but also his witness statement as truthful. In it he confirms that he personally has taken possession of the Jewellery which is the Company's. His failure to deliver up that Jewellery on the request of the Liquidators, and then the court, is a breach of his ongoing fiduciary duties; they were breached as well in his apparent failure to secure the Jewellery or its proceeds for the Company.

89. I therefore find for the Liquidators against Mr Khadka in misfeasance.

90. As to quantum, the best evidence we have is the June 2017 invoice to the Company in the sum of £4.95m. I find that Mr Khadka is liable to the Company in that sum. Again, the interest rate and basis will be addressed on hand-down, and which elements should be joint and several with other parties.

The claim against SVJ

91. Directly or indirectly engaged by each of the claims against SVJ is the question: what did he know about the fraud from which he received £2,357,302, comprising £146,750 transferred on 26 May 2017 by Casa to Jack Barclay Limited for the Bentley; £210,552 in 52 transactions between 21

February and 4 December 2017 from Casa; and £2m on 8 August 2017 from his father?

92. Those bare facts, accompanied by the image of this young man gliding around Mayfair in his expensive car, do not tell well for him, especially when contrasted with the woes of those whose invested money this was. But in respect of SVJ the reality is more nuanced.

93. His father and Taru Dumra married in February 1991. He was born in November 1992. From 2006 his mother has largely been in India, and his parents' marriage on the decline from then. In 2014 Ms Dumra filed for divorce in India, which was granted in 2016. She and the First Respondent remain cordial because, she said, of SVJ, to whom she professed herself as close, speaking to him regularly, if not frequently, on the telephone. Since her departure for India SVJ has been cared for mainly by his father.

94. Ms Dumra told the court that she was aware her husband's parents were wealthy, and she conveyed the impression of someone for whom wealth was easy: while she had moved between properties a chandelier and two chimneypieces, she considered the furniture she had bought for many thousands of pounds now of little value, as slightly old and used.

95. The Liquidators seek to characterise her evidence as "argumentative and evasive". That was not my view. Ms Dumra was giving evidence over a slightly imperfect link from India. She strained to understand and follow questions put, and sometimes appeared to give up on them. There was also a sense of remoteness which was not just ascribable to the medium. I do not consider that her evidence was untruthful, but honest.

96. That ease with money was something in which SVJ was brought up. He has lived most of his life within Mayfair, supported financially by his father on an open-handed basis: "whatever I desired, more often than not, my father provided… without any further questions". Between 2011 and 2014 SVJ was at Nottingham University studying business administration and management. His average monthly allowance he puts at £4,000. His father had a personal chauffeur and a Bentley for a few years "which I had access to whenever I needed". Every other weekend the chauffeur would pick him up from Nottingham so he could stay in his father's serviced Park Lane apartment.

97. Between 2015 and 2016 SVJ undertook an MSc in finance at the International University of Monaco. His budget from his father was about £5,000 a month. He resided in a four-bedroom villa with a pool, live-in maid, and access to a Range Rover Sport.

98. From September 2016 until April 2017 SVJ was staying at his father's residence in Dubai, while a non-paid intern with the Commercial Bank of Dubai. His allowance was about £4,000 per month, with use of a Range Rover for the first three months, followed by a BMW 5 series.

99. As SVJ put it in his last, and fullest, witness statement, of 12 June 2020 "I grew to become accustomed to this lavish lifestyle. It would be absolutely bizarre for me to second-guess the events which followed as I had no reason to doubt anything. There was no change in my lifestyle from previous years and with my inexperience and youth I was not in a position to question my father about his business dealings".

100. That last remark points to another crucial factor in assessing SVJ's knowledge: the relations between himself and his father.

101. At various points the court was given evidence as to traditional relationships within a Punjabi Indian family, or, at least, how this family regarded and respected such relationships. In his rigorous cross-examination Mr Brown sought to cast doubt on these, but I have been convinced that they were the predominant factor behind the Jewellery (the details of which we will come on to) and the £27,000 diamond halo ring (the "Ring") gifted by Ms Dumra's mother, Manju Dumra, to SVJ's fiancée, Virginia Furst, in Summer 2019; and by extension an important factor in the relationship between the First Respondent and his son.

102. It is convenient to say more about the Ring now, which took a prominence at trial not linked to the Amended Particulars of Claim, in which it isn't mentioned. Mrs Dumra, Skyped from another location in India, described how she had visited London in the Summer 2019. She was seeing SVJ again "after a long time" and meeting Ms Furst for the first time. SVJ and Ms Furst had been going out since 2015, and were now engaged. Towards the end of her visit Mrs Dumra gave Ms Furst, as partner of her only grandson, the Ring. "This is considered as a tradition in our culture, that when I, the grandmother meets her would be granddaughter-in-law for the first time we exchange a token of love and appreciation on behalf of Siddhant as a symbolism for welcoming her into the family". Mrs Dumra described how the "ring has been a part of my family for a large number of years", but she herself had had it reset for Ms Furst, as she was bored of the existing setting.

103. Mrs Dumra's evidence was considerably more alert and vigorous than her daughter's. Her only moments of hesitation were when asked about the amount of money she had transferred to SVJ just three weeks before trial, presumably to meet his costs of representation: she ended by saying that she had told her husband to provide him with whatever he needed, whether £20,000 or £50,000. There seemed to me nothing devious in such hesitation, more a surprise at being asked. Mrs Dumra was a truthful witness.

104. So too was Ms Furst, who married SVJ on 9 October 2019. Operating in a second language, as she is German, she listened carefully to the questions and gave brisk, intelligent, and organised answers. Mrs Dumra had presented her with the Ring on her visit, telling her it had been in the family for many years; it was "a token of love and unity to welcome me into the family" rather than an engagement or wedding ring, and was now being looked after by Ms Furst's mother in Hamburg, as she and SVJ had no safe to keep it in. She had asked SVJ to insure it with T.H. March, with whom he already had a policy.

105. Factored into these character assessments is SVJ's evidence on the point. He confirmed his grandmother's story, averring that this was not a wedding ring as there was no such thing in Indian culture, but instead a traditional sign of bringing someone into the family, from the grandmother. The Liquidators have obtained a transcript of what he told T.H. March when he telephoned them about the Ring on 19 September 2019, and they not surprisingly underline in closing and in support of their contention that SVJ was "a wholly unreliable witness" that he told T.H. March that "I have just bought a ring that I want to give to my girlfriend to engage". After giving details of his existing

policy he was asked "So it is a recent purchase of the ring is it?" to which he replied "Well no, it's a family ring"; "So you have recently been given it by a family member?"; "Yeah by my mother, yeah exactly"; "Was it inherited or did your mum just give it to you?"; "It is inherited, it is mine now".

106. Thus, although SVJ moved to a more accurate story, he did not provide what has been presented to the court as the complete account, he said because he didn't want to waste hours giving them his life history.

107. As I say, I am convinced by Mrs Dumra and Ms Furst as to the Ring, and those parts of SVJ's account which are consistent. There is further support in that when Prestige Valuations of Hatton Garden valued the Ring in October 2019 they recorded that it was not hallmarked; which, as they confirmed to Gunnercooke in June, showed it had been purchased abroad. The "very modern contemporary" halo design also indicated creation within the last few years.

108. SVJ's shiftings do, though, show a freedom with the truth in a formal situation, a trait even on his own account continued with his dealings in May 2020 with T.H. March over cancellation of a policy. He must have told them of an intention to set up a German bank account; they wished to send the returned premium to that; by email of the same date, 12 May, he told them that while he was "due to move there in the next month or so" he still had to activate his German card which could only be done in that country, so either asked them to delay, or send it to his wife's account. How activation of a card was linked to receipt of monies is not explained, nor why such a charade should be maintained in the name of an easy life. Although not within the

immediate purlieus of this trial, SVJ's and Ms Furst's resolute evidence was that they have no immediate intention to move to Germany, that Ms Furst has a job here which she does not wish to leave at the moment, and that though he has a German wife SVJ as an Indian citizen has no immediate right to enter (a point on which Ms Furst in particular was convincing, describing telephoning embassies here and in Germany to check); it is also to be noted that Ms Furst has paid for a year's storage in this country for the five containers removed from 33 Charles Street.

109. The Ring is therefore an example of SVJ's family adhering to traditional values.

110. As I will find, so too is the Jewellery.

111. Before returning to the relations between SVJ and his father, another cultural example came in the evidence of his mother. She knew that the First Respondent was "in the property business", but no more: it was not in the culture, she said, to ask for details.

112. SVJ did not know that his father had been disqualified as a director in 2003 for his conduct at Charles W Hall (Hosiery) Ltd; nor did he know anything about Trident Solar Power, which the Bristol Post has said was an Indian company belonging to the First Respondent which collapsed in about 2013. Instead, until the loss of his inheritance, he had a "good relationship" with his father and "always trusted him": "there was no one I trusted more than my dad", who "I'd never doubted… in 25 years". He took the obvious wealth to be derived from his father's success in property development, and rejected as

culturally unbecoming a suggestion that he might have looked up his father's name on the internet and found stories about him.

113. Notwithstanding the deficiencies in SVJ's evidence, and there are further examples of that to which I shall come, I accept his account of their relationship. It makes sense in this familial context, and is consistent with matters within these claims: his father's repayments of much of the Casa loan; SVJ's investing his entire inheritance with his father, and without security; and with some only tangentially related: SVJ acting as his father's nominee in the purchase of Flat 54, 49 Hallam Street, London W1, for example.

114. SVJ respected his father, looked up to him, and did what he told him; not just because he was bound to do those things, but because they were genuinely close. SVJ was registered proprietor of Flat 54 on 25 January 2018. It was recorded as having been purchased on 19 January 2018 for £775,000. The Liquidators trace £291,000 of the Company's monies into this flat; the balance seems to have been raised on a mortgage, as there is a charge to PSL Property & Loans Ltd and Unicourt Finance Limited of 19 January.

115. On 22 January SVJ signed a declaration of trust by which he held Flat 54 for My Casa PBSA Ltd a company owned not, as might be expected, by Mr England but by the First Respondent. SVJ transferred title into the beneficiary's name on 22 January 2019 for nil consideration. The Land Registry records the value stated on that date as £1.05m. It was sold to an Elizabeth O'Reilly at a price stated of £850,000 on 17 July 2019. The TR1, signed on behalf of My Casa PBSA Ltd by the First Respondent, includes

reference to an ongoing tenancy at the property dated 19 March 2019 and made between SVJ and a Miss Selby Anne Jenkins.

116. SVJ explained that the tenancy agreement had been drawn up by agents, who had assumed that he was the owner as he had instructed them to sell Flat 54 the previous summer. He also said that Flat 54 was a property which he had developed with his father, to give him as an "aspiring" property developer leadership and advice, albeit that he was not himself financially involved.

117. Another example which we touched on was Flat 25, 125 Hallam Street W1. On 4 April 2018, again according to the Liquidators using Company monies, JMD92 Ltd acquired this lease for £115,000, the price explained by this being a fag-end, expiring on 24 June 2023. JMD92 Ltd was SVJ's company, incorporated on 22 November 2017. Quizzed about the name, SVJ told us that it stood for Jai Mata Di, which he translated as "Praise the Almighty", the 92 referring to the year of his birth. His father paid for at least some renovations. SVJ must have learned something from him in the movement of assets, as he says that on 15 November 2019 he transferred his shares in JMD92 Ltd to a Lokendra Bam of Mumbai, in discharge of gambling debts of £60,000 accumulated between 2016 and 2017. There is a confirmatory statement from Mr Bam, but one which also states that he wants nothing to do with the property as it is involved in litigation, so is shortly transferring the shares back to SVJ.

118. Flat 25 and Flat 54 both post-date the matters in issue at this trial. They have been investigated at it as a part of the Liquidators' general investigations, and because the dealings may relate to injunctive relief, but also as to the nature of

SVJ's relationship with his father, and his credit. In his first witness statement, of 14 May 2019, SVJ had stated "I have no connection with my father in so far as business dealings are concerned, save when I approached my father for assistance in respect of the third party loan from Sands". Taken as the general statement which it appeared to be, that was not correct. SVJ acknowledged that, but said he was only there describing business dealings with Casa. In the immediate context of his witness statement, looking at the paragraphs surrounding that statement, that is plausible; it must also be recalled that at the time SVJ had been joined as to the Bentley only, which was a dealing with Casa. I accept his explanation.

119. The primary evidence to which Mr Brown points in describing SVJ as wholly unreliable also relates to Casa. It is SVJ's LinkedIn CV, taken down before June 2019 as SVJ said he had deactivated his profile, but not before the Liquidators had photographed it.

120. The profile dates from some point after January 2018, as it describes SVJ as from that date being a property developer through JMD92 Ltd. It is headed "Sid Varma Property Developer and Project Management at JMD92Ltd". His summary includes "3 years experience in London's high-end real estate market", which would give a date some time in 2019. He describes his university education, and ascribes the gap year of 2014-2015 as being for "1 year and 3 months" occupied as a "Real Estate Analyst" at Prime Central Property Consultants Ltd. In his 12 June statement SVJ asserted that he "had worked at [Mr England's] previous company for prior experience", which would be this; but it seems unlikely it was for such a long period, not least as

SVJ was keen to ensure that his acknowledged false occupation with Casa, between January 2017 and January 2018, was spread over that period because he understood that it was important to show potential employers more than a year at a company.

121. That period we know to be false, because SVJ was in Dubai until April 2017. He explained that he had described himself as an intern at the Commercial Bank of Dubai between September and December 2016 only, because four months was the limit on any official internship; hence while he had continued at the bank until April, that was on bi-weekly attendance rather than the formal daily internship.

122. His time at Casa, which dovetails into the time investments were collected from investors in the Hotel, he proclaims spent on actively managing property development and refurbishment projects "from inception to completion ranging in value up to £25m"; of deep relevance to the claims against him now, he also says he "Prepared, maintained and monitored development budget, accounts and cash flow for each project, monitoring costs against approved budget".

123. As Mr Brown pointed out, within the descriptions of his work for Casa appear, in a mask, actual activity: the funding of a Central London four apartment development would mirror the 33 Charles Street project.

124. On any view this is a bad document for SVJ. The question is whether its primary detriment to him is because it is truthful in what it states, or because it is false.

125. In one relevant way, the dates SVJ was in Dubai, we know it is false. He cannot have been working at Casa until May 2017 (an important date, given the Bentley and £210,552 claims which lie before). There is also not the slightest evidence that he ever worked at Casa. While little weight may be placed on Mr England's evidence, he might be expected to say if he had as it would help to explain the Loan Facility to which he does depose. Much more materially, save for one entry marked "Pay" there is nothing in the Casa bank statements which would indicate periodic wages; and ostensible (and denied) occasional use of its banking card is too random to imply remuneration. SVJ says that he returned from Dubai intending to start his own development business; but when he heard about his inheritance, he then waited for that. That is not implausible.

126. Another indirect factor is that Mr Ko, intimately involved in the Company, could only remember meeting SVJ once, and that informally; and while he had the slight impression he had met him more often than that, there is no indication that he considered SVJ to be in any way formally connected with the Hotel development.

127. This untrue CV plainly upset SVJ while he gave evidence in which he confirmed its falsity. His upset seemed caused not by what it contained, by which I mean his involvement with Casa, but by its being a false concoction. This professedly God-fearing individual had presented a lie. He did so, he said, having obtained Mr England's permission, and having a desire to give himself the best possible chance to succeed in a competitive jobs market in property development. That last motive is at least comprehensible.

128. SVJ must be weighed as a witness on the totality of his evidence in light of the surrounding circumstances and documents. I have already highlighted some unsatisfactory aspects. This is manifestly another. I could add to it his evidence in cross-examination on being given two watches by his father, which changed from his first account, of both at once, to first the £30,000 Audemars Piguet and then, when he told his father it was too valuable to wear, his being given a £10,000 everyday watch; both these as presents for graduation, albeit, as Mr Brown says, a year late. There will be other examples of his evidential deficiencies below.

129. There will also be examples of his evidential qualities, of which the watch account is actually another: a freshness of immediate apparent recollection, as opposed to speaking of rehearsed lines. Save, perhaps, in respect of his occupation, or not, of 33 Charles Street, W1, a matter I am asked not to make findings on, there was a consistent attention to the question and openness of response: he was a witness who answered the questions, who was anxious to convey his entire story on points, but who desisted when occasionally (and properly) Mr Brown intervened to bring him back to the original question.

130. I have endeavoured to test my reaction to his evidence throughout trial and throughout writing this judgment, including against the more extraordinary parts of this story. I am left with the certainty that his failures in some indirect matters do not require me to conclude that SVJ was not in essence the open witness which he appeared on the material components. Wrapped within that conclusion is that I must, though, always subject his evidence to an acutely critical eye.

The Bentley, and the £210,552

131. The original claim against SVJ was in respect of the Bentley, under section 234 or section 238 of the *Insolvency Act 1986*, to which has been added a claim in unjust enrichment. It is not in dispute that it was bought for SVJ from Jack Barclay Limited, the £146,750 being transferred direct to the dealer by Casa on 26 May 2017. Nor is it in dispute that in 52 transactions between 21 February and 4 December 2017 SVJ received £210,552; and for those the Liquidators rely on section 238 and unjust enrichment.

132. The two claims are linked not only by the origin of the monies given to or expended for the benefit of SVJ, but by his defence that all of them were paid pursuant to a Loan Facility agreed between himself and Casa in February 2017; and by his further defence that the Loan Facility has been repaid in full.

133. There is a preliminary matter which applies to both these claims and, in due course, to the £2m. In his outline submissions Mr Ramsden wrote that "at trial [SVJ] will not advance any positive case in evidence that the monies he is alleged to have received were not Company monies or monies mingled with Company monies or their traceable proceeds. It however remains for the JLs to prove that fact". Echoing my findings on the same point in respect of Mr England, I am satisfied from the Liquidators' evidence, the exhibited bank statements, the Investment Pictogram and the separate schedules of payments that these are all Company monies held in the Casa Account. Supporting such a conclusion is that carefully excluded from this figure are the last five

drawdowns totalling £56,000, which do not clearly derive from Company monies.

134. By section 234 a court may require "any person [who] has in his possession or control any property… to which the company appears to be entitled… forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property… to the office-holder".

135. The section has been subject to recent analysis by the Court of Appeal in *Re Charlotte Street Properties Limited* [2020] EWCA Civ 687 in which Patten LJ, with whom Henderson LJ and Rose LJ agreed, set it into its statutory context, linking it with section 236 as a summary means to place within the office-holder's control property to which the company appeared to be entitled; from which he derived that the section "may not (and probably is not intended to) provide a definitive ruling about title nor is the possibility of such a ruling a pre-condition to the exercise of the power": [26]. He continued that although "a determination of whether the company appears to be entitled to the property does not preclude the resolution at the hearing of the grounds upon which the application is resisted, it may not provide an appropriate procedure for determining complex issues about title…". At [27] he observed that "The summary nature of the power to order an immediate transfer of the property in question to the office holder suggests that it is concerned with property to which the company appears to have title that could be asserted without the need for some kind of contractual enforcement and the possible resolution of a contractual dispute".

136. The Liquidators put their case very shortly: the Bentley was bought with Company monies; it is in SVJ's control (which is uncontroversial); they are entitled to an order that he deliver it up. Put another way, there is nothing of legal effect which interferes with the Company's title, it having paid for the vehicle.

137. As to section 238, it is not disputed that SVJ is a connected person, nor that these transactions occurred at a relevant time. In issue, aside from the Loan Facility (which would by itself constitute equivalent value) and the averred repayments, is whether these can properly be treated as "transactions" between the Company and SVJ. By section 436 "'transaction' includes a gift, agreement or arrangement", and within that extendable language "arrangement" was in *Feakins v DEFRA* [2005] EWCA Civ 1513, [2007] BCC 54 at [76] construed by Jonathan Parker LJ, following Hart J at first instance, as "apt to include an agreement or understanding between parties, whether formal or informal, oral or in writing". That was within a section 423 claim, and Jonathan Parker LJ continued: "the wide definition of 'transaction' in the context of section 423 is entirely consistent with the statutory objective of remedying the avoidance of debts". Mr Ramsden does not demur from its application to transactions at an undervalue. He stresses, though, that the insolvent company has to be a party to the transaction: *Re Ovenden Colbert Printers Ltd* [2013] EWCA Civ 1408, [2015] BCC 615 at [31].

138. In *Ovenden Colbert* Kitchin LJ said this at [32]: "As I have explained, the term 'transaction' is widely defined in s.436 as including a gift or arrangement. If it were necessary for the purposes of this decision, I would

therefore be disposed to find it is broad enough to encompass a payment made by a company or by an agent of the company acting within the scope of his authority. But to focus unduly on the word 'transaction' risks obscuring the need for the second and vital element, namely the requirement that the transaction be something that the company has 'entered into'. This expression connotes the taking of some step or act of participation by the company. Thus the composite requirement requires the company to make the gift or make the arrangement or in some other way be party to or involved in the transaction in issue so that it can properly be said to have entered into it…". He went on to refer to *Ingram v Inland Revenue Commissioners* [2001] AC 293, 305 as authority for the proposition that a trustee is not agent for his beneficiary: [37].

139. Against that the Liquidators set *Phillips v Brewin Dolphin Bell Lawrie Ltd* [2001] UKHL 2, [2001] 1 WLR 143 for this proposition: "The Court can and should look at the substance of the way the parties dealt with each other. The relevant transactions (or arrangements) were the purchase of the Bentley for [SVJ] (and the transfers of £210,552 to him), which were gratuitous receipts of Company money. Such gifts qualify under s238 as transactions at an undervalue". I would observe that *Phillips v Brewin Dolphin* was a case directed at the ascertainment of value rather than the qualification under section 238 of the relevant company.

140. The Liquidators continue: "It is also because of this lack of consideration that [SVJ] has been unjustly enriched". As recognised by Mr Brown, that is to put the claims on a narrow basis (and actually too narrow a basis, because every gift would be unjust enrichment: Mr Brown agrees that there should be read in

"without intention to make a gift"). Parallel to the section 234 claim as to the Bentley, it is triggered by mere receipt of another's money without interference from anything of legal effect. Mr Ramsden accepts that when analysing whether the enrichment has been at the claimant's expense, no more is required than a sufficient causal connection between the detriment to the claimant and the benefit to the defendant; and therefore that a direct payment from the claimant is not required: *Menelaou v Bank of Cyprus UK Ltd* [2015] UKSC 66, [2016] AC 176.

141. Although these two claims may be said to commence with SVJ's £1,200 payment to Casa on 13 February as, he says, an arrangement fee for the Loan Facility, and the £2m claim with the payment to him from his father on 8 August 2017, it is potentially misleading to analyse them apart from one another, as that may lead to a focus on SVJ's knowledge only in respect of the £2m, where unconscionable receipt is in issue. What he knew, or can be taken to have known, is relevant to the nature of these payments for the Bentley and of the £210,552 and whether there was a Facility Agreement.

142. Investment into the Company began in February 2017. SVJ was then essentially still in Dubai, where his father was also on occasion based.

143. SVJ explained the origin of the Bentley monies as being the Loan Facility in his first witness statement, of May 2019, and in his pre-amendment Defence of July 2019. He exhibited both the Loan Facility and the Account Letter, which is dated 1 April 2019, on Casa-headed paper, apparently signed by Mr England, and lists money paid out and money paid in pursuant to the Loan Facility between 21 February 2017 and 31 March 2019. £413,302 had been

paid out (this includes the Bentley monies and the £56,000 to which the Liquidators make no claim), and £444,315 paid back through 25 transactions beginning on 16 December 2017. The loan and £31,103 interest specified in the Loan Facility had been met and "we confirm we now have no further claims from you whatsoever and our accounts are settled in full and final".

144. There are some oddities in this. The Loan Facility, a letter dated 15 February 2017 and apparently signed by Mr England, specified the total of the loan facility as being £400,000, with a final repayment date 31 March 2019. How more than that was drawn is not explained, but there is no reason not to think it consensual. The interest was the curiously-specific figure of £31,103, seemingly whatever sums were withdrawn or repaid. SVJ was unable to explain that figure. The agreement permitted drawing in multiple tranches and repayment whether by "instalments" of "in full by way of a single repayment" on 31 March 2019.

145. The Loan Facility refers as well to return of a "Form of Acceptance… by 20 February 2017 as confirmation of your acceptance of the Loan and the terms on which it is being made available to you". In cross-examination SVJ did not think he had returned this; and again, that would appear a waivable requirement. I note that it would have been easy for a dishonest witness to pretend that they were certain they had.

146. The Loan Facility makes no reference to the £1,200 paid by SVJ to Casa on 13 February 2017, he says as a loan arrangement fee.

147. There are other troubling points. Casa was not in the business of making loans. It was lending a large sum to a young man with no job, without

security. Perhaps most piquantly, for the last few months its bank account had hovered around zero. The Liquidators suggest that this was a "commercially implausible" loan for Casa.

148. These are all fair remarks, but they derive from a consideration of the Loan Facility and Account Letter in a vacuum.

149. On his own account, in February 2017 SVJ "was anticipating coming back to [the] UK and start[ing] my career, I needed some capital for expenses and my future business plans", which would probably be starting his own property development business. He contacted one or two financial institutions who not even to his own surprise turned him down. His father pointed him towards Mr England. So far as SVJ was aware, that was the extent of his father's direct involvement in the making of the lending agreement.

150. SVJ and Mr England had a prior relationship: as he have seen, SVJ had been an intern at his previous company. SVJ had therefore known Mr England for a few years and "We always maintained a good relationship", he says; "I asked him for monetary assistance via a loan to which he agreed". As SVJ said when asked about the lack of security, there was also the "trust factor. [Mr England] trusted me".

151. What Mr England also knew was that the Hotel development was about to start, which could be anticipated to be successful; and, of course, he knew SVJ's father.

152. SVJ says that when he asked for the loan Mr England told him Casa was doing well. That is not a position borne out by its historic bank statements, but SVJ

"thought it was a successful company, operating for a while". I am satisfied that that was SVJ's belief as to Casa at the time, not least as even into 2019 he was proclaiming to the world through his LinkedIn CV, designed to promote his self-interest, that he had worked for it.

153. I bear in mind that SVJ's evidence that he had talked to Mr England on the telephone about the loan, from which Mr England knew that it would not all be drawn on day one, came only in cross-examination. No doubt it could, and should, have been in a witness statement. But as SVJ was still based in Dubai at that point, the evidence is hardly a surprise, and is of little materiality. In any event, if a strict contractual approach is appropriate, the statement in the Loan Facility that "The Loan is available for drawing in multiple Tranches on the Loan Date in immediately available cleared funds" can be read as reflecting the practical position that withdrawals could not exceed cleared funds.

154. I therefore reject the contention that the creation of the Loan Facility is inherently implausible.

155. There is then its operation. This has been challenged on a number of bases.

156. The Liquidators suggest that it is strange that Casa was always in the position of having the money to meet SVJ's withdrawal requests. But SVJ was not making Casa's bank transfers, so there had to be discussion between himself and Mr England. Mr England was also in a position to allocate monies from Kennedys or, once opened, the Company Account, if he chose.

157. There are next multiple points on the Bentley.

158. First is its very purpose. If the Loan Facility was to aid SVJ's start in business life, why was so much of it dispensed on an unnecessarily expensive car?

159. The point would be stronger still were SVJ's usual cars a little more ordinary. His father had had a Bentley. The Bentayga was a step up from what SVJ had been driving recently, but not nearly such a large step as it would be for most. He acknowledged in cross-examination that while it was partly a professional expense, there was no actual restriction on how he could use the Casa loan, and he was someone who had a "passion for cars".

160. Next, the Liquidators plead six inconsistent accounts given to them as to how the Bentley came to be purchased.

160.1 On 26 February 2019 the First Respondent said in interview that "no Company money whatsoever was used directly or indirectly to purchase prestige cars" (these quotations being from the Amended Particulars of Claim).

160.2 His second version, of 2 April 2019, was that SVJ received the Bentley "in exchange for introducing Casa… to a sales agent in Dubai. Mr England agreed to pay the agent commission, an arrangement which involved the Company financing the purchase of the Bentley".

160.3 On 25 April 2019 the Liquidators wrote to SVJ "inquiring after the acquisition of the Bentley and requesting its return or preservation if [SVJ] considered he was entitled to it"; in his 29 April emailed response SVJ "commented that the JLs' letter was 'meaningless to him'".

160.4 On 2 May 2019 Mr England was interviewed. His first version was that the payment to Jack Barclay Ltd was "'nothing to do with the Company; Casa lent money to [SVJ] which was subsequently paid back'".

160.5 Mr England's second version at the same interview was that it was "a payment for an introduction to a sales agent in Dubai".

160.6 The First Respondent's third version, on 3 May 2019 "after it is inferred Mr England communicated with [him] about the line of questioning at his interview" was that "the Bentley was a loan to [SVJ] which Mr Sanjiv Varma has repaid".

161. To these can be added from Mr England's Defence that the Bentley payment was "from Casa's own money pursuant to a loan agreement between Casa and [SVJ] dated 15 February 2017 which has now come to an end following [the First Respondent's] repayment of the loan". He explains any other account at interview as being as a result of "stress related illness".

162. These do not bear the weight which the Liquidators seek to place on them, especially considering that they are an element within Mr Atkinson's stern conclusion that "Neither [SVJ's] 'story', nor his evidence can be relied upon. It is clear that he has (repeatedly) lied to the DLS; frustrated their investigations; made false statements supported by a statement of truth; falsified (or allowed to be falsified) or put forward as authentic documents which he knows to be falsified…".

162.1 As already remarked, it has always been SVJ's position within this litigation that the Bentley was paid for by the Loan Facility, which has been repaid.

162.2 For what it is worth, that is also Mr England's formal position in his Defence, and the first account he gave in his 2 May interview.

162.3 SVJ's position can be backdated to his father's 3 May position because the Amended Particulars of Claim misrecord what was said. The First Respondent on that occasion said "I do not know the source of funds for the purchase, I was not involved in the purchase… Having spoken again to my son, it is now my understanding that he purchased the car out of a loan that he took from Casa... This was a loan that I helped to repay". In cross-examination SVJ confirmed that he had spoken to his father, but was not the source for his added remark that "I do not believe that my son owns the car anymore".

162.4 The First Respondent's second version is also incomplete in the Amended Particulars of Claim. What the First Respondent said on 2 April was this: "I am aware that my son… introduced Casa… to a sales agent in Dubai and Mr England agreed to pay him commission. Since my interview I have ascertained that my son purchased the Bentley and the purchase was financed as part of this arrangement but I do not know the details". The Amended Particulars reflects the little sense made by that paragraph, but, again for what it is worth, it does on its face show that the First Respondent was not aware of the details.

162.5 The First Respondent's first response was also, therefore, on the face of it made in ignorance; and given his activities, it is not a surprising statement for him to make.

162.6 That leaves SVJ's remark of 'meaningless'. "To characterise this as other than evasive strains credulity" says Mr Brown. I disagree. SVJ had received out of the blue from Gunnercooke the 25 April letter which without giving any details averred that Company funds had been used to buy the Bentley; asking him by "no later than 4pm Monday 29 April 2019 [to] confirm the current location of the Bentley so that our clients can make arrangements to secure and collect the same", or alternatively sign an undertaking to protect it and "with full particularity explain the basis on which you consider you are entitled to retain the Bentley". As SVJ said, this letter "pops up- hey, what's this- I haven't done anything". He replied that the second paragraph (purchase with Company funds) "means nothing to me and I note that you do not attach any documents to support your contention… unfortunately the rest of your letter is meaningless to me. When you explain to me why the matter is of concern to me I will be happy to assist you in any way I can": an understandable response.

162.7 So from April 2019 two versions are circulating: that this in some way represented recompense for the introduction of a sales agent in Dubai, or that there was a loan. While the origin of the monies was a matter for Mr England and the First Respondent, it is to be noted that Mr England, who may be expected to know the arrangements, has on one occasion given an alternative account. That said, both Mr England and the First Respondent were under

their own pressures; both have given evidence later considered by the court made up; and momentary expediency may have been a motive for both. For that reason, Mr Brown's invitation to me to draw adverse conclusions as to SVJ's case through the non-attendance of his proposed witness Mr England, under the principle in *Wisniewski v Central Manchester Health Authority* [1998] Lloyd's Rep Medical 223, is not one to which I can accede: Mr England is a man with many reasons not to be cross-examined.

162.8 It was SVJ's evidence that he had introduced an agent in Dubai, a Mr Khalid Mohamad, to Casa; but there was no direct link between that introduction and the Loan Facility.

163. None of this, even adding in the consistency of SVJ's story or his giving an undertaking in respect of the Bentley on 14 May 2019, means that the Loan Facility could not be a concoction of early May or early April 2019; but it can hardly be said to be a clear conclusion.

164. Neither can I derive much from the alleged "hiding" of the Bentley, by which is meant firstly the 2 April 2019 insertion of Ms Furst as registered keeper in place of SVJ. That date is, as the Liquidators say, exactly the same date as the First Respondent's first witness statement in which he responded to the Liquidators' case that he was the owner of the Bentley by enclosing the V5 showing SVJ as owner. By 3 May the First Respondent was saying that he didn't think SVJ owned the Bentley any more. The Liquidators believe that SVJ "attempted to transfer ownership of the Bentley but decided to abort that attempt at dissipating assets after receiving legal advice".

165. The change in the V5 document was not a change in ownership, but in registered keeper, a distinction of which SVJ and Ms Furst were aware and which is apparent from the face of the document. At most it could only have been a prelude to a sale of the Bentley, but there is not a hint of that in the following weeks before the undertaking. The 2 April date on the V5 is also potentially misleading, as that is the date of registration, not necessarily of application for registration.

166. It is right that the motives for the transfer have been added to over the case, growing from SVJ's initial reasons being so Ms Furst "could ensure the road tax is up-to-date" to it being more convenient for Ms Furst to keep the road tax up to date, authorise repair works, and renew the MOT as she is the one with a full-time job permanently in the UK, whereas SVJ travels frequently; to SVJ having no overdraft, so she could more reliably pay parking tickets and congestion charge, as well as deal with the other matters. Those are minor points, and I believed Ms Furst when she said that it had all been her idea.

167. The second, more indirect, alleged hiding was through SVJ's not disclosing a copy of the unredacted V5, despite repeated requests in solicitors' correspondence in September and October 2019. This is not really hiding at all, but a question of disclosure. A redacted copy, which showed all relevant details, was attached to SVJ's first witness statement of 14 May 2019.

168. The next challenge within the operation of the Loan Facility is how Casa marked the bank transfers. Except for eight marked just "SV" and one marked "PAY", all were marked "Exp". Mr Brown observes that "Pay" must mean just that, and "Exp" would usually be expenses.

169. SVJ was, of course, unable to explain these markings, as he was not responsible.

170. In three ways, I consider that they support the genuineness of the Loan Facility.

171. First, it is absolutely inconsistent with either description that those items should be repaid; yet they have been.

172. Secondly, the Loan Facility contains as its heading "Subject: Loan Facility Our ref: EXP". Mr Brown put to SVJ that this was the same description as on the payments to him; and that someone had created a document to try to cover up those expense payments. SVJ's rection was instructive. He genuinely seized upon the first suggestion as explaining why there was the curiosity over the "Exp" entries which had been explored over the previous few minutes. There was nothing contrived in that intellectual reaction: he took the point as being an explanation of the puzzle put to him.

173. Thirdly, although a small point, it seems to me that someone creating such a document to cover their tracks would be unlikely to insert a reference which covered only some of them, especially when there was no need for a reference in that document at all.

174. The next challenge is to the repayments. The Liquidators say it is "doubtful" whether the alleged repayments in the Account Letter were that: they were not marked as such, and around £371,000 were made by Sands Finance Ltd.

175. There is very little in the first point. Most of the repayments were marked "Mr S Varma" or suchlike. That of £1,700, referenced "Casa Jordan Andrew",

SVJ said was because Mr England had told him Casa needed money to pay a Jordan Andrew. That was not an explanation in his statements, although it is a point of detail.

176. The Sands Finance payments were of £273,000 on 29 March and £98,559 on 27 September 2018. SVJ says that his father did not originally know about the Loan Facility. I have already considered his statement, limited he said to Casa dealings, that "I have no connection with my father in so far as business dealings are concerned", which continued "save when I approached my father for assistance in respect of the third party loan from Sands". As he explained earlier in his first statement, Sands Finance was a "third party finance company. These payments represented a separate loan from Sands to my father… When I informed my father that I owed monies to Casa, my father arranged to get an unsecured loan from Sands and asked them to pay the loan monies directly to Casa, which they duly did…".

177. Mr Atkinson accepted in cross-examination that there was no suggestion that Sands Finance was other than an independent credit provider. There is no challenge to the Sands Finance monies being its own.

178. No other reason for the Sands Finance payments to Casa has been proposed, and I accept SVJ's evidence on the point.

179. As to the remaining £73,000 of repayments, the Liquidators accept that these were each made by SVJ, save the last, of £3,000, which they cannot trace to his account. Again, there is no other realistic reason for why SVJ should be paying Casa this money.

180. It follows that the repayments are very strong evidence that the Loan Facility is genuine.

181. The Liquidators correctly did not pursue a point that payments to Casa could not discharge a debt owed to the Company: the monies were repaid whence they came.

182. There is another reason why these repayments point to the genuineness of the Loan Facility. The Liquidators have helpfully provided a timeline from 4 December 2017 to 25 February 2019 showing repayments, drawdowns, and the running total. The £98,559 from Sands on 27 September 2018 took the account to a credit, before the £31,103 interest due, of £30,563. Further payments during November 2018 took the balance to £12,460 in credit even taking account of the interest. There followed a withdrawal of £20,000 on 3 December; four repayments, the last of which, £3,000 on 8 February 2019, giving a credit of £32,013 before interest; then a £1,000 payment of 25 February taking the account to balance.

183. At the least from the £3,000 repayment, but on this evidence from the September 2018 repayment, the transactions had been directed at achieving a repayment of the loan principal and the exact interest of £31,103.

184. The final matter in this sequence is the date of the Account Letter, which purports to be 1 April 2019. Mr Brown directs my attention to the report of SVJ's own expert, Gerald M. LaPorte, who from the counterfeit protection security code ("CPS Code") embedded by the Xerox machine from which it was printed can conclude that the printing date was 30 April 2019. I have no reason to question that, and it does show Mr England signing a backdated

document. The backdating, though, is not without a certain presumed justification, in that the Loan Facility was due for repayment by 31 March 2019.

185. SVJ believes that Mr England drew up the Loan Facility, and signed it. SVJ did not see the document until the end of 2017.

186. From all the above I conclude that the probability is that the Loan Facility is genuine.

187. On 31 May 2019 SVJ's solicitors, Keystone Law, confirmed that they held the original Loan Facility and Account Letter. On 10 June Gunnercooke requested the original, threatening an application if not produced; and chased on 18 June. On 24 June Keystone Law stated that SVJ was content to hand them over, on undertakings, once the reason for wanting the originals had been explained. The next day Mr Gray of Gunnercooke said it was to check their authenticity, neither the First Respondent nor Mr England having produced them, and provided the undertakings. Mr Gray chased on 5 July and 29 August. Mr Tinkler of Keystone Law replied on 6 September, observing (as he might have done before) that there was no direction for experts and no pleaded allegation in relation to the age of the documents; and telling Gunnercooke (as he might have done before) that at some point following the 10 June letter SVJ had "concluded the prudent course was for him to seek to age test the documents first"; Radley Forensic Document Laboratory had said they could not do it, and recommended someone in the USA; but as the cost was $11,000, in the circumstances SVJ was "holding off". Gunnercooke's letter of 13 September described itself as a "final opportunity" to deliver the

originals, about which SVJ must have had doubts if he was having them checked. That was chased on 25 September: unless provided by Friday an application would be made. Keystone Law couriered them to Gunnercooke on 1 October, a week and three months after requested.

188. The result has been an expert report from Mr Speckin, responded to by Mr LaPorte pursuant to the order of Judge Mullen of 4 March 2020. At considerable inconvenience to them given the time-differences, I have heard evidence from them both. I am grateful for their dedicated assistance.

189. Both Mr Speckin and Mr LaPorte conducted their investigation into the signature on the Loan Facility using gas chromatography/ mass spectrometry ("GC-MS"). Mr LaPorte also searched for a CPS Code which would have told with great accuracy when the Loan Facility was created. He could ascertain that the first page, which contained colour toner in the heading, contained a CPS Code "consistent with a dot pattern observed in office machines manufactured by Xerox"; but as the second and third pages were black and white there was no CPS Code to be found on them. The CPS Code on the first page was, regrettably, indecipherable.

190. In their Joint Report of 7 June 2020 the experts agree that GC-MS functions by detecting and identifying volatile organic compounds ("VOCs") which aid the fluidity of ink applied to paper. These VOCs, and particularly 2-phenoxyethol ("2-PE"), which is found in over 85% of black and blue ballpoint inks, are subject to evaporation, the rate of which stabilises over a period of three to eighteen months from application; after two years evaporation is no longer at a measurable rate. A base sample will be

compared with a heated sample, from which evaporation may occur. Evaporation of 25% plus is "very strong evidence to conclude that the ink is less than two years old".

191. Mr Speckin examined the Loan Facility using GCMS in November 2019. He concluded that "The heated and unheated samples… exhibited a significant difference in 2-PE levels which is consistent with the signature being written recently; within the last 18 months, and not on or near its purported date. Based on the results of this testing, it is my opinion that with a high degree of probability [the Loan Facility] was not signed on or near its purported date". As he put it in answer to CPR35.6 questions, "the tested ink is still in the drying process". That gives a date from May 2018.

192. Mr LaPorte tested in May 2020 and found an evaporation rate of 8% which, as he said, might represent stabilisation. He concluded that "the results did not meet an established threshold level to indicate that the [Loan Facility] was executed sometime in the past two years from the time I performed my testing", which gives us a May 2018 and before date. He stated that "This result should not be construed as strong or conclusive evidence that the document was factually executed on the purported date". That might be thought to follow from the time-limit of a GC-MS test, but Mr LaPorte ascribes the statement to "some writing inks [being] known to be fast aging… once they are placed on a piece of paper, the ink can reach its full drying age within several weeks or months".

193. That point is confirmed in the Joint Report, and is why although the 25% threshold is established by "extensive research… and validation studies", its being met is only "very strong evidence": this is not a scientists' certainty.

194. Mr LaPorte raises significant criticisms of Mr Speckin's methodology ranging from the handling of the document to lackadaisical pin-pricking of samples; these were built on by Mr Ramsden, who also raises non-compliance with CPR32.19.

195. There is no need for me to determine those issues. The intersection of the experts' evidence is around May 2018, after the Company had ceased to take more investment, but before presentation of the petition on which it was wound up. I therefore accept, despite not having heard from Mr England, that his signature was appended to this February 2017 document around that date.

196. The Liquidators conclude from that that the Loan Facility is a "forgery"; as it is put in the Amended Particulars of Claim, SVJ "has created, caused or permitted to be created a forged document in order to explain his receipt of Company money or its traceable proceeds from the Casa Account".

197. That conclusion is far larger than the evidence. Although in his CPR35.6 response Mr Speckin described his oral instructions, from a Jeff Katz at Bishop Group International, as "to determine if the submitted documents were written on or near their purported dates or at a later date", his reports have been limited to the date of application of Mr England's signature. It was Mr LaPorte who did try, but failed, to ascertain the date of the document as a whole (which is why I cannot accept the Liquidators' criticisms of SVJ's non-production of the original document, unsatisfactory as it was, which they

attribute to a desire to "let the ink dry": not only was Mr Speckin able to reach his conclusion, but it was SVJ who ensured his expert at least tried to cover the brief). The surrounding evidence for the creation of the Loan Facility in February 2017 I accept for the reasons given. My conclusion is not upset by the knowledge that Mr England applied his signature only 15 months later.

198. It follows that SVJ did provide consideration for his borrowings from Casa. There was no undervalue within the transaction, nor unjustness. He acquired title to the Bentley.

199. In any event, the undervalue and unjust enrichment claims would fail because all sums, and more, have been repaid.

200. Had it been necessary, I would not have found section 238 could apply anyway, as there was no transaction between the Company and SVJ: at most, there was on this hypothesis an illicit use of the Company's money by its agent, being Casa and/ or Mr England, resulting in the monies being passed into SVJ's hands.

The £2m

201. On 8 August 2017 SVJ received £2m from his father. On 22 November 2017 he transferred that sum to his solicitors, Portner Law, who on 25 January 2018 transferred it to Boodle Hatfield as a part-contribution to the purchase price of 33 Charles Street.

202. The Liquidators make claim against SVJ for the £2m in knowing (or unconscionable) receipt; alternatively in unjust enrichment. SVJ denies any unconscionable knowledge; avers that the £2m represented a lifetime legacy to him from his paternal grandmother; and presents a defence of change of position, the investment in 33 Charles Street being lost.

203. Mr Atkinson again gives detailed evidence, which is not formally challenged, as to the £2m in the First Respondent's hands representing Company monies. It was paid from monies originating as to £295,000 in the Casa Account, £925,000 from Kennedys, and £1.048m from the Company Account routed through the Third Respondent.

204. The £2m was therefore the traceable proceeds of the First Respondent's and Mr England's breaches of fiduciary duty.

205. The Amended Particulars of Claim plead that SVJ "well knew" that the monies were "traceable proceeds of a breach of fiduciary duty", but proceed to give particulars which include averrals referring to the reasonable and honest person. The Liquidators' skeleton states that they "will demonstrate at trial that [SVJ] had the knowledge rendering his receipt of the money unconscionable".

206. The principles have been summarised recently by Butcher J in *Iranian Offshore Engineering and Construction Company v Dean Investment Holdings SA* [2019] EWHC 472 (Comm): "A claim for knowing or unconscionable receipt requires: (1) a disposal of the claimant's assets in breach of fiduciary duty; (2) the beneficial receipt by the defendant of assets which are traceable as representing the assets of the claimant; and (3) knowledge on the part of the

defendant that the assets received are traceable to a breach of fiduciary duty. (See *El Ajou v Dollar Land Holdings plc* [1994] 2 All ER 685, 700). It is not a necessary feature of this cause of action that the defendant should have been dishonest. Instead the question is whether the defendant had such knowledge as to render it unconscionable for him to retain the benefit of the receipt: *BCCI v Akindele* [2001] Ch 437, 450, 455; *Brent LBC v Davies* [2018] EWHC 2214 (Ch) at [558]".

207. It is point (3) which is in issue here, as explained in *Akindele*.

208. Mr Ramsden says that the Liquidators must go further, having pleaded a case in dishonesty. I do not read the claim that way. We do have Mr Atkinson's views as to SVJ and his conduct, which are not complimentary; but they are just conclusions; and they are wrong.

209. The touchstone, then, is unconscionability set against the pleading in actual knowledge, or measured against the standard of "a reasonable and honest person". In their skeleton the Liquidators elucidate the second point thus: "it is not necessary that [SVJ] realised the transaction was 'obviously' or 'probably' in breach of fiduciary duty or fraudulent. It is enough if he wilfully and recklessly failed to make such inquiries as an honest and reasonable man would make".

210. That elucidation quotes from stage (3) of the test in *Baden v Société Générale pour Favoriser le Developpement du Commerce et de l'Industrie en France* [1993] 1 WLR 509 which was discarded in *Akindele* but whose descriptions of states of mind are, as Mr Ramsden says, "still useful as a way of approaching levels of knowledge".

211. In closing, the Liquidators made reference to stages (4) and (5) of the *Baden* test to observe that "it is sufficient if [SVJ's] state of knowledge is at the bottom" of the scale. For that they cited *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch); [2013] Ch 156 [113]-[123]. It would make no difference to the result, but there are two difficulties with that approach: first, and seriously, that is not how their case is put, either formally or in their trial skeleton; secondly, as the *Armstrong* judgment says, whether (4) and (5) are sufficient to found unconscionability depends upon the particular circumstances, with especial regard to the nature in which the defendant receives, or ought to receive, his knowledge. That would require pleading out, particularly where the recipient, as here, had no direct connection to the fraud and was acting in a private capacity.

212. I will therefore treat the Liquidators' claim for knowing receipt as limited to what is in the pleading and the trial skeleton.

213. As with the other unjust enrichment claims, that in relation to the £2m is placed on a narrow basis. The Amended Particulars of Claim state that SVJ "received £2,000,000 of the Company money or its traceable substitute for no legitimate commercial purpose and without providing any consideration whatsoever to the Company". After providing the origins and transmission of the money they say that SVJ "has been enriched at the expense of the Company and the enrichment was unjust in that [SVJ] has provided nothing in return for his receipt of the traceable proceeds of £2,000,000 of Company money".

214. Again, the origin of the monies, which meets *Menelaou*, is not in issue. As to "nothing in return", if indeed SVJ was bequested £2m from the Jewellery then his receipt of that sum would constitute something in return, as its receipt would be due transmission of the sum with attendant release as between SVJ and his father of the latter's obligation to account. It would not matter that the Company had not received consideration from SVJ, because he was never dealing with it directly. Alternatively, the Company treating itself in its claims against the First Respondent, Mr Khadka, and Mr England as having disbursed sums for the Jewellery, which has been treated as acquired for the Company, the receipt of that sum by SVJ representing his rights in the Jewellery cannot be characterised as unjust.

215. As to change of position, it is for SVJ to show that having been enriched, and caused by or in anticipation of the enrichment, his position has changed, such that meeting the claim would leave him worse off than if he had never received the enrichment; and that it would be unfair to require him to make restitution to such extent.

216. Exactly why SVJ "well knew" that the £2m was the traceable proceeds of the fraud is not identified. There is nothing to link him to the Company or its "business". Although this is to go over some trodden ground, when its business commenced SVJ was in Dubai, at times coinciding with his father by whom he had been brought up for the previous 10 years; whom as a loyal son he trusted and respected as an affluent and successful businessman; and who he was hoping would nurture him in his own business within the same field of property development when he returned to London in April.

217. SVJ's own evidence is that "I have never been to Bristol. I have never seen the site, met any investors, signed any documents relating to Bristol or had any meetings with sale agents of Bristol. Further, I have never been in control of any finances involving Bristol". That accords with Mr Ko's evidence. It has not been subject to direct challenge by the Liquidators, no doubt because they have not found any evidence within their extensive investigations which confutes it.

218. SVJ says that "I was aware that Casa did business with [the Company] but had no knowledge of Casa's finances… I was unaware of how Casa obtained its money". He learned about the purported Master Agency Agreement only in about May 2019. He said in cross-examination that he did not know that Mr England was involved with the Company, or that his father was holding himself out as developer of the Hotel. He knew no more than that his father had a project in Bristol. There was no change in his lifestyle when he returned to London.

219. Even with a critical eye, I have no reason not to accept that evidence. There is, as I say, nothing concrete which contradicts it.

220. Given his role and status, Mr Ko's evidence is of great weight. By the time he left Kennedys in September 2017, as the solicitor with primary responsibility for dealing with the Company, he had no suspicion of fraud and no concern in relation to the monies paid to Casa. In about June 2017 he had had concerns triggered not by the payments themselves but that "it became apparent that little or no progress was being made in relation to the development". So he and Joseph Dean, his associate who dealt with the majority of the sales of the

units, did ask questions of the First Respondent, and "raised the issue with Kennedys 'Compliance' team", who cleared them to continue acting. As Mr Ramsden says, Mr Ko was obliged to report any reasonable suspicion of criminality in relation to the monies or transactions in which they were engaged as solicitors.

221. Onto those facts can be overlaid the evidence as to the Jewellery.

222. At the time of settling the Amended Particulars of Claim, in among the fourth particular of knowledge was that "there is no evidence whatsoever which the JLs have been able to find or which has been disclosed by [the First Respondent] or [SVJ] which would support the assertion that the £2,000,000 was an inheritance or anything other than the traceable proceeds of Company money".

223. There now is evidence from SVJ and his family.

224. SVJ's Amended Defence, which is his first pleading addressing the issue, says that Nirmala Varma was SVJ's paternal grandmother. In about the middle of 2017 she telephoned him to say that she had given his father his share of his inheritance from her estate while she was still alive, mainly consisting of the Jewellery; and that she had instructed her son to transfer from its proceeds of sale £2m to SVJ. "Such sum was to represent his inheritance from her estate".

225. At about the same time SVJ's father showed him a letter from his mother "reiterating that her wish was that [the First Respondent] would transfer the sum of £2m to [SVJ] from the proceeds of sale of the Jewellery"; which he did from his Dubai account on 8 August 2017.

226. SVJ is pleaded as "aware that his grandmother was wealthy and owned substantial assets". In anticipation of receipt of the monies "on 19 July 2017, when he understood that the payment would be made imminently, he met with Canaccord, a wealth management fund, to discuss investment options". He also "viewed several properties with a view to investing in them or purchasing them, but could not find a suitable commercial proposition". In the end, he invested in 33 Charles Street.

227. More details have been given by SVJ in his witness statements and orally.

228. His grandmother died on 28 January 2018. She and his grandfather, who died in October 2017, "had for a long time owned a significant amount of real estate in Mumbai". In about 2012 or 2013 the "large prime-location plot in which their house stood was redeveloped in 8-storey block of flats" one each of which was given to his uncles and the rest sold. SVJ believes "that the gift was her way of 'balancing the books'" as well as her "way of reaching out and reconciling our relationship before she passed away": she was in and out of hospital regularly.

229. The reference to reconciliation is because, as SVJ described, their relationship was "not great", he having taken his mother's side and his father being stuck between the two. It arose because of, or was exacerbated by, the division of the apartments: "They never offered any apartment to my father, nor to me which my mother felt very hurt by and considered it unfair that my father's brother and daughter received an apartment but not my father or me".

230. I take into account that shortly after the Amended Defence and his 24 May 2020 witness statement, SVJ's recollections had in his 12 June 2020 statement

changed slightly in their details. He now considers the telephone call to have been in March 2017, by when he was reconnecting with his grandmother and father's brother, and this to have been said: "She specifically told me she wants me to forget about the past and remember her as both a generous and fair grandmother, not the image I had of her and she apologised to me for her past mistakes".

231. SVJ says that he was not surprised by the gift being through jewellery as "It is still the case that jewellery is used as a means to store wealth in India… this is a very common means of conveying an inheritance and is preferred by many to using a will". He told Mr Brown, emotionally, that the gift was not made directly to him because of the culture: an inheritance being passed to a son, for his son.

232. SVJ's mother has also given evidence on the Jewellery.

233. When in February 2017 Taru Dumra was in Dubai for a wedding, attended as well by SVJ and his father, she talked to the First Respondent about "setting up" their son as he had finished university and was starting his career. She described this as a common tradition, whereby parents and grandparents would give the young a start in life. She reminded the First Respondent of the promise he had given her to "look after Siddhant financially".

234. The First Respondent showed her a letter from his mother about her intent to give SVJ jewellery. He said it was worth about £4.5m, of which about £2m "was to be given" to SVJ. Ms Dumra says she remembers "reading listed various expensive jewellery items". She was aware his parents had a "good

deal" of jewellery, and had seen her mother-in-law wearing "very expensive jewellery on a number of occasions, so this was not a great surprise to me".

235. I do not see Taru Dumra as a self-serving witness, nor as one who would propound a false document, the February 2017 letter, at the behest of her son and/ or her ex-husband. She was an honest witness, and I accept her evidence, and by extension her son's, on the existence of the Jewellery and how in accordance with Nirmala Varma's wishes it was to be dealt with.

236. I have borne in mind what an extraordinary story this is, although that is mitigated by my acceptance of the point that in Indian culture many do still put wealth into jewels. I take Mr Brown's points that there is no will, and there are no estate accounts; but absent some evidence of their requirement as a matter of Indian law, and given SVJ's evidence that the transmission of jewels can be in lieu of a will, they bear little weight (SVJ anyway said that he wasn't aware of any will or accounts); nor, for similar reasons, does SVJ's failure to disclose his personal tax returns. The lack of a death certificate for Nirmala Varma is not accorded any weight.

237. Four other points might be said to raise doubts as to this conclusion.

238. First is an amateurishly-drafted deed of gift, dated 8 August 2017, signed by the First Respondent and purportedly witnessed by a Dubai lawyer calling himself "Salem". It records the First Respondent's wish "to make an irrevocable financial gift" to his son of £2m; witnesses that that sum is "a genuine gift and is made wholly out of the Donor acquired funds and no other person has any rights, title, interest, whether direct or indirect, whatsoever in

the same or any part thereof"; and certifies that it is "unconditional and irrevocable".

239. This has every appearance of being a document created by the First Respondent, in his own interests and trying to protect his son, knowing the origin of the monies he has passed.

240. What is really interesting is SVJ's reaction to it. "On 10 August 2017, at my father's request, I attended the office of S R Tadvai Solicitors in Harrow, London, to sign a deed of gift. I did not know the purpose for which the deed of gift was needed… I agreed to sign the deed of gift at my father's request. I assumed that it was merely part of the legal formalities needed for me to receive the inheritance and I did not probe this any further as, to my mind, it was in the hands of professional solicitors".

241. That reaction may be naïve (although it is also another example of filial loyalty), but it is neither not reasonable nor not honest. SVJ has, as I find, been to a solicitors firm and signed in their presence and without their objection a formal-looking document as his trusted father has asked.

242. The second point is the late production of what may be Mrs Varma's February 2017 letter. As I am convinced of its existence without its production, I give neither its contents nor the fact that it has been produced very late (after the close of SVJ's case, but before closing) any weight.

243. The third point is that ultimately the monies found their way back to the First Respondent, in the sense that he owned Grosvenor PBSA which acquired 33 Charles Street.

244. This too is countered by a sensible story from SVJ. I have already described his attempts to find an investment manager in Canaccord or a suitable property on his own account. The potential returns on those at 3-5% did not excite him. The monies still untouched, in November 2017 his father mentioned 33 Charles St, which SVJ visited with him and an agent who "both sold me on the project". The property was on a short lease which, if extended for a reasonable price, SVJ understood would significantly increase its value. Moreover, his father was offering him a rate of interest far greater than any other property investment, at 18%. "I had no reason to doubt that my father could not deliver because he had been successful in his career thus far not to mention the fact that he was my father and since he knew the sentiment and value of this inheritance to me and my career, I felt he would be extra cautious with it". "At the time, there was no one I trusted more than my dad… it all seemed to add up to me". In his earlier May statement he says "I understood this to be a good investment opportunity. I also thought that it would be wise to invest with my father as I would be able to speak with him first hand about the project and naturally, at the time, I trusted him far more than I would a third party. I was also eager to gain first hand experience of property development. I understood that my father had been successful in this field and I saw this investment as an opportunity to 'learn the ropes'".

245. SVJ invested the £2m through his company, Dare to Invest Ltd ("Dare"), which he had incorporated on 9 November 2017, and of which he has always been sole director and shareholder.

246. Again, I accept this plausible and detailed account.

247. The fourth point is that SVJ has relied on a document, purportedly confirming the existence of the Jewellery, which has emanated from his father, and been produced at his father's request by "some organisation called either MBC or MBG", depending on how one reads the inept logo. SVJ has disclosed this document rather than relied on it. It adds nothing.

248. I turn to the particulars of knowledge.

249. The first is that when he received the £2m SVJ was 24, and this was "an unusually large sum" for him, or a man of that age and in his circumstances, to receive. That is not right. SVJ's circumstances were lavish. He knew his grandparents to be wealthy. His mother was not surprised by the sum to be given to him, and neither was he, except, as he remarked in cross-examination, he had "expected it to be more".

250. Secondly it is said that the reasonable and honest person receiving such a sum, whatever their wealth, "would question where it came from, i.e. its provenance, including questioning their own entitlement to receive it and the ultimate source of the material funds in the hands of the transferor". SVJ knew where it was coming from and why, because his grandmother had told him.

251. Thirdly it is said that had he "made the inquiries that a reasonable and honest person would have made into the provenance… he would have discovered facts that would have put him on notice that the £2,000,000 was not his to apply as he saw fit, belonged to the Company, and should not have been transferred to him; alternatively, his father would not have told him the truth

and that would have been easy to verify by making the inquiries that a reasonable and honest person would have made in the circumstances"

252. This appears to be a development of the second particular, so never arises. Even if not, it is hard to foist on a reasonable and honest person unparticularised inquiries which they ought to have made. SVJ's relationship with his father and knowledge of the project I have already described, and also Mr Ko's. Mr Ko had no suspicions at this stage, as an insider. There is nothing in this, though I do agree that given their relationship the First Respondent would not have told his son the truth.

253. Fourthly is an averment that the £2m was not an inheritance. It was.

254. Fifthly it is said that it is to be inferred from Dare's being incorporated two months after receipt of the £2m (in fact, three months) that its incorporation was "for the purpose of obscuring his own receipt" of the £2m. The inference on incorporation if anything goes the other way. The mere incorporation of Dare would not obscure anything. In fact, the £2m never went into a Dare account but was passed, as we have seen, to solicitors.

255. Next within this point is that Dare was incorporated for the purpose of giving the onward payment of the £2m "the appearance of legitimacy". That is not explained, but insofar as it is directed at SVJ not just putting in the money as an individual, he explained that there were tax benefits, because of the corporation tax rate, in investing through a company; and it is anyway common practice in the industry.

256. Next is that if this was indeed an inheritance "there would have been no reason to advance it to Grosvenor PBSA". I have addressed the reasons already, and also the Liquidators' puzzling point that there was therefore "no legitimate commercial purpose" to the loan.

257. Sixth is that SVJ has "lied in relation to his receipt of the traceable proceeds of Company money", in particular in his 29 April 2019 response describing parts of Gunnercooke's 25 April letter as 'meaningless', when actually, as by his later evidence, he has shown he could have provided an account as to the purchase of the Bentley. This is uncomfortably overstated, and for the reasons already given unsustainable.

258. Seventh is that SVJ has "created or caused or permitted to be created a forgery in order to defend the claim against him", being the Loan Facility. This is rejected for the reasons already given.

259. A final point which may be said to touch on this are the Casa transactions apparently in SVJ's name. There were a number of transactions at Selfridges, the watches, which have already been explained, being the largest. There was also, for example, three month's hire of a locker at the Lanesborough. SVJ lucidly described how he had asked for his father to pay for this. He said as well, and I accept, that he himself never used the Casa card. I note that his mother said the same as to her supposed purchases in Selfridges, but did say she had given the First Respondent her loyalty card as he was the one in London.

260. The claim in knowing or unconscionable receipt therefore fails.

261. So too, given my acceptance of the story of the inheritance, does the claim in unjust enrichment.

262. If needed, SVJ's change of position defence would have succeeded as well.

263. The Liquidators ask why SVJ should have a defence "if he made an imprudent investment (in effect putting it all on black)". He is entitled to such a defence because he was an innocent recipient, dealing with what he believed to be his monies. The change of position defence has its own inbuilt mechanisms to ensure it is applied justly.

264. I shall deal with this shortly. Through Dare, SVJ invested the very monies which he inherited. He was not in a position to make the investment otherwise.

265. Although he had understood that what he was providing were development costs, they were actually used for the capital purchase. SVJ understood total anticipated costs to be about £12.5m as against a projected value, with lease extension, of "close to £16-17 million". He was therefore confident his loan and interest could be repaid.

266. Land Registry entries identify the property as being purchased on 25 January 2018 for £7.25m. Greenwood Capital Europe Limited, a Cypriot company ("Greenwood"), was first chargeholder. SVJ knew that.

267. While in about January 2018 Mr Ko drafted a trust deed for the First Respondent by which he would hold the Grosvenor PBSA shares on trust for his son, SVJ knew nothing about it, and there is no evidence it was witnessed.

Given the later change in ownership of Grosvenor PBSA, it is to be inferred it never became effective.

268. Mr Ko's colleague drafted the loan agreement between Dare and Grosvenor PBSA. It contained no immediate security for Dare, but did give it a right at any time to call for a legal charge, subject to the terms of Greenwood's lending and its consent.

269. The Land Registry shows that on 17 May 2018 a further chargeholder was entered, PHD Finance & Investments Limited ("PHD") of Pimlico. By deed of even date there appears to have been an alteration in priority of charges.

270. SVJ was not aware at the time of the second chargeholder. He discovered PHD's existence only around the turn of the year. This resulted in a 3 January 2019 tenancy agreement between Grosvenor PBSA and Dare, for six years, at £300,000 per annum, to be set off against and extinguish the £2m as Grosvenor PBSA was unable to repay it. SVJ said that he entered this to try to protect his inheritance. He told his father it was not right that he had not informed him of the second charge. This was the beginning of the breakdown in their relations and SVJ's loss of trust in his father. That is exemplified by what he did a week later: SVJ cancelled this agreement, as "something [was] not adding up" (as to which he must have been right: there is no evidence of the chargeholders consenting to it). Dare's previous rights resurrected.

271. There were delays in the refurbishment. The lease was not extended. Greenwood appointed a receiver, and on 28 March 2019 33 Charles Street was sold at public auction. For unexplained reasons that purchase did not go through. The details of what then happened are not clear, and the Liquidators

are still investigating them. In broad terms, Greenwood's charge was redeemed and receivership costs paid. Grosvenor PBSA still owns the property, but on 28 March 2019 the First Respondent transferred his shareholding to a Nalin Patel, also of Pimlico, for £1.

272. SVJ says he was "naturally furious" with his father and "let down". His father having lost his inheritance, their relationship has soured irredeemably. As he said in cross-examination, his father would not be seeing his grandchildren.

273. More materially, the evidence is that although Dare may still retain rights against Grosvenor PBSA, they are worthless. The sale at public auction, an open market value, was at £6.6m. Greenwood was owed about £6m and PHD £2m.

274. The £2m has therefore been lost.

275. The Liquidators state that if SVJ now had to repay the £2m he would be in no worse position because he had had the use of the £2m and chosen to invest it. That would be right were the investment still worth £2m, but change of position is a defence based upon the use of the enrichment.

276. They say that "there is no documentary evidence" that this change of position was in anticipation of or caused by the enrichment. The evidence, including documents, is against that.

277. They say that "critically" Dare had the benefit of the January 2019 lease, and "[SVJ] is therefore in a better position than he would have been had he not receivd the money in the first place". If the lease were still in existence then to the extent that payments were made, there might be some merit in that.

278. They say that there would be nothing unfair in ordering SVJ to repay the £2m even if lost, as (a) he invested it all in 33 Charles Street rather than diversifying; and (b) failed to make prudent inquiries as to the money's origin, which should not count against the Liquidators. These both fail on the facts: SVJ considered where to invest his money and for rational reasons decided on 33 Charles Street; he did not fail to make prudent inquiries.

279. Finally, the loss "was entirely [SVJ's] own fault" in cancelling the lease. For the reasons already given, that is untenable: he was wise to do so at the earliest opportunity.

280. I add that while there was mention in evidence that some payments of interest had been made to Dare by Grosvenor PBSA on the loan, those were not directly addressed in the statements of case, and have not formed part of either party's formal case.

281. The change of position defence would have succeeded in its entirety.

282. The claims against SVJ are dismissed.