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Case No: PT-2018-000293, CR-2018-004897

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE (CH D)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 August 2021

Before :

Tom Leech QC (sitting as a Judge of the Chancery Division)

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Between :

NICOLA OBERMAN — **Claimant**

-- and –

(1) SHAUN COLLINS
(2) BLUEGEN LIMITED — **Defendants**

- -

6-7 July 2021

- -

Mr Jack Watson (instructed by **Payne Hicks Beach**) for the **Claimant**
The **First Defendant** in person

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APPROVED JUDGMENT

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

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Tom Leech QC :

I. Introduction

1. In this judgment I adopt the defined terms and abbreviations which I used in the judgment dated 21 December 2020: see [2020] 3533 EWHC (Ch). In that judgment I determined the substantive dispute between Ms Oberman and Ms Collins and held that Mr Collins held the Oberman Property, the Joint Properties and the Collins Properties on trust for himself and Ms Oberman in equal shares. I also found that Mr Collins had committed unfairly prejudicial conduct. For a summary of the findings which I made see [222] to [229].

2. On 29 January 2021 I made an order (the "**Order**") requiring Mr Collins to purchase Ms Oberman's shares in Bluegen to be valued at the date of the petition (which was 14 June 2018) subject to various adjustments to reflect the unfairly prejudicial conduct. I also ordered Mr Collins to account for the funds derived from the Portfolio and how they were applied and ordered Mr Collins to pay to Ms Oberman 50% of those funds which Mr Collins did not re-invest in the Portfolio (either by using them to fund the purchase of new Properties or to meet the outgoings of existing Properties).

3. Finally, I also ordered a further hearing to dispose of the outstanding issues and, in particular, to determine the value of Ms Oberman's shares and to determine any issues arising out of the account (in the event that the parties were unable to agree terms). I made various consequential orders including an order for costs against Mr Collins and an order for an interim payment which I suspended pending the sale of those Properties which the parties held directly.

4. On 6 and 7 July 2021 the disposal hearing took place remotely. Mr Watson represented Ms Oberman (as he had done at the trial). However, Mr Collins (who had been represented by solicitors and counsel at the trial) appeared in person. Bluegen was not represented at the disposal hearing (and it had not been represented at the trial although it was a party to the petition as is conventional).

5. At the disposal hearing I heard evidence from Mr John Cordner, Ms Oberman's expert valuer, and Mr Andrew Wilson, who also gave evidence on Mr Collins'

behalf in relation to the value of Bluegen. (I return to the status of Mr Wilson's evidence below.) Neither of the active parties gave evidence although I asked Mr Collins a number of questions in argument and, in particular, in relation to the taking of the account (which he answered). Following the disposal hearing, I made an order which was intended to hold the ring until I had handed down this judgment.

II. Valuation of Bluegen

(1) Basis of valuation

6. Both Mr Cordner and Mr Wilson valued Bluegen on a net asset basis. Mr Cordner explained that Bluegen was an investment company, which holds investment properties on a long-term basis. He distinguished such a company from a property development company, which buys properties to develop and then sell and generates both profits and goodwill. He exhibited the ACCA technical factsheet 168 which states that in the vast majority of cases property and farming companies are valued on the basis of assets rather than earnings. Mr Wilson adopted the same approach and prepared a valuation setting out the assets and liabilities of Bluegen.

(2) The Evidence

7. Mr Cordner prepared a detailed expert's report which complied with CPR Part 35 and PD35 and he confirmed that he had read the Guidance for the Instruction of Experts in Civil Claims. He disclosed that since 2016 he had acted as Ms Oberman's accountant and tax adviser. But he also confirmed that this did not affect his independence or his ability to fulfil his duty to the court. I found him to be a straightforward and helpful witness and I accepted his evidence.

8. Mr Wilson prepared a one page valuation of Bluegen which was accompanied by a spreadsheet which set out valuations of the individual Properties. Mr Wilson confirmed that this spreadsheet had been provided by Mr Collins. In cross-examination he confirmed that he had not been engaged to give evidence as an expert witness because Mr Collins had been unable to afford to instruct an expert. But he also said that he had been asked by Mr Collins to prepare a

valuation to assist the Court. I also found Mr Wilson to be a straightforward and honest witness who was trying to assist the court. He stated clearly where he had relied on Mr Collins and he also conceded points fairly when they were put to him. I therefore accepted his evidence too.

9. Mr Cordner and Mr Wilson produced a joint statement which identified a limited number of issues on which they disagreed and at the end of the joint statement they both produced revised valuations. Mr Cordner valued Bluegen at £1,967,441.55 (and Ms Oberman's 49% shareholding at £964,046.36). Mr Wilson valued Bluegen on a net assets basis at £1,243,539.75 (which produces a valuation of £609,334.45 for 49% of the shares).

10. After the joint statement and shortly before the disposal hearing Mr Wilson produced a written response to Mr Cordner on the issues on which they disagreed. He stated in evidence (and I accept) that he prepared it to answer a number of the individual points which Mr Cordner had made and not on the instructions of Mr Collins. In relation to a number of points, he conceded that a number of issues were beyond his competence or that they were matters for Mr Collins or the court. I deal therefore with the disputed issues before considering the overall valuation of Bluegen.

(3) The House Prices Index

11. Mr Cordner adopted the valuations of the individual Properties shown in Bluegen's audited accounts for the year ended 30 September 2018 (which Mr Wilson had himself prepared) (the "**2018 Accounts**"). However, Mr Wilson had adjusted those valuations for the increase in the national House Prices Index ("**HPI**") between 14 June 2018 and 30 September 2018. He accepted that the index only showed a broad trend. But he insisted that it provided an objective measure of valuation.

12. Mr Wilson accepted that he had not made such an adjustment in his report and when he was asked to explain this, his evidence was that Mr Cordner had raised concerns about the fluctuating values, he had discussed this with Mr Collins and Mr Collins had suggested that he adjust for movements in the HPI. Whilst this might have been a reason for rejecting all of these adjustments by itself, I did

not do so. However, Mr Wilson conceded almost all of the relevant adjustments when was taken to contemporaneous valuations of the individual Properties. In particular:

i) In September 2019 Hunters had valued 17A Redbourne Drive and Flats 1 to 3, 49 Elmdene Road. All four valuations showed that values were falling slightly between 2018 and 2019. Mr Wilson had never seen these documents before and he accepted that they did not support an increase in value between the valuation date and 30 September 2018.

ii) Mr Cordner had placed a value of £785,000 on Flats 1 to 3, 49 Elmdene Road at the valuation date. This compared with Mr Collins' own valuation of £1,100,000 for the three flats in January 2018. When this valuation was put to Mr Wilson, he accepted that there was no reason to doubt Mr Cordner's valuation.

iii) Mr Watson also challenged the adjustment to the valuation of the freehold of the Redbourne Communal Property on the basis that it was based on the capital value of the ground rents for the flats and could not be affected by the HPI. When this was put to him, Mr Wilson also conceded this point.

iv) Mr Cordner placed a value of £210,000 on 177B Herbert Road at the valuation date. This compared with Mr Collins' valuations of £350,000 in both January and October 2018. When these valuations were put to Mr Wilson, he accepted Mr Cordner's figure.

v) Mr Cordner also placed a value of £210,000 on 75 Miles Drive at the valuation date. In September 2019 Hunters had placed a historic value of £210,000 on it for 2018 and in January 2018 Mr Collins had valued it at £235,000. When these valuations were put to Mr Wilson, he accepted Mr Cordner's figure.

vi) Mr Cordner placed a value of £60,000 on 136 Woodhill at the valuation date. This compared with Mr Collins' valuation of £100,000. When it

was put to Mr Wilson, he accepted that Mr Cordner's figure was reasonable if it came from a third party valuer.

vii) Mr Watson also challenged the adjustment to the valuation of the Royal Oak offices on the basis that they were commercial premises and that the HPI had no application to them. When this was put to him, Mr Wilson also conceded this point.

viii) Mr Watson also challenged the adjustment to the valuation of 59 Sweyn Road on the basis that his original valuation was based on the fact that works were being carried out to the Property. When Mr Cordner produced the certificate of completion which shortly post-dated the valuation date (25 July 2018), Mr Wilson had to concede that his valuation was incorrect. He also had to accept that part of it was a commercial property and that the HPI had no application.

ix) Mr Cordner also placed a value of £350,000 on 98 Woolwich Road at the valuation date. In September 2019 Hunters had placed a historic value of £350,000 on the Property for 2018 with planning approval to extend and develop the site. When this valuation was put to Mr Wilson, he accepted that Mr Cordner's figure was reasonable.

13. I therefore reject the adjustments which Mr Wilson made to the valuations of these Properties on the basis of an increase in the HPI between the valuation date and 30 September 2018 and I accept Mr Cordner's valuations for all of these Properties.

(4) 111 Whitebeam

14. Mr Cordner placed a value of £475,000 on 111 Whitebeam on the basis that this was the figure shown in the 2018 Accounts. Mr Wilson valued it at £300,000 on the basis that substantial works were being carried out to the Property. There was no clear evidence about the duration of the works. But it is likely that they were being carried out both in June and September 2018 and when he was questioned by Mr Collins, Mr Cordner confirmed that the Property was like a building site when they inspected it together in October 2018.

15. Mr Collins submitted that the Property should only be valued at its site value and that its open market value would only be realised when it was sold. He also said that there was a delay in carrying out the works and that they took over two years to complete. Although I accept the evidence of both Mr Collins and Mr Cordner that substantial works were being carried out to the Property, I am not prepared to make an adjustment for the building works for the following reasons:

    i) Mr Collins did not produce any evidence of the works or their costs and Mr Wilson accepted that he could not express any opinion on whether the deduction of £175,000 was reasonable.

    ii) If it had been a reasonable deduction, one would have expected to be reflected in the internal valuations which Mr Collins produced during the period of the works. However, in three spreadsheets dated January, October and November 2018 he valued the Property at £500,000. Mr Wilson could not explain why there was no fluctuation in these valuations if the effect of the works had been to reduce the value significantly.

    iii) Mr Cordner's evidence was that the works were being carried out at the year end. Again, if it had been reasonable to deduct £175,000 because of the works, one would have expected that deduction to be reflected in the 2018 Accounts. But it was not and Mr Wilson could offer no explanation for the figure of £475,000.

    iv) I am not satisfied, therefore, that the works had any real effect on the value of the Property and if they did, they were probably reflected in the reduction of £25,000 from the internal valuations which Mr Wilson made in the 2018 Accounts.

(5) 251 Eltham High Street

16. One of the issues which I had to determine at trial was whether Mr Collins held Properties which he had acquired after his relationship with Ms Oberman had come to an end on the same trusts as Properties which had been acquired during

the relationship. One of those Properties was 251 Eltham High Street. The position was also complicated by the fact that Bluegen had acquired the freehold but then granted leases of the shop and flats to Mr Collins personally. In the event, I held that Mr Collins held all four Properties on trust for Bluegen: see [142]. I also held that he purchased the freehold against Oberman's wishes and that this was unfairly prejudicial conduct: see [182].

17. When it came to the valuations Mr Cordner adopted the valuation of £1,070,000 used for the 2018 Accounts and then reduced it to £1,030,000 on the basis of mortgage valuations which Mr Collins had disclosed. Mr Wilson valued the Property at £905,000 but in doing so he valued the shop and the three flats separately but did not include the freehold. His explanation in the joint statement was as follows:

> "Mr Collins has advised that the value of the leases be moved from the total to ensure parity of treatment with 49 Elmdene. Our legal advice is that there was some ambiguity in the judgment."

18. I did not entirely follow this or Mr Collins's submission. But what I understood Mr Collins and Mr Wilson to be arguing was that the Eltham flats should be valued as a single freehold site rather than as three flats and a shop. They also drew a parallel with 49 Elmdene Road where I had ordered the valuation of Bluegen to be struck on the basis that it should include Flats 1 to 3, Elmdene Road.

19. I am not satisfied that there was any ambiguity in the judgment and, if there had been, Mr Collins' legal representatives would have asked me to clarify the position. I did not refer to the freehold of 251 Eltham High Street because there was no dispute that it was (and is) owned by Bluegen. I do not understand the analogy which Mr Collins sought to draw with 49 Elmdene Road either. I ordered that Bluegen should be valued on the basis that it owned Flats 1 to 3, 49 Elmdene Road because that was one of the issues which I was asked to decide. However, at all times during the trial Mr Collins accepted that he held the shop and flats at 251 Eltham High Street on trust for Bluegen. I therefore reject Mr Collins' argument and accept Mr Cordner's valuation.

(6) 58 St Nicholas Road

20. Both Mr Cordner and Mr Wilson were agreed that the value of 58 St Nicholas Road should be included in the valuation of Bluegen. Mr Cordner adopted a figure of £25,000 and Mr Wilson adopted a figure of £5,000. I accept Mr Cordner's valuation. It was supported by two of Mr Collins' spreadsheets showing that he put a value of £25,000 on the Property. Mr Wilson justified his own figure on the basis that it was taken from another internal valuation. But he made no attempt to explain why Mr Collins had taken a different figure in that valuation or why it was more reliable than the two valuations upon which Mr Cordner relied.

21. Mr Wilson also deducted costs of £123,684.42 for the works which were carried out to 58 St Nicholas Road. He relied on an invoice dated 5 August 2015 addressed by Blue Letts to Bluegen which referred to the "total refurbishment and extension to the rear of property". In my judgment, that deduction was not justified for the following reasons:

    i) The total figure of £123,684.42 included VAT of £20,614.07 producing a figure of £103,070.35 (ex VAT). A breakdown of that figure also showed that it included mortgage repayments totalling £10,021. Mr Wilson accepted that VAT should not have been charged on that sum.

    ii) The schedule also contained a breakdown of miscellaneous expenditure of £26,103, materials of £31,564.81 and labour of £35,381.54. Mr Wilson was also taken to an email dated 1 May 2015 which contained completely different figures. He accepted that he was not able to confirm that Bluegen was liable to Blue Letts for £123,684.42.

    iii) I have already found that in breach of section 175 of the Companies Act 2006 Mr Collins was deliberately inflating the liabilities which Bluegen incurred to Blue Letts. Given the discrepancies between the schedule supporting the invoice and the email dated 1 May 2015 and Mr Wilson's unwillingness to confirm that Bluegen owed the sum to Blue Letts, I am not prepared to accept that Bluegen owed the sum of £123,684.42 to Blue Letts (or, indeed, that it ever paid it).

(7) Skerryvore Legal Costs

22. Mr Wilson also included in his valuation £175,917 in legal costs which Bluegen incurred after the valuation date in relation to a dispute between Skerryvore Technologies Ltd ("**Skerryvore**") and Bluegen. I was taken to the Particulars of Claim dated 8 August 2014 and Mr Collins gave me a description of the proceedings in his closing submissions. He submitted that he had incurred the costs because Ms Oberman refused to release restrictions over a number of the Properties. In reply, Mr Watson drew my attention to Ms Oberman's evidence that she never approved the loan or its terms.

23. Mr Cordner's valuation took into account a liability of £12,880 for the costs which Bluegen had incurred by the valuation date. But I am not satisfied that the valuation should include any further costs which it incurred after that date. I accept Mr Watson's submission that the liability for costs was not a contingent liability which the company had already incurred and whether or not Ms Oberman agreed to the original loan, she had no conduct of the proceedings or any involvement in the conduct which led to Bluegen incurring the relevant costs. Mr Collins authorised them on Bluegen's behalf long after the valuation date.

(8) Outstanding Mortgage Liabilities

24. There was a very minor difference between Mr Cordner and Mr Wilson about Bluegen's total mortgage liabilities at the valuation date. Mr Cordner calculated them at £2,402,400 whereas Mr Wilson had calculated them at £2,407,737. The reason for the difference was that Mr Wilson had included debts of £1,736.71 and £3,600 owed to Funding Circle and A Reeve. However, in evidence Mr Wilson withdrew both of these items and I therefore accept Mr Cordner's figure.

(9) Conclusion

25. I have accepted Mr Cordner's figures in relation to all of the disputed items. He also made some minor concessions himself in the joint statement (which I accept) I therefore accept his valuation of £1,967,441.55 for Bluegen as at the

valuation date and I order Mr Collins to buy Ms Oberman's shares at a price of £964,046.36.

III. The Account

(1) Basis for taking the Account

26. In the introduction to this judgment I briefly summarised the orders which I made. However, it is necessary for me to explain them in a little more detail. Following judgment I ordered Mr Collins to account to Ms Oberman for the receipts (including rental payments, re-mortgages and proceeds of sale) of the Oberman Property, the Joint Properties and the Collins Properties (subject to certain exceptions) which I had found were held on trust for both parties in equal shares: see paragraph 1 of the Order.

27. I also ordered Mr Collins to account for the purchase price of 26 Beaconsfield Road and 10 Brasted Close (see paragraph 2); to provide a detailed breakdown of his Blue Letts loan account (the "**Loan Account**") and evidence to support it (see paragraph 3); and to pay 50% of all receipts which were not used to purchase other Properties or to meet outgoings or refurbishment costs or to enhance the Properties (see paragraph 4).

28. I will refer to paragraphs 1 to 4 of the Order (or the process which Mr Collins was required to undertake in order to comply with those provisions) as the "**Account**". I will also use the term the "**Portfolio**" to refer to the Properties which were the subject matter of the Account (although I used that term in a wider sense to include the Bluegen Properties and the Bluegen SC Properties in my earlier judgment).

29. Because of the detailed findings of fact which I had made I ordered Mr Collins to provide an account from the beginning of his relationship with Ms Oberman in 2005. At the disposal hearing, however, Mr Watson was prepared to limit the scope of the court's scrutiny of the figures which he had provided to the period from 1 January 2016 onwards and, although he submitted that the account and the evidence which Mr Collins had provided was unsatisfactory, he limited his

objections to a number of individual items and asked me to make specific findings in relation to those items.

30. This seemed a very sensible approach to me and within the scope of the court's discretion in policing the substantive obligation of a trustee to account to the beneficiaries of a trust (see below). In my judgment, it was not in the interests of either party to order Mr Collins to give further disclosure or to put them both to the time and additional costs of a further hearing. Indeed, I am satisfied that it was in both of their interests to bring this litigation to a close and for the court to determine the financial position as between the parties on the basis of the materials before it (if it proved to be possible).

31. PHB also provided me with a spreadsheet headed "Running total calculation" setting out the individual adjustments which they asked me to make to the Account. For the reasons which I set out below, I accepted many (but not all) of those adjustments and I set out my conclusions in the Appendix to this judgment. For the most part, I have adopted the format and line items in that spreadsheet although I have adopted a slightly different order.

(2) Legal Principles

32. Because Mr Collins was acting in person at the disposal hearing, it was important that he understood the legal principles upon which the remedy of account is based. I therefore asked Mr Watson to produce a note setting out those principles which he provided to Mr Collins before the second day of the hearing and which Mr Collins confirmed that he had read and understood. The general principles are set out in *Lewin on Trusts* 20th ed (2020) at 41—003 (footnotes removed):

> "The claim to compensation for breach of trust has traditionally been brought by way of action for an account. This may be for an account in common form, whereby the claimant falsifies the accounts to show the position as it was before the breach of trust was committed. Such an account would be used where, say, a trustee has paid out part of the trust fund to the wrong beneficiary. If such an allegation is proved, then the account is taken as though the unauthorised payment had not been made. Alternatively, the claimant may seek to argue that the breach of trust consists of an omission, for instance a failure to

> invest appropriately. In such circumstances, the claimant is said to surcharge the accounts, and the action is for an account on the footing of wilful default. In such a case, the accounts are then sought to be amended so as to reflect the position as it would be if the omission had not occurred, and if the trustee had received what he would have received if he had exercised due care and diligence.….Very often, however, claims for compensation for breach of trust are not now brought by way of action for an account, but simply as a direct claim for such a monetary remedy, by way of equitable compensation or for the return of the missing trust property. The amount of actual loss does not have to be pleaded where the basis of the claim is clearly articulated by the date of the trial and set out in the expert and factual evidence."

33. The editors of *Lewin* also emphasise that an order for an account is a substantive remedy to enforce the trustee's primary duty to hold trust property and only to pay out authorised sums. As such, it is incumbent upon the trustee to justify any payments made: see 41—005. In *Libertarian Investments v Hall* [2014] 1 HKC 368 Lord Millett NPJ also emphasised that the account forms part of a process in which a claimant can either enforce the primary duties of the trustee or claim compensation at his or her election. He stated this at [167] and [172]:

> "Once the plaintiff has been provided with an account he can falsify and surcharge it. If the account discloses an unauthorised disbursement the plaintiff may falsify it, that is to say ask for the disbursement to be disallowed. This will produce a deficit which the defendant must make good, either in specie or in money. Where the defendant is ordered to make good the deficit by the payment of money, the award is sometimes described as the payment of equitable compensation; but it is not compensation for loss but restitutionary or restorative. The amount of the award is measured by the objective value of the property lost determined at the date when the account is taken and with the full benefit of hindsight."

> "At every stage the plaintiff can elect whether or not to seek a further account or inquiry. The amount of any unauthorised disbursement is often established by evidence at the trial, so that the plaintiff does not need an account but can ask for an award of the appropriate amount of compensation. Or he may be content with a monetary award rather than attempt to follow or trace the money, in which case he will not ask for an inquiry as to what has become of the trust property. In short, he may elect not to call for an account or further inquiry if it is unnecessary or

> unlikely to be fruitful, though the court will always have the last word."

34. This passage supports the approach which Mr Watson asked me to take in the present case. Although it was her case that Mr Collins had failed to comply with his primary duties as a trustee, Ms Oberman elected not to seek any further accounts or inquiries and relied on the evidence at the disposal hearing to establish which disbursements were unauthorised and asked for an immediate award of compensation to reflect them.

35. It is also well-established that the burden of proving that any disbursement or deduction from the trust fund rests upon the trustee not the beneficiary: see *Lewin* (above) at 41—006. This proposition is supported by a number of authorities including *Ross River v Waveley* [2013] EWCA Civ 910 and *GHLM Trading Ltd v Maroo* [2012] EWHC 61 (Ch) in which Newey J held that the same principle applied to the debit entries on a director's loan account: see [143] to [148].

(3) The Account

36. Mr Collins produced the Account in the form of a detailed breakdown of the receipts and outgoings of the Portfolio since 2005 which he exhibited to his second witness statement. His evidence was that the Portfolio had made an overall loss of £43,165.89. His detailed breakdown also indicated that the Portfolio had made cumulative net losses of £84,109.73 by 31 December 2015. I reject that evidence for four principal reasons:

    i) Mr Collins was unable to produce contemporaneous accounts which showed the profits or losses from the individual Properties year on year. Moreover, I felt unable to accept as reliable the electronic records which he was able to produce. Mr Watson took me to the metadata relating to 9A Redbourne Drive and 13A Redbourne Drive which showed that the electronic files had been modified on 24 March 2021. Mr Collins could give no explanation for these modifications.

ii) Mr Collins disclosed no other source of income apart from the Portfolio itself and if it was loss-making, then he and Ms Oberman had little or no source of income whatsoever for the entire period between 2005 and 2020. This was wholly implausible and I rejected Mr Collins' evidence to similar effect during the course of the trial.

iii) Mr Collins' evidence was also inconsistent with the tax returns which he disclosed and, in particular, his tax return for the year ended 5 April 2016 which showed that his adjusted profit from property income was £24,531. This was inconsistent with Mr Collins' detailed breakdown which stated that the Portfolio had made a loss of £20,284.23 for the year ended 31 December 2015 and a loss of £57,848.10 for the year ended 31 December 2016.

iv) I also accept Ms Oberman's case that a number of adjustments must be made to the Account for the reasons set out below. Once those adjustments are made, it is clear that the Portfolio was profitable throughout the period from 1 January 2016 onwards. I accept Mr Collins' evidence that there were reasons why the Portfolio might have been less profitable in 2008 and immediately after the collapse of Mains Amis. But I do not accept that it remained unprofitable for the following eight years.

37. Mr Watson submitted, therefore, that I should reject Mr Collins' evidence that the Portfolio had a negative balance as at 1 January 2016 and that I should adopt a balance of £0 as at 1 January 2016 as the base or starting point for the Account. I accept that submission. It is consistent with Mr Collins' tax return for the year ended 5 April 2016 which showed a modest profit from the Portfolio. But it is also neutral as between the parties. It assumes not only that Mr Collins had made no losses (or had recovered them) over the previous 13 years but also that he had built up no reserves over the same period. I therefore assume a balance of £0 for the income and outgoings from the Portfolio as at 1 January 2016.

(4) Income

38. Mr Watson submitted that the property income breakdown which Mr Collins exhibited to his second witness statement showed that the Portfolio had generated income of £40,943.84 for the period between 1 January 2016 and 28 February 2021 (the date to which the Account was taken). Mr Collins did not dispute this calculation and I accept it. Subject to minor disputes about two Properties, the issues between the parties related to the deductions which Mr Collins had made rather than the income which he had received.

(a) 11 Wedgewood Court

39. Mr Collins occupied (and continues to occupy) 11 Wedgewood Court as his home. Nevertheless, he produced schedules showing that he received rental income at various times for this Property and in his tax return for the year ended 5 April 2017 he declared that he received a profit of £1,438. Mr Collins could not explain this inconsistency and I find that he failed to account to Ms Oberman for the rents which he received from this Property. To bring this litigation to an end, Ms Oberman was prepared to limit her claim to the sum which Mr Collins had declared in his tax return. I therefore limit the order which I will make in relation to this Property to that sum.

(b) 207 Greenhaven Drive

40. In her third witness statement dated 1 July 2021 Ms Oberman gave evidence that since February 2021 she had been making the mortgage payments in relation to 207 Greenhaven Drive but that the tenant had continued to pay rent to Mr Collins. She exhibited a series of text messages in which she had asked the tenant to pay the rent to her but he had declined to do so until Mr Collins gave him authority (which Mr Collins had failed to do). Mr Collins denied this but when I put the text messages to him, he could not explain them. I accept Ms Oberman's evidence in relation to this issue and I find that Mr Collins has failed to account to her for the rent for this Property. It was Ms Oberman's evidence that 50% of the rent over the relevant period was £2,574.80 and I accept that figure. For the purposes of the Appendix (where I have set out the adjustments in full and ordered Mr Collins to pay 50% of the final figure) I have doubled that figure.

(5) Deductions

(a) 117 Greenhaven Drive

41. It was common ground that Ms Oberman received £10,000 out of the proceeds of the sale of 117 Greenhaven Drive. However, Mr Watson submitted that Mr Collins should not have treated this as a deduction from the rental income because it was paid out of capital rather than income. I reject that submission. Mr Collins did not prepare the Account differentiating between capital and income receipts and there was no dispute that Ms Oberman received the money.

(b) 9A Redbourne Drive

42. Mr Collins deducted £9,630.64 from the rent of this Property in respect of invoices submitted by Blue Letts for refurbishment. He produced a "Move In Statement" dated 15 March 2016 from TM Estates recording this payment but a later statement dated 13 September 2016 also recorded a payment of £9,827.30 to him as the landlord. Ms Oberman challenged this payment in her witness statement but Mr Collins failed to deal with it in reply or to produce the relevant invoices.

(c) 13A Redbourne Drive

43. Mr Collins also deducted sums of £7,443.65 and £2,044.15 from the rent of this Property. He produced a "Move In Statement" dated 29 August 2016 from TM Estates recording that these deductions were made for "outstanding balance" and "furniture costs carried over". Ms Oberman also challenged this payment and Mr Collins failed to deal with it in reply or to produce the relevant invoices or vouchers. Moreover, these payments were inconsistent with the schedule to his tax return for the year ended 5 April 2017 (which recorded expenses of £1,656 only for repairs, maintenance and renewals).

(d) 1A Redbourne Drive

44. Mr Collins also deducted sums of £6,747.53 from the rent for this Property. He produced a rent statement dated 8 March 2016 which recorded deductions of £80 for changing a light bulb, £150 to fix the intercom system and £6,517.53 in

respect of "Property Refurb". The detailed breakdown of income and outgoings which Mr Collins exhibited also showed that he had deducted £2,215 from the rent for this Property for December 2019 and January 2020. Ms Oberman also challenged these deductions and this time Mr Collins produced a Blue Letts invoice dated 10 March 2016 for £6,517.53 (although he did not explain the later payments).

45. Mr Watson submitted that the obvious way in which to prove that these payments were made was to produce the relevant bank statements for these payments (which Mr Collins failed to do). I also gave Mr Collins an opportunity to address the deductions relating to 9A, 13A and 1A Redbourne Drive in his submissions but he frankly admitted that he could not tell me what these deductions were or why they had been incurred. In the absence of any documentary evidence to support them or any direct evidence from Mr Collins himself, I find that Mr Collins has failed to discharge the burden of proving that any of these deductions were properly authorised or made.

(e) 19A Redbourne Drive

46. Mr Collins deducted the sum of £7,151.38 from the rent for this Property in October 2019. This deduction is in a slightly different category from the earlier deductions for Redbourne Drive. Mr Collins recalled these works specifically and was able to describe them and the process for payment in some detail. Although he was unable to produce invoices or vouchers for these works, I am prepared to accept that they were carried out and that the deduction was properly authorised and made. Further, I am satisfied that Mr Collins must have incurred some of the costs which he claimed in relation to the Redbourne Drive Properties and despite the unsatisfactory evidence which he produced it seems fair to allow him the costs relating to one of the four Properties.

(f) 272 Greenhaven Drive

47. Mr Collins deducted five sums of £1,000 from the rent for this Property. He produced rent statements showing that these sums were paid to BCB, his solicitors. He did not suggest that they had been acting in a joint capacity or that

Ms Oberman had authorised him to instruct them and I am satisfied that he was not authorised to pay these sums out of the income of the Portfolio.

(g) 11 Shepherds Lane/70 Princess Alice Way

48. Both of these Properties were sold and Mr Collins deducted £4,000 and £3,240 from the rents to pay sales commission. Mr Watson suggested that this explanation could not be correct because Mr Collins' solicitors would have deducted agents' commission before transferring the net proceeds of sale to him as vendor. Mr Collins told me that since TM Estates was acting as the agent, he would normally receive the proceeds of sale and then pay the agent's commission himself. He was also able to produce one of the invoices and show it to me online. I am satisfied, therefore, that these deductions were properly authorised and made.

(h) Management Fees

49. Mr Collins also personally deducted management fees of 10% for the rental of each Property in the Portfolio after the collapse of Thamesmead. Ms Oberman challenged these fees on the basis that they were unauthorised; that Mr Collins continued to deduct them for periods when Properties were vacant; and that the management services were provided by Bluegen (of which Ms Oberman was a director and shareholder). Ms Oberman claimed that Mr Collins had deducted a total amount of £41,150.50.

50. There was no evidence that Ms Oberman ever authorised Mr Collins to charge a management fee and Mr Collins did not suggest otherwise. As a trustee, therefore, Mr Collins was not entitled to charge fees without the informed consent of Ms Oberman. However, it is within the court's discretion to order an equitable allowance and there is no doubt that Mr Collins and Bluegen did provide management services for the Portfolio throughout the relevant period. Given that neither Mr Collins nor Bluegen charged a management fee for managing the Portfolio, I am satisfied that some equitable allowance for reasonable management fees should be made (excluding void periods). I will therefore allow 50% of the fees which Mr Collins charged: £20,575.25.

(6) Additional Income

51. Mr Watson also submitted that I should assess the further income which the Portfolio had earned for the five months between March and July 2021 on the basis that Mr Collins had an ongoing duty to account. I accept that submission. It makes no sense to order Mr Collins to produce a further account for the interim period between the completion of his evidence and the handing down of this judgment.

52. Mr Watson submitted that I should assess the additional income from the Portfolio at £24,049.30. However, this figure was based on the assumption that I accepted all of Ms Oberman's proposed adjustments and since I have not accepted them all, I must produce my own figure. I therefore assess the income which Mr Collins received from the Portfolio as follows:

    i) Income shown in Mr Collins detailed breakdown: £40,943.84;

    ii) Additional income from 11 Wedgewood Court: £1,438.00;

    iii) Unauthorised deductions: £53,656.22;

    iv) Total: £96,038.06.

53. Mr Collins received this income over a total period of five years and two months (1 January 2016 to 28 February 2021) and this equates to a monthly income of £1,549. I, therefore, assess the additional income which Mr Collins will have received for the five month period between 1 March 2021 and 31 July 2021 at £7,745 (i.e. 5 x £1,149). I add that I have not included the rent which Mr Collins received from 207 Greenhaven Drive in my calculation of the total net income because this also related to the later period after February 2021.

54. I add £7,745 to the total of £96,038.06 to give total net income for the entire period from 1 January 2016 to 31 July 2021 of £103,783.06. I then add the rent which Mr Collins received from 207 Greenhaven Drive to give a final figure of

£108,932.86. I find that Mr Collins has failed to account for this sum and order him to pay 50% of this sum to Ms Oberman.

(7) Proceeds of sale and mortgages

(a) 70 Princess Alice Way

55. In May 2017 Mr Collins sold 70 Princess Alice Way and the net proceeds of sale of £143,698.01 were paid into his First Direct account. A substantial proportion of these funds was used to purchase 26 Beaconsfield Road but Mr Collins used £55,909.73 to pay off his credit cards and for general living expenses (including paying a jeweller). Mr Collins did not dispute the use of these funds and I find that he failed to account to Ms Collins for her share of them.

(b) 1A and 15A Redbourne Drive/116 and 152 Greenhaven Drive

56. Between November 2019 and February 2020 Mr Collins re-mortgaged these four Properties for £383,337.40 in breach of an undertaking which he had given to Ms Oberman. He also failed to account to her for any of the sums which he received. When I put this to him, Mr Collins did not dispute that he was liable to pay her share of the proceeds to Ms Oberman.

(8) The Loan Account

57. In the judgment dated 21 December 2020 I ordered Mr Collins to account for the source of the funds which he advanced to Blue Letts and which were credited to the Loan Account. I was taken to the breakdown of the individual entries which he had provided and in the column headed "Source of Funds" he referred to a number of cash payments totalling £64,458.21 although he did not identify the ultimate source of that cash. He also identified the source of other funds as a number of bank accounts including his personal account at First Direct, Thamesmead's account at the NatWest and Bluegen's account at HSBC.

(a) The First Direct Account

58. Mr Oberman's primary complaint was that it was not possible to tell from this information whether the ultimate source of the funds was the Portfolio or an independent funds in which she had no interest. In her second witness statement dated 4 June 2021 she analysed the information which Mr Collins had provided and asserted that the Portfolio must have been the source of the funds recorded on the Loan Account.

59. In particular, she pointed out that Mr Collins had identified his First Direct account as the source of £346,167.61 on the Loan Account and that he had received £298,254.54 of those funds by re-mortgaging 1A and 15A Redbourne Drive and 16 and 152 Greenhaven Drive. She also pointed out that in his tax return for the year ended 5 April 2017 Mr Collins had not disclosed any income (whether from Blue Letts, Thamesmead, Bluegen or any other source) which would explain how he was able to raise a sum as large as £346,167.61 independently (or, indeed, the cash of £64,458.21).

60. In his witness statement in reply Mr Collins asserted that the Portfolio was not his only source of income and stated that considerable funds had come from earlier income "including Main Amis, Winkworth, Building Companies and third party investors". He did not explain why he had not disclosed those sources of income in his tax return. Nor did he offer any further explanation about the source of funds in his First Direct account or produce any bank statements or other evidence which would show where it came from.

61. I am not satisfied by Mr Collins' explanation. It must have been obvious to him that the information which he had provided would not enable Ms Oberman (or, indeed, the court) to establish whether the Portfolio was the source of the funds which he paid to Blue Letts from his First Direct account. Moreover, when Ms Oberman challenged the account which he had given, he had a further opportunity to provide this information but failed to do so.

62. In my judgment, the burden was on Mr Collins to satisfy the court that the funds which he paid to Blue Letts out of his First Direct account (and which were credited to his Loan Account) were not derived from trust funds: see, in particular, *GHLM Trading Ltd v Maroo* [2012] EWHC 61 (Ch) (above). I am

also satisfied that Mr Collins failed to discharge that burden. But even if the principles explained by Newey J in *Maroo* do not extend to the Loan Account, I would be prepared to draw the inference that the Portfolio was the source of those funds based on the evidence advanced by Ms Oberman in her witness statement and the lack of explanation from Mr Collins.

63. Accordingly, I find that Mr Collins has failed to account to Ms Oberman for the sums which were paid to Blue Letts out of Mr Collins' First Direct account after giving credit for the proceeds of the re- mortgage of 1A and 15A Redbourne Drive and 16 and 152 Greenhaven Drive and that he is liable to pay 50% of those funds to Ms Oberman. Mr Watson submitted that this figure was £68,083.80 and Mr Collins did not dispute it. I therefore order him to pay that sum to Ms Oberman. (Again, for the purposes of the Appendix I have doubled this sum and ordered Mr Collins to pay 50% of the final figure to Ms Oberman.)

(b) Cash

64. I am also satisfied that the burden was on Mr Collins to satisfy the court that the £64,467.95 which he paid to Blue Letts in cash was derived from trust funds and that he failed to discharge that burden. But even if the principles explained by Newey J in *Maroo* do not extend to the Loan Account, I would be prepared to draw the inference that the Portfolio was the source of the cash. There was evidence that tenants paid in cash and Mr Collins could easily have explained where he got it from but did not do so. Accordingly, I order Mr Collins to account to Ms Oberman for 50% of the cash payments.

(c) Redbourne Drive Communal

65. One of the more troubling aspects of Mr Collins' conduct was that he disclosed the existence of another personal bank account at Barclays in producing the Account. His failure to disclose this account at any time before the production of the Account was a breach of an unless order against which I gave him relief against sanctions at the PTR (shortly before trial). If I had known that Mr Collins had not disclosed the existence of the Barclays account I consider it highly unlikely that I would have given him relief against sanctions.

66. It is also clear that this account was used by Mr Collins for the purposes of the Portfolio because service charges of £61,458.21 were paid into this account by tenants of Redbourne Drive rather than to Bluegen (their landlord) and then paid on by Mr Collins to Blue Letts. Mr Collins must have known, therefore, that the existence of this account and the contents of the bank statements were all relevant to this dispute and that he had no excuse for the failure to disclose them.

67. Ms Oberman claimed 50% of the funds paid into the Barclays account on the understandable basis that Mr Collins must have diverted them from their proper purpose. Moreover, given Mr Collins' conduct this is an inference which I might well have drawn. However, by the end of the disposal hearing Mr Collins had satisfied me that the funds had been genuinely used to fund the services at Redbourne Drive and Mr Watson did not pursue this claim with any real determination. I therefore find that Mr Collins used these funds for their authorised purpose.

(d) HSBC Rental Account

68. Mr Collins' detailed breakdown of the Loan Account also showed that on 15 May 2020 £5,000 was paid out of a personal HSBC account in two tranches of £2,000 and £3,000. The narrative which he gave for these payments was "Loan from Rental Account – Bounce Back loan". Ms Oberman challenged these payments on the basis that there was no evidence of such a loan. Mr Collins replied stating that such a loan was made for £50,000. However, the bank statement which he exhibited showed that it was not made until June 2020 and then paid into his First Direct account. He was unable, therefore, to demonstrate that this loan was the source of the £5,000 and I order him to account to Ms Oberman for her share of this payment.

(e) Thamesmead/Just Legal

69. Mr Collins' detailed breakdown also showed that £90,995 was paid by Thamesmead and Just Legal London Ltd ("**Just Legal**") to Blue Letts and credited to the Loan Account. It was Ms Oberman's evidence that both Thamesmead and Just Legal collected rents and rent arrears from tenants and Mr Collins accepted that these funds came from the Portfolio and that he had to

transfer funds around to cover various arrears. I therefore order Mr Collins to pay Ms Oberman her share of these funds.

(9) Purchase Funds

(a) 10 Brasted Close

70. Ms Oberman also claimed 50% of the sums which were used to purchase 10 Brasted Close and 26 Beaconsfield Road. However, Mr Watson conceded in argument that she did not pursue the claim in relation to 10 Brasted Close because the source of the purchase price was funds paid to Just Legal and recorded on the Loan Account. He accepted that if I ordered Mr Collins to pay 50% of those funds to Ms Oberman, it was unnecessary for her to pursue the claim in relation to 10 Brasted Close. Since I have ordered Mr Collins to pay 50% of those funds to Ms Oberman, it is unnecessary for me to consider this claim further.

(b) 26 Beaconsfield Road

71. Mr Watson continued to pursue the claim in relation to 26 Beaconsfield Road. Mr Collins funded £266,215 of the purchase price of £355,000 by obtaining a mortgage and paid the balance of £88,785 out of his First Direct account. I am satisfied that Mr Collins funded the deposit of £35,500 and £55,909.73 of personal expenditure out of the proceeds of sale of 70 Princess Alice Way (which were paid into that account). However, I am not satisfied that he funded the balance of the purchase price of 26 Beaconsfield Road out of trust funds. Mr Watson attempted a complex tracing exercise and Mr Collins provided answers to some of the points which he made. But I was unable to find on a balance of probabilities that Mr Collins used trust funds to fund the balance of the purchase price.

72. It is quite possible that Ms Oberman would have been able to persuade me that Mr Collins used trust funds to pay the balance after further disclosure and cross-examination. But she elected not to seek a further account but to ask the court for an order for payment now. I considered this to be a sensible decision but, having made this election, Ms Oberman must take the rough with the smooth. I

have found in her favour on a number of important issues but I find in favour of Mr Collins on this one. I will only order Mr Collins to pay Ms Oberman her share of the deposit of £35,500 (which was derived from the proceeds of sale of 70 Princess Alice Way).

IV. Disposal

73. I therefore order Mr Collins to buy Ms Oberman's shares in Bluegen at a price of £964,046.36. I also declare that Mr Collins has failed to account for income and assets of the Portfolio totalling £880,310.54 and order him to pay her 50% of that sum, i.e. £440,155.27. If the parties are unable to agree any outstanding issues either arising out of the Order or of this judgment, I will list a further disposal hearing to dispose of those matters.

APPENDIX: THE ACCOUNT

Item	**Amount/Adjustment**	**Running Total**
Income		
Net income 1/1/16-28/2/21	£40,943.84	
Add		
11 Wedgwood Court	£1,438.00	£42,381.84
207 Greenhaven Drive	£5,149.80	£47,531.64
Net income 1/3/21-31/7/21	£7,745.00	£55,276.64
Deductions disallowed		
9A Redbourne Drive	£9,630.64	£64,907.28
13A Redbourne Drive	£7,443.65	£72,350.93
	£2,044.15	£74,395.08
1A Redbourne Drive	£6,747.53	£81,142.61
	£2,215.00	£83,357.61
272 Greenhaven Drive	£5,000.00	£88,357.61
Management Fees	£20,575.25	£108,932.86
Sale and mortgage proceeds		
70 Princess Alice Way	£55,909.73	£164,842.59
1A, 15A Redbourne Drive, 116, 152 Greenhaven Drive	£383,337.40	£548,179.99
The Loan Account		
First Direct Account	£136,167.60	£684,347.59
Cash	£64,467.95	£748,815.54
SC HSBC Rental Account	£5,000.00	£763,815.54
Thamesmead/Just Legal	£90,995.00	£844,810.54
26 Beaconsfield Road	£35,500.00	£880,310.54

Total		**£880,310.54**
Ms Oberman's share (50%)		**£440,155.27**