Neutral Citation Number: [2021] EWHC 2644 (Ch)

Case No: HC-2017-001058

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
BUSINESS LIST (ChD)

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

Date:01 /10/2021

Before:

EASON RAJAH QC
Sitting as a Judge of the Chancery Division

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Between:

(1) ANWAR GANGAT
(2) SURENDRA BHAWAN **Claimants**

- and –

YUSUF JASSAT

Defendant

- -

Arfan Khan (instructed by Pandya Arbitration Global) for the **Claimants**
David Peters (instructed by Edwin Coe LLP) for the **Defendant**

Hearing dates: 16, 17, 18, 21, 22, 23 and 29 June 2021

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Approved Judgment

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Eason Rajah QC

1. This trial was conducted on a fully remote basis. It is the trial of liability pursuant to the order of Deputy Master Nurse dated 9 March 2020 which directed a split trial. That order identifies the issues which might need to be determined to establish liability rather than quantum and disclosure has been restricted to those issues. I have concluded that it is not necessary to determine every issue identified in that order to determine the issue of liability.

2. This judgment is structured as follows:

A) Introduction

3. The Claimants, Anwar Gangat and Surendra Bhawan, are businessmen resident in South Africa. The Defendant, Yusuf Jassat, is a British national, resident in London, who has a number of business interests, including a property related business in partnership with his wife which trades as Richmond Lodge Management.

4. The Claimants were, with two other South African businessmen (Edrees Hathurani and Dinesh Seetha), the principal shareholders in that part of the Jumbo Group of companies which carried on a legitimate cash and carry business in South Africa from the mid-1980s until the sale of the business in 1998. During this period an "off book" cash business ("the cash business") was run alongside the legitimate business of the Jumbo Group companies. The profits of the cash business were not declared to the South African Revenue and tax was not paid on them at that time. A portion of the profits from the cash business was expatriated from South Africa, in breach of South African exchange control requirements in place at the relevant time, and placed in Swiss bank accounts.

5. The Claimants' case is that the monies in the Swiss bank accounts belonged to them and to Mr Hathurani and Mr Seetha in shares agreed between themselves. The Swiss bank accounts were placed under the control of the Defendant. Initially, they say, the Defendant obtained their consent to the application of the monies in the Swiss accounts in the purchase of UK real property on their behalf, but over the years they lost oversight of the Defendant's actions with their funds. The Claimants now seek orders for accounts and inquiries to establish what has become of their share of the funds in the Swiss bank accounts under the Defendant's control, and equitable compensation for breach of trust and breach of fiduciary duty.

6. The Defendant accepts that he had some control of the Swiss accounts. He puts the Claimants to proof of their interest in the funds in those accounts. No positive case has been pleaded by the Defendant, but at trial it was argued that the Claimants cannot discharge the burden of proving their interest because the correct legal analysis of the position in South Africa is that the profits of the cash business are really the property of the Jumbo Group companies which carried on the legitimate cash and carry business.

7. If the Claimants can overcome that hurdle, the Defendant says that he managed all the Swiss accounts in accordance with Mr Hathurani's instructions and he says that so far as he was concerned the monies were Mr Hathurani's, or, at least, his to deal with as he thought fit. In essence he says that any duty he has to account in respect of the

Swiss bank accounts is a duty to account to Mr Hathurani, not the Claimants, and that any claim the Claimants may have in respect of those accounts is against Mr Hathurani.

8. Mr Hathurani brought proceedings in the High Court in 2008 in relation to the Defendant's handling of the funds in the Swiss accounts and those proceedings were compromised in 2011 on the basis that the Defendant would pay Mr Hathurani £8,750,000 by 31 January 2012. The Defendant no longer pursues his pleaded case that Mr Hathurani was acting on behalf of the Claimants in those proceedings and that the compromise of those proceedings extinguished any claim they may have in the expatriated funds. The Defendant does assert that it would be an abuse of process for the Claimants, who he says chose not to join those proceedings, to seek to assert an interest in any asset claimed by Mr Hathurani in the Hathurani Proceedings. This is significant because Mr Hathurani claimed that the Defendant had acquired a shopping centre at New Ash Green ("**New Ash Green**") for Mr Hathurani, whereas the Claimants contend that they have a 20% interest in it.

9. The Defendant says that he acquired only one property, called Eastover, for the Claimants in 1991 using a Jersey corporate vehicle for that purpose. He says the Claimants agreed with him in 2009 that he should pay them £653,009 in respect of their interest in Eastover which would be treated as an interest free loan. He accepts that it has not been repaid.

10. The Claimants say that the Defendant controls much more property acquired with their funds than simply Eastover. They rely on a document which the Defendant accepts that he prepared and signed in 2009 in which he acknowledges holding in addition to Eastover (and its rent and investments made from its rent) further sums in cash of approximately $7.5m and a 20% share of the shopping centre at New Ash Green. The document was also signed by his daughter and it has been called the "**Richmond Lodge Document**" in these proceedings. At the pre-trial review I directed that the original Richmond Lodge Document be produced by the Claimants for inspection. The original which was produced is identical in all respects save that it is clear from the placement of the signatures that it is a different document to the document which was disclosed by both sides. The Defendant alleges that this recently produced document is a forgery.

11. Other issues were raised by the pleadings which have fallen by the wayside. There was on the face of the pleadings a dispute between the parties as to the consequences of the South African tax and foreign exchange evasion involved in the expatriation of the funds in the first place. Expert evidence from South African lawyers was filed and served by both parties. There is broad agreement between the experts and neither were called as witnesses. In light of their evidence much of the dispute on illegality has fallen away and the Defendant restricts his argument on the doctrine of illegality to the argument that there should be a stay of any money judgment against the Defendant. If the Claimants can establish that it was their money which was used to acquire Eastover, he says the only order which should be made is an order for the payment of £653,009 and that such order should be stayed until the Claimants have secured that its enforcement would not be a further breach by them of South African exchange control regulations.

B) Approach to the evidence

12. There is a considerable conflict in the evidence. Both sides accuse the other of giving dishonest evidence.

13. In resolving the conflict of evidence in this case I have sought to adopt the approach described by Robert Goff LJ (as he then was) in *The Ocean Frost* [1985] 1 Lloyd's Reports 1 at p.57:

> *"It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth."*

14. This passage has been repeatedly cited with approval and applied by subsequent cases; see for example *Bancoult, R (on the application of) (no3) v Secretary of State for Foreign and Commonwealth Affairs* [2018] UKSC 3 at paragraphs 100-101.

15. I also note that the matters on which the witnesses have given evidence date back to the 1980's and 1990's. Where witnesses give evidence on matters which have taken place so long ago, there is bound to be detail upon which their memory cannot be expected to be reliable.

16. Ordinarily the court would be assisted by contemporaneous documentation. In this case, there are some contemporary documents available but it is a feature of this case that the South African businessmen were seeking to conceal their connection with the expatriated funds from the South African authorities. There was therefore an aversion to creating or keeping documentary records which might now be helpful to a court. There are subsequent events which may shed some light on the issues, and some of those events have generated documents. On any view the documentation which is available is not complete, and there is always a danger when the documentation available is incomplete that the picture that is disclosed is misleading. This is a particular danger where it is said that there has been deliberate suppression of relevant documents by one or other side in a case.

17. Notwithstanding these challenges, I do my best to assess the rival versions of the truth against an objective assessment of such reliable facts as there are, and the overall probabilities.

C) The witnesses

18. All the witnesses gave evidence remotely from the offices of a firm of solicitors, with a legal representative of each side present in the room as an observer. The Claimants gave evidence from Johannesburg and Durban. The Defendant, Ms Jassat and Ms Atkins gave evidence from London. The parties agreed at the pre-trial review that neither Claimant would listen to the evidence given by the other and would not read the daily transcripts of the other's evidence until after they had both completed giving their oral evidence. There is no suggestion that this did not happen.

19. There were a number of difficulties with Mr Gangat's evidence. His witness statement was plainly drafted for him and at times he seemed surprised by what it said. There were also a number of inconsistencies between his witness statement and the Particulars of Claim. Both the Claimants had been ordered by Deputy Master Nurse on 20 March 2020 to search for and disclose a number of categories of documents including all documents relating to an inquiry by the South African Revenue Service ("**SARS**") into the cash business and the expatriated funds. Mr Gangat and Mr Bhawan both maintain that apart from settlement agreements and an email, they have no such documents relating to their dealings with SARS. A disclosure list with a statement of truth was prepared by each of them confirming that they had searched for and disclosed all documents relating to the SARS inquiry. When Mr Khan was opening the Claimants' case on Day 2 of the trial, he sought to deduce how much money had been expatriated from South Africa and paid into the Swiss accounts from the amount of tax paid pursuant to the settlement agreements. However, it soon became clear that the basis on which the tax paid had been calculated was not in evidence. Overnight, a letter from the South African Revenue Service which addressed this issue and confirmed Mr Khan's instructions was produced by Mr Gangat. The Defendant did not oppose the introduction of this document into the trial bundle on Day 3 but when Mr Gangat gave evidence he was cross examined at length by Mr Peters about the discovery of this document. Mr Gangat maintained that the document was found in a box of old cheque books which had not previously been searched and was the only further document relating to the SARS inquiry that had been found. He was unable to explain satisfactorily why it had suddenly occurred to him to search this particular box overnight, nor why it had not occurred to him to do so when he had been ordered by Deputy Master Nurse to search for documents in 2020. This was not credible evidence and I reject it. The SARS inquiry was a major inquiry which lasted several years and (as Mr Bhawan readily agreed) generated an enormous amount of documentation. The settlement agreements can be avoided by SARS if the Claimants have failed to make full disclosure to SARS. The suggestion that the Claimants have kept almost no documents at all relating to the inquiry and what they have communicated to SARS is not credible. Nor is it credible that only one further document beyond those disclosed was kept which Mr Gangat conveniently found overnight and which conveniently addressed the point on which their counsel had got into difficulty earlier that day.

Surendra Bhawan (Second Claimant)

20. Mr. Bhawan's witness statement was unsatisfactory because it simply adopted what Mr Gangat had said. However, he was cross examined at some length and his evidence, in his own words, was consistent on material aspects with that of Mr Gangat. He was careful not to claim or assert knowledge which he did not have and he was quick to accept things which were not correct or accurately stated. However, he became very uncomfortable when cross examined as to why there had been no wider disclosure of documentation relating to the SARS inquiry and I did not find his evidence on this issue credible.

Yusuf Jassat (Defendant)

21. Mr Jassat was, by far, the least satisfactory witness. He was argumentative and evasive and it became clear that on certain issues he was either lying to this court or had lied in his witness statement in the Hathurani proceedings. In his witness statement in the Hathurani proceedings he said that New Ash Green was purchased with monies belonging to all the South African businessmen and was therefore owned as to 60% by the Claimants and Mr Seetha. This is directly contrary to his case in these proceedings where he says New Ash Green was purchased with Mr Hathurani's money and that the Claimants and Mr Seetha have no interest in it. When cross-examined, his evidence to this court was that his witness statement in the Hathurani proceedings was not true, and he had known it was not true when he signed the Statement of Truth to it. That is a *prima facie* contempt of court. He claimed that he had intended to say the opposite in the witness box in the Hathurani proceedings unless the Claimants and Mr Seetha came to give evidence to support what he says was *their* assertion (made in 2009) that the property was purchased with joint monies. Firstly, this is not mitigation for making a false Statement of Truth. Secondly, the supposed mitigation does not stand up to scrutiny – the last amendment to his WS was made just 2 days before the trial was due to start and it would have been abundantly clear by then that the Claimants and Mr Seetha had not provided witness statements and were not coming to give evidence for him.

Defendant's witnesses – Ms Shakera Jassat and Bernadette Atkins.

22. I also heard evidence from Shakera Jassat who is the Defendant's daughter and from Bernadette Atkins who works for the Defendant. They were both clearly loyal to the Defendant and trying to give evidence which helped him, but were nevertheless honest witnesses. In the end there were aspects of their evidence on which I am satisfied they were simply mistaken.

D) Documentation

23. The principal sources of documentation available at trial were (a) the documentation disclosed in, and generated by, the Hathurani proceedings and (b) a report prepared by Grant Thornton on behalf of the Defendant and its annexures (c) emails and correspondence passing between the parties and their advisors.

24. The Grant Thornton document is a significant document in these proceedings. On 21 November 2011 HMRC opened an investigation into the Defendant's tax affairs under the code of practice applicable to cases of suspected serious fraud. The Defendant instructed Grant Thornton to act in relation to making a disclosure to HMRC's Specialist Investigations Office in London. The report dated 9 October 2012 confirms that Grant Thornton had conducted "*a thorough review*" of the Defendant's personal affairs as well as the offshore companies whose properties were managed by the Defendant as a partner of Richmond Lodge Management. Grant Thornton had been given access to the historic records of the offshore entities for that purpose as well as to the Defendant's bank statements and the bank statements of all bank accounts managed by him on behalf of third parties. The report is some 71 pages long and its appendices occupy three volumes of the trial bundle.

25. The annexures to the Grant Thornton report, together with the documents disclosed in the Hathurani proceedings means that there is contemporaneous documentation available in relation to the Swiss bank accounts, the Jersey offshore structures, the properties which had been acquired and Mr Hathurani's dealings with SARS. The documentation is incomplete but I have found it helpful in building a picture of what occurred.

26. The Grant Thornton report, and the documents generated by the Hathurani proceedings are also a source of previous statements which have been made by or on behalf of the Defendant and Mr Hathurani and are helpful in assessing where the truth lies in this case.

E) The facts

27. I will now set out the facts, and my findings where the facts are disputed, in broadly chronological order. Inevitably my consideration of issues which are dealt with later in this judgment have affected my conclusions on issues dealt with earlier.

The Jumbo Group and SARS

28. In the early to mid-1980's the Claimants became shareholders in various companies in the Jumbo Group in South Africa. The other major shareholders in those companies were Edrees Hathurani and Dinesh Seetha.

29. The general structure of the shareholdings was that Mr Hathurani and Mr Seetha each had a 40% interest and the Claimants each had a 10% shareholding, although there were other minor shareholders in some companies. Mr Hathurani, Mr Seetha, and the Claimants are referred to together in this judgment as "**the South African businessmen**".

30. The Jumbo Group companies carried on a cash and carry business, the profits of which were disclosed to SARS and on which tax was paid.

31. In about 1998, the cash and carry business was sold. The circumstances of the sale led to an acrimonious falling out between Mr Hathurani on the one hand and Mr Gangat, Mr Bhawan and Mr Seetha on the other.

32. SARS had concerns about the sale of the Jumbo companies and in or about 2006 convened an inquiry into the sale and the manner in which the proceeds of sale were dealt with by the South African businessmen.

33. Mr Hathurani provided SARS with an affidavit dated 26 April 2008 as part of a compromise of the claims against him by SARS and as part of an agreement with

SARS that he would be afforded immunity from prosecution. In that affidavit he made voluntary disclosure to SARS of an "off book" cash business which had operated for a decade or so alongside the legitimate cash and carry business of the Jumbo Group. The Claimants and Mr Seetha were informed that Mr Hathurani had settled his disputes with SARS and had made full disclosure in respect of the cash business. Mr Seetha then made a statement, which each of the Claimants and Mr Seetha confirmed as true in affidavits made on or about 21 May 2008 in which they too made voluntary disclosure in respect of the "off book" cash business.

34. SARS entered into settlement agreements with each of the Claimants (and Mr Seetha) conditional upon each making full disclosure to SARS. The accounts of Mr Hathurani and Mr Seetha in their affidavits to SARS are the same in many material respects and, where they are, I regard these affidavits as a broadly reliable account. In circumstances where Mr Seetha apparently had not seen Mr Hathurani's affidavit when he made his own affidavit, this suggests that where they say the same thing, both Mr Hathurani and Mr Seetha were telling the truth. In light of the bad feeling between the South African businessmen, and Mr Hathurani's apparent desire to get his former business partners into trouble with SARS, the similarity in accounts is not attributable to collusion. The account set out in the affidavits broadly accords with the Claimants' evidence (although there are anomalies as to dates, which I consider understandable having regard to the time which has lapsed since these events) and it accords with what the Defendant says that he understood from what he had been told by the South African businessmen in about 1991.

35. I have found the affidavits broadly reliable but I do not accept everything that is said in the affidavits. One issue, for example, on which I do not accept Mr Seetha's affidavit as correct, is his attempt to downplay his and the Claimants' knowledge of the expatriation process and of the operation of the Swiss bank accounts suggesting that "*Mr Hathurani controlled this entire side of the Jumbo operation*". It is highly improbable that the Claimants and Mr Seetha would have let Mr Hathurani keep them completely in the dark as to what had become of their share of the expatriated monies. While Mr Hathurani may have dealt with the expatriation of the funds, the Claimants and Mr Seetha were clearly involved in the Swiss bank accounts, visiting Geneva to create their own individual accounts and to arrange the division of funds between the

South African businessmen. They claimed that they had no direct contact with Mr Jassat but in fact they gave evidence that he visited them in South Africa, they visited him in London and Mr Gangat gave evidence of telephone calls and email contact. According to Mr Hathurani it was Mr Gangat and Mr Seetha who were responsible for the division of the expatriated monies.

The expatriation of funds

36. The voluntary disclosure made by the South African businessmen to SARS confirmed that a portion of the profits made by the cash business had been secretly expatriated in breach of South African exchange control regulations ("**the expatriated funds**").

37. It was agreed between the South African businessmen that their shares in the cash business and the expatriated funds would be 40% for each of Mr Hathurani and Mr Seetha and 10% for each of Mr Gangat and Mr Bhawan.

38. Mr Bhawan's evidence was that between 1987 and 1997 a sum of 207m South African Rand was expatriated to Swiss bank accounts. Mr Bhawan's evidence was that he worked closely with the Jumbo Group accountant, Mr Yunus Moolla. Mr Moolla kept records of the profits made by the cash business and the amounts expatriated. Mr Seetha exhibited to his affidavit to SARS schedules which had been prepared by Mr Moolla as the best available information about the amounts expatriated. Schedule A to Mr Seetha's statement appears to show that the cash business generated profits of approximately R209m of which approximately R207m was expatriated.

39. Mr Hathurani was the dominant figure amongst the South African businessmen and organised for the expatriated funds to be paid into Swiss bank accounts. Mr Hathurani said in his affidavit that this involved the use of a number of middlemen in South Africa and involved the payment of commission of between 2% and 5% on the amounts transferred. Mr Hathurani's affidavit to SARS also said that records had been kept by Mr Moolla and invited SARS to contact Mr Moolla and Mr Bhawan for further details. He estimated that the amounts expatriated were approximately R200m.

40. The letter from SARS to Mr Gangat on 3 February 2009 (which was disclosed during the hearing in circumstances described in paragraph 20 above) indicates that Mr Gangat's evidence to the inquiry was that R207m had been expatriated and that SARS accepted Mr Moolla's schedule as accurate and levied tax at the rate of 45% on each of the Claimants' 10% share of the R209m profits.

41. It is not necessary for me to determine exactly how much was expatriated from South Africa, but it is helpful to understand the scale of the operation and the sums involved. It seems that the sums which were expatriated from South Africa during the 1980s and 1990s to Swiss bank accounts, which will have been reduced by the commission of the middlemen, was somewhere in the region of R200m.

The Swiss bank accounts

42. The Defendant and Mr Hathurani had known each other from the 1970s. According to Mr Hathurani's affidavit to SARS, bank accounts were established under the Defendant's control at Banque Multi Commerciale ("**BMC**") which became Banque Safdie. The accounts were given names which disguised the identity of the true account holder. Initially Mr Hathurani was the account holder, but to protect himself, Mr Hathurani instructed the Defendant and his bankers in the late 1980s to change the identity of the account holder to the Defendant.

43. The Defendant was given a power of attorney to control these accounts which he says he did on Mr Hathurani's instructions. The expatriated funds were paid into these accounts.

44. In the late 1980s or early 1990s Mr Seetha and Mr Gangat came to London and met with the Defendant. Mr Gangat and Mr Bhawan gave evidence that this trip was made because some US$20m had now accumulated in the main Swiss bank accounts and it was time for it to be distributed amongst the South African businessmen.

45. The Defendant says that it was at this point that he was told that the expatriated funds were owned as to 40% by Mr Hathurani, 40% by Mr Seetha and 20% for Mr Gangat. In fact the position was more nuanced. Mr Hathurani's and Mr Seetha's share included

an interest intended for certain of their relatives. Mr Gangat's share was held equally for Mr Gangat and Mr Bhawan. Mr Bhawan has been content to leave it to Mr Gangat to represent him and deal with his interest. The Defendant learnt only later of Mr Bhawan's interest.

46. The Defendant says that Mr Hathurani instructed him at this time that Mr Seetha and Mr Gangat would be responsible for splitting the expatriated funds that came into Mr Hathurani's accounts. Mr Seetha, Mr. Gangat and the Defendant then travelled together to Geneva where further accounts were created at BMC to hold the personal shares attributable to each of the South African businessmen in the expatriated funds. The account created to hold the share of the Claimants was called "Camelot" and the account holder was Mr Gangat. The Claimants each gave evidence that the amount transferred into Camelot on this occasion was $4m. The Defendant was given a power of attorney to control Camelot.

47. Apart from some bank statements for a limited period in the 1990s, there is very little documentary evidence of the Swiss bank accounts available at this trial. It seems that over the years many accounts were opened (and closed) at BMC, Banque Safdie and elsewhere (the Defendant refers to accounts at Merrill Lynch) and that the Defendant had signing authority over these accounts. The Defendant accepts that he eventually became the account holder of at least some of these accounts.

48. It was nevertheless common ground between the Claimants and the Defendant in their evidence (and in the Defendant's amended third witness statement in the Hathurani proceedings) that there was always at least one account of Mr Hathurani's which was earmarked to receive the funds on expatriation and before division between the South African businessmen. The account so used changed from time to time. Initially, at least, it was an account called "B. Kidney". It was also common ground that after the first visit to Geneva for the initial division of $20m there were thereafter individual accounts for the benefit of each of the people who had an interest in the expatriated funds. These were also controlled by the Defendant. Again the accounts so used changed from time to time.

49. The Claimants say that, after this initial distribution, further sums were expatriated from South Africa, and apart from $12 million, were distributed in the agreed proportions to the individual accounts of each of the South African businessmen. The affidavits filed by Mr Seetha and Mr Hathurani said the same to SARS.

50. According to Mr Hathurani the remaining $12m was to have been shared in the agreed proportions, but this did not take place because the monies were misappropriated by the Defendant.

51. The Claimants evidence, consistent with Mr Hathurani's position in the Hathurani proceedings, was that over time the Defendant acquired a position of complete control over the Swiss bank accounts and only he knew what accounts existed, and whose money they held. I accept that evidence.

52. The Defendant accepts that he has provided no account to the Claimants for his dealings with either the monies in their individual account, originally Camelot or such successor that he may have set up, nor in respect of his dealings with the main accounts which he accepts he knew was held as to 20% for the Claimants.

Ownership of the funds in Swiss bank accounts

53. This is a convenient point in this judgment to consider the non-admission by the Defendant of the plea that the Claimants owned the funds in the Swiss bank accounts. Although no positive case is pleaded, the Defendant now contends that the correct legal analysis is that monies made by the "off book" business must have belonged to the Jumbo Group companies from whose premises the business was conducted. In support of this contention the Defendant points to the letter from SARS dated 3 February 2009 (which was disclosed in the circumstances described in paragraph 20 above) dismissing the same contention being advanced on behalf of Mr Gangat.

54. It seems to me that such a fundamental point should have been positively pleaded and is not, but I have considered it anyway, and I am satisfied that the funds belong to the Claimants for two reasons.

55. Firstly, the "off book" business was investigated during the SARS inquiry and SARS concluded that the cash it generated belonged to the South African businessmen and taxed them accordingly. It dismissed the attempt by Mr Gangat's South African lawyers to argue the point now raised by the Defendant. SARS was in a much better position than this court to assess what the correct analysis of the position was. The evidence of what occurred is consistent with this being an illicit business by the South African businessmen and not the companies. The cash from the "off book" business was never included in any of the Jumbo Group companies accounts and there is no evidence of any claim having ever been made to those monies by any of those companies. The Defendant cannot identify which Jumbo Group companies it says own the profits of the "off book" business and the constitutional documents of those companies or details of their directors and shareholders are not available. There is no evidence of what knowledge the directors of any particular company may have had of the "off book" business and no evidence of South African company law which might affect the issue of ownership of the "off book" business. I reject the invitation, based on such flimsy evidence, to speculate that the companies, and their directors, were complicit in the South African businessmen's conspiracy.

56. Secondly, and in any event, I am not concerned with who owned the cash generated by the "off book" business. That cash was given to middlemen and no one in this case knows where it went. I am concerned with dealings with monies standing to the credit of the account holders of various Swiss bank accounts. Those accounts were initially in the names of the South African businessmen and may later have been transferred to accounts in the name of the Defendant as their agent and pursuant to powers of attorney granted to the Defendant by them. Whatever personal claims any third party such as the Jumbo companies might have against the South African businessmen it is clear that the chose in action represented by the debt owed to the account holder by the Swiss banks ultimately belonged to, or was held for, the South African businessmen.

Investment in UK real estate

57. There is no dispute that the Defendant used funds from the Swiss bank accounts to invest in real estate in the United Kingdom. He began by investing Mr Hathurani's

monies in property (the basis of his agreement with Mr Hathurani was disputed in the Hathurani proceedings). He was later asked by the Claimants and Mr Seetha to invest their monies in property on their behalf. The Defendant agreed.

58. The Grant Thornton report to HMRC on behalf of the Defendant identified 53 commercial and residential properties acquired between 1988 and 2005 by or on the instructions of the Defendant almost all of which were properties in which Grant Thornton said the Defendant had no interest and had been acquired primarily for the South African businessmen.

59. The properties were initially purchased in the names of a series of companies incorporated in Jersey. Sixteen companies were identified by the Grant Thornton report. Of those companies six were identified as having been set up for the benefit of Mr Hathurani, three for the benefit of Mr Seetha, three for the benefit of Mr Gangat (and therefore Mr Bhawan) and one for the benefit of all of them. Offshore corporate services providers supplied the directors to the Jersey companies and executed declarations that the shareholdings were held by them as nominee for the relevant South African businessman. These companies were managed and controlled by the Defendant and the offshore nominees took their instructions from the Defendant. The Defendant says that Richmond Lodge Management in which he and his wife are partners, acts as property management agents for the offshore companies, collecting rent and maintaining the properties.

60. The Defendant confirmed in evidence that the companies set up for the Claimants were:

a. Alton & Farnham Limited ("**A&F**");
b. Richmond and Kingston Properties Limited; and
c. Redhill and Reigate Properties Limited.

61. The contemporaneous documentation is not complete, but it is possible to see that on 16 October 1991 A&F was incorporated as a company in Jersey. On 22 October 1991 each of Trident Nominees Limited, Strategic Management Limited and Xenith Trust Company Limited all of 17 Bond Street, St Helier, Jersey executed Declarations

declaring that they held the shares of A&F as nominee and trustee for Mr Gangat. The nomineeship of the shares in A&F was passed to Guernsey entities in 1992 which executed similar declarations that they held the shares of A&F as nominee and trustee for Mr Gangat on 28 January 1992. There are declarations of nomineeship for Mr Gangat in respect of Richmond & Kingston Properties Limited by the Guernsey entities on 4 March 1992 and by CI Law entities in Jersey on the 9 March 1993.

62. On 11 November 1991 A&F purchased 37/43a Eastover, Bridgewater, Somerset ("**Eastover**"). The funds to purchase Eastover were paid by the Defendant from the Claimants' Camelot account using his power of attorney.

63. The Defendant's case is that this was the only property acquired by him for the Claimants but the documents suggest that A& F opened bank accounts, obtained mortgages and invested in other properties and that some properties were acquired in the name of Richmond & Kingston Properties Limited and Redhill and Reigate Properties Limited. This is reinforced by the Grant Thornton report on behalf of the Defendant to HMRC. It says that A&F acquired further property at Blaby Road. Richmond & Kingston Properties Limited also acquired property – land at Broadwood rise – this is what has been referred to as "**the mosque land**" and there is no dispute that it was acquired with the rents from Eastover. Blaby Road was transferred to Richmond & Kingston Properties Limited from A&F for £412,500 in June 1992. The Defendant's evidence to this court is that he had no recollection of ever acquiring a property at Blaby Road whereas the report says that the Defendant's instructions to Grant Thornton were as follows:

"[Mr Jassat] states that this property was purchased on behalf of [Mr Gangat]. [Mr Jassat] confirms that [Mr Gangat] provided the funds to purchase the property, and that when the property was subsequently sold, the proceeds were paid to [Mr Gangat]."

The Claimants deny having ever received those monies.

64. I do not need to determine precisely what property was acquired by the Defendant for the Claimants but I do not accept that the only properties acquired by the Defendant

using only the Claimants' monies was Eastover, and the mosque land from its rents. It is inconsistent with the contemporaneous documents, the Defendant's representations to HMRC in the Grant Thornton report, the Richmond Lodge Document (which I will come to) and the emails passing between the Claimants and the Defendant and Grant Thornton (which I will also come to).

65. The company set up for all the South African businessmen was identified in the Grant Thornton report as Piperton Finance Limited. This company was used to purchase a shopping centre at New Ash Green with the benefit of a mortgage and cash from the Swiss "B Kidney" account. I will come to the Hathurani proceedings later in this judgment but, in his witness statement in the Hathurani proceedings, the Defendant also said that New Ash Green was purchased with monies belonging to all the South African businessmen and was therefore owned as to 60% by the Claimants and Mr Seetha. In those proceedings Mr Hathurani accepted that he could not gainsay what the Defendant asserted because only the Defendant knew what monies he had used. Consistently with what the Defendant said in his witness statement the Richmond Lodge Document prepared by the Defendant recorded the Claimants as having a 20% interest in New Ash Green and the similar document prepared for Mr Seetha recorded that he had a 40% interest in New Ash Green.

66. The Defendant now seeks to say to this court that New Ash Green was purchased with Mr Hathurani's money. I reject his evidence on this issue. It is significant that the monies came from the B Kidney account which is the account which was earmarked to receive the expatriated funds before division between the South African businessmen and so the use of monies from that account supports the proposition that New Ash Green was purchased with joint monies. I accept as correct the evidence on this issue that the Defendant provided in his witness statement in the Hathurani proceedings (later sent to HMRC on his behalf without correction) and in his representations to HMRC through the Grant Thornton report. I accept as correct what the Defendant recorded as to the Claimants' interest in New Ash Green in the Richmond Lodge Document.

67. The remaining three companies not held for the South African businessmen were said to have been set up for a Mr Patel who does not otherwise feature in this litigation.

68. The Defendant accepts that he has provided no account to the Claimants for his dealings with any of the companies which were created for them and managed and controlled on his instructions.

Breakdown in relations in 1998

69. As I have already mentioned, the sale of the Jumbo cash and carry business resulted in a severe breakdown in relations between the South African businessmen. Mr Seetha's statement to SARS said that after the sale Mr Hathurani became aggressive and threatening, refused to discuss the expatriated funds with them and made them feel that their interest in those funds were lost. Mr Jassat corroborates this with an account of an incident he witnessed in 2003 when Mr Hathurani attempted to run over Mr Gangat because he asked for his share of the expatriated funds.

70. There is no suggestion, however, that there was in 1998 any breakdown in the relationship between Mr Hathurani and the Defendant. That relationship broke down in 2004 when the Defendant says that Mr Hathurani began to demand repayment of monies he said were due to him from the Defendant. That is also what Mr Hathurani said in his affidavit to SARS. According to the Defendant's witness statement in the Hathurani proceedings he had no direct contact with Mr Hathurani from October 2004 to 2008.

The Richmond Trust

71. In 2005, shortly after this breakdown in the relationship between the Defendant and Mr Hathurani, the Defendant gave instructions to the Jersey nominees to transfer all the Jersey companies to a discretionary trust constituted under the law of Jersey and for the benefit of his family, called the Richmond Trust.

72. A copy of the trust deed is one of the few documents in relation to this trust that is in the bundles. It was initially set up in 2000 as a discretionary trust with the Red Cross as the only named beneficiary and a power on the part of the trustees (initially CI Law Trustees in Jersey) to add beneficiaries.

73. The Defendant says that he set up this trust, using a friend in Malawi called Mr Bhana as a purported settlor (the trust deed itself is silent as to who the economic settlor is). The Defendant in his witness statement and in his oral evidence confirmed that the Richmond Trust was set up for the benefit of his family and his children. On 15 May 2006 CI Law Trustees retired in favour of Mauritian trustees.

74. The Defendant says that not one of the South African businessmen, not even Mr Hathurani, was aware of the Richmond Trust. In his evidence the Defendant said that it was his decision to transfer the companies to the Richmond Trust.

75. When asked why he had thought it appropriate to transfer Mr Gangat's companies to the Richmond Trust, Mr Jassatt said he thought it would be safer and he would just give the companies (or underlying properties) to Mr Gangat when he asked for them. When it was pointed out that in his witness statement he had said that as a discretionary trust it was the trustees who have "*total power*" over what happens, he said that he thought they would listen to him or his family. I did not find this explanation to be credible, although I note that the Defendant accepted that it was the Claimants' assets that were being transferred into the Richmond Trust. In my view it is much more likely that these assets were transferred into the Richmond Trust because of Mr Jassat's dispute with Mr Hathurani and as part of an attempt by Mr Jassat to conceal them from Mr Hathurani and to improve his position in that dispute.

76. On any view the Defendant was not authorised by the Claimants to transfer companies held for them into an offshore trust for the benefit of the Defendants' family. This was simply a misappropriation by the Defendant of assets which did not belong to him.

The Hathurani proceedings

77. On 17 October 2008 Mr Hathurani commenced proceedings against Mr Jassat claiming that his share of the monies in the Swiss bank accounts had been invested in UK real property pursuant to a partnership between Mr Hathurani and Mr Jassat. The claim was for in excess of £28m by way of partnership capital and partnership profits. Mr Jassat's response was that he had taken monies from the Swiss accounts with Mr Hathurani's permission, on the basis that the relevant sums were loaned to him by Mr

Hathurani. These loans were interest free, but were to be repaid with a bonus (the amount of which was left to the Defendant's discretion). The Defendant contended that the total he borrowed amounted to £7.5m. In the end the claim was compromised at the doors of the court on the basis that Mr Jassat had received no more than £7,500,000 of Mr Hathurani's monies and he would repay £8,750,000 by 31 January 2012.

78. It is significant that in his Defence the Defendant contended that the monies which he had taken from two of the Swiss Bank accounts and used to purchase property, namely B. Kidney and Taisen, had belonged to all four South African businessmen. In answer to a request for further information under CPR Part 18, Mr Hathurani acknowledged that given the Defendant's control over the Swiss bank accounts, Mr Hathuirani could not state whether the sums used were his funds or those belonging to all four South African businessmen.

79. The Defendant's evidence in chief for trial on 6 May 2011 was set out in his Amended Third Witness Statement dated 4 May 2011 supported by a Statement of Truth. In that witness statement the Defendant confirmed that he had control of Swiss bank accounts, some of which contained joint monies and some of which contained the shares of the individual businessmen. He reiterated that the B. Kidney account held jointly owned monies. He explained that Pipperton Finance Limited had acquired New Ash Green with a mortgage and monies belonging to all four South African businessmen.

80. In his evidence to this Court, the Defendant recanted what was said in that witness statement. His evidence to this Court was that New Ash Green was purchased with Mr Hathurani's money. His only investment for the Claimants, he said, was Eastover.

81. As I have already made clear I reject the Defendant's evidence that New Ash Green was purchased with Mr Hathurani's money alone, rather than with a mortgage and money from the B Kidney account belonging to all four South African businessmen.

The Richmond Lodge Document

82. Mr Seetha is recorded in the Isadore Goldman attendance note as having said that notwithstanding the acrimony between Mr Hathurani and the other South African businessmen over the sale of Jumbo and the SARS inquiry, Mr Hathurani had contacted him in December 2008, was extremely cordial to him, and invited him to join him in his fight against the Defendant. Mr Seetha declined.

83. The Defendant's evidence is that when the Hathurani proceedings commenced, he called Mr Gangat and Mr Seetha and invited them to come to London. The Defendant says that he invited them to come to London to see if the trustees would allow them to take their property in Eastover. I do not accept that was the real reason. The Defendant had not communicated with Mr Seetha and Mr Gangat for years and for years had displayed no indication that he intended to account to Mr Seetha and Mr Gangat for their money and investments, having instead transferred them into the Richmond Trust for the benefit of his family. It is much more probable that the Defendant was hoping to reach an agreement with Mr Seetha and the Claimants so that they did not join Mr Hathurani's proceedings against him.

84. On 7 January 2009 Mr Gangat and Mr Seetha met with the Defendant in London and there were then several meetings. Mr Gangat remembers having several meetings but not what was said in them. He does recall that his objective was to see some documentary evidence of the assets which were held for the Claimants.

85. The Defendant's account of these events is that he first arranged for them to meet with Mr Nick Morgan of CI Law. I observe that CI Law was by this time no longer the trustee of the Richmond Trust to which the Jersey companies had been transferred but it seems Mr Morgan was still a director of some or all of the companies. The Defendant says it was made clear to all at the meeting that A&F belonged to Mr Gangat. Mr Morgan agreed to the transfer of Eastover to Mr Gangat and Mr Bhawan but that Mr Gangat should go to a solicitor for that purpose. The Defendant says he then took Mr Gangat and Mr Seetha to see Isadore Goldman, the solicitors acting for him in the Hathurani proceedings. It is apparent from the attendance note of that meeting that the purpose of that meeting was for Isadore Goldman to find out more about Mr Hathurani, the cash business and the expatriated funds and it is clear that Mr Seetha and Mr Gangat were very forthcoming. The Defendant says that he then took them to Edwin Coe to

arrange the transfer of Eastover to Mr Gangat but this meeting was aborted because Mr Gangat was not willing to hand over his passport.

86. Looking at the overall probabilities, it seems to me most likely that these meetings were intended to satisfy Mr Gangat and Mr Seetha that their investments were safe and would and could be returned to them if they wished. In return Mr Gangat and Mr Seetha would not participate in the Hathurani proceedings and would provide Mr Jassat's solicitors with assistance by way of background to help him with the Hathurani proceedings. The Defendant is specific about the order of the meetings. The first meeting was clearly to provide reassurance to Mr Gangat and Mr Seetha, the second was to extract information to help Mr Jassat in the proceedings and the third may have been to begin the process of transferring assets to them. It is plausible that at that stage Mr Gangat baulked at producing his passport and having the prospect of having the properties vested in his name or in entities traceable to him while the SARS inquiry against him was unresolved.

87. At some point on the 7th January 2009 Mr Gangat and Mr Seetha returned with the Defendant to his office and one or more copies of a document (referred to in the proceedings as the Richmond Lodge Document) were signed. The document was on Richmond Lodge Management letterhead. I should set out its terms in full.

> Richmond Lodge Management
> Richmond House
> 34A Sydenham road
> Croydon
> CR0 2EF
> Tel No: 020 8686 8884
> Fax No: 020 86868839
>
> ALTON & FARNHAM LTD
>
> 37-43a Eastover, Bridgewater, Somerset :Acquired 12/11/1991
>
> As at 31 MARCH 2008
>
> Financed by:
>
> *Capital Account*

Initial capital introduced	483,927	
Retained Profit	169,082	
	653,009	653,009
Capital payments		653,009

Estimated rental per month Gross £2,500.00 (Less 22% Tax and other expenses)

1) Rent paid every Quartly (3 monthly)
2) COH £169,082 (rent) Cash Alton & farnham
   £139,000 (mosque Property) Cash
3) Cash $5, 103,500
4) Foreign Account $12MIL (1.2Mil x 2 = 2.4mil) Cash
5) Jumbo Syndicate
   NEW ASH GREEN Properties (10% share x 2)

Above Total investments to be split in half

50% ANWAR & 50% SURU

Above portfolio is held by Mr Y A Jassat

[signature] Y A Jassat

[signature] Miss S Jassat.

88. Mr Gangat said that the Defendant had already prepared this document and it was produced and signed by the Defendant and his daughter in front of him and Mr Seetha at the Defendant's office.

89. The Defendant accepts that he prepared this document and that it was typed up by him. He says that the first half dealing with the Eastover property down to the line referring to capital payments of £653,009 was inserted by him using information provided to him by his accountant Mr Mir, who works in his office in the room next door to him. The rest of the document he says was dictated to him by Mr Seetha and Mr Gangat at their request for use in the SARS inquiry and "*was irrelevant as between us*". There was one copy and it was signed by the Defendant and his daughter, and then a member of his staff, Bernadette Atkins, signed the reverse. Mr Gangat does not remember Ms Atkins signing the document.

90. Both Ms Jassat and Ms Atkins gave evidence that there was just one single page document which they were asked to sign by Mr Gangat and which neither read. Ms Jassat signed it and then Ms Atkins signed the reverse. They did not see the Defendant sign it.

91. At the pre-trial review, both sides assumed that there was just one copy of the Richmond Lodge Document, and that it was in the possession of Mr Gangat. I made an order directing the production of the original to the Defendant who wanted to inspect the reverse for Ms Atkins' signature. On production of that document it became clear that there are two identical copies of the Richmond Lodge Document which from the placing of the signatures appear to have been separately signed. The original produced by Mr Gangat was not signed on the reverse by Ms Atkins.

92. It was put to Mr Gangat that the original produced by him was a forgery which he vehemently denied. I accept his evidence on this point. There is no sensible reason, notwithstanding Mr Peters' creative speculation, for forging the Defendant's and his daughter's signature on an identical document. It is much more likely that there were two copies of the Richmond Lodge Document and each was signed. It would be reasonable to assume one was to be kept by the Defendant and one was to be kept by Mr. Gangat. At some point Mr Gangat may have been sent a copy of the Defendant's version which explains why there are the two different versions in his possession.

93. I am reinforced in that view by the fact that, on the same day, a similar document was prepared by the Defendant on Richmond Lodge headed notepaper for Mr Seetha which purported to show what the Defendant owed Mr Seetha ("**Mr Seetha's Richmond Lodge Document**"). The Defendant's evidence is that it was signed at the same time as the Richmond Lodge Document. There are two identical copies of Mr Seetha's Richmond Lodge Document, also both apparently signed by the Defendant and his daughter, which also appear from the different placement of the signatures to have been separately signed. Those documents were disclosed by one or other party at the disclosure stage of proceedings and included in the trial bundles and the fact that there are two such documents has gone without remark. Certainly there has been no allegation that one of them is a forgery, no production of the originals and no forensic examination of them.

94. I think it is highly likely that there were four documents produced and signed on 7 January 2009. There were two copies of the Richmond Lodge Document, one for the Defendant and one for Mr Gangat. There were two copies of Mr Seetha's Richmond Lodge Document – again one copy for the Defendant and one copy for Mr Seetha. This means that the Defendant has signed two versions of each document and his daughter has also signed two versions of each document. It was clearly meant to be an important record.

95. This conclusion is contrary to the evidence of Ms Jassat and Ms Atkins that they recall signing only one single page document, but that evidence is plainly flawed. Even on the Defendant's case there were at least two documents signed (the Richmond Lodge Document and Mr Seetha's Richmond Lodge Document). It may be that there was some other document signed on that day or another day which Ms Jassat and Ms Atkins are thinking of, but I do not accept their evidence as accurate as to the signing of the copies of the Richmond Lodge Document and Mr Seetha's Richmond Lodge Document. In circumstances where the Defendant accepts that he typed up and signed at least one copy of each of the Richmond Lodge Document and Mr Seetha's Richmond Lodge Document, very little turns on their evidence in any event. As the copies of each document are identical, I will continue to refer to them for convenience as the Richmond Lodge Document and Mr Seetha's Richmond Lodge Document, although there are in fact two copies of each.

96. I find that the two copies of the Richmond Lodge Document were intended to be a statement of account of the assets under the Defendant's control which were derived from the Claimants' monies. The two copies of Mr Seetha's Richmond Lodge Document also appear to be intended to be a statement of account of the assets under the Defendants control which were derived from Mr Seetha's monies.

97. I find the Defendant's story that he included entries in these documents simply at Mr Gangat and Mr Seetha's request for use in the SARS inquiry and that it "*was irrelevant as between us*" inherently improbable and I did not believe his evidence about it. The Defendant is a shrewd businessman. On the face of the documents the disputed entries increased the Defendant's liability to the Claimants and to Mr Seetha by millions of

pounds and he simply would not have signed his name to four copies of such documents, and asked his daughter to do the same, if they were untrue. He says that Mr Gangat and Mr Seetha said they needed it for the SARS inquiry, but I do not find it credible that the Defendant would have signed documents ostensibly falsely, acknowledging his liability for millions of pounds simply to help Mr Gangat and Mr Seetha with the SARS inquiry. In fact there is no dispute that it was not shown to SARS, and it makes no sense that Mr Gangat and Mr Seetha would have wanted a document which falsely inflated their net wealth out of the jurisdiction, and therefore their potential tax liability, for the purpose of the SARS inquiry.

98. It follows that I also reject the Defendant's case that Mr Gangat asked him to keep Eastover and to convert their interest in it into an interest free loan of £653,009. There was no convincing explanation as to why Mr Gangat would do this, why he would have given up the prospect of future rent, and given up his right to the proceeds of the mosque land which had been purchased with previous rents. It is also inconsistent with the later assertions made to HMRC by Grant Thornton that the Defendant had no interest in A&F and Eastover or with the subsequent emails passing between the Defendant and the Claimants which I must deal with below.

99. Both Mr Gangat and Mr Bhawan say, and I accept, that the Defendant reassured them that he was keeping their money safe and that he would account to them for the assets recorded as under his control in the Richmond Lodge Document. On that basis they did not join the Hathurani proceedings or bring claims at that stage against the Defendant which I find was what the Defendant was seeking to achieve.

100. The Defendant contends that it would be an abuse of process for the Claimants, who he says chose not to join the Hathurani proceedings, to seek to assert an interest in any asset claimed by Mr Hathurani in the Hathurani Proceedings, and in particular New Ash Green. I reject that submission. It mischaracterises Mr Hathurani's claim in the Hathurani proceedings, which was a personal claim against the Defendant, for the dissolution of a partnership which he said existed between them. Pipperton Finance Limited, the Jersey company which owned New Ash Green, was not a party to the proceedings and the Claimants interest in Pipperton Finance was not "*directly*

affected" by the proceedings (see *Behbehami v Al Sahoud* [2019] EWCA Civ 2301). In my judgment, it could not have been "*directly affected*" unless and until some attempt was made to enforce an order against the company or New Ash Green. The position is simply that the Claimants were not party to the Hathurani proceedings and under no obligation to apply to be made parties. If the Defendant had wanted them bound by the outcome of the Hathurani proceedings or to advance their case in those proceedings, he could have applied to join them. He did not do so. In such circumstances there is no abuse of process in the Claimants advancing their claim in these separate proceedings. Further, as I have found the Defendant was actively trying to stop the Claimants from joining the Hathurani proceedings by assuring them that their funds were safe with him and he would account to them for their monies – in such circumstances it does not lie in his mouth to assert that their claims against him are barred by their failure to participate in the Hathurani proceedings.

Grant Thornton report and letter

101. On 21 November 2011, HMRC opened an investigation into the Defendant's tax affairs under the code of practice applicable to cases of suspected serious fraud. The Defendant instructed Grant Thornton to act in relation to making a disclosure to HMRC's Specialist Investigations Office in London. Grant Thornton agreed with HMRC that Grant Thornton would produce a report which covered a number of areas including a complete review of the offshore structure which was in operation, a review of all offshore bank accounts which the Defendant had access to and all the properties purchased by the offshore entities.

102. The report dated 9 October 2012 confirms that Grant Thornton had conducted "*a thorough review*" of the Defendant's personal affairs as well as the offshore companies whose properties were managed by the Defendant as a partner of Richmond Lodge Management. The report purports to detail "*the relationship between EH, DS, AG and the YJ, specifically looking at the offshore structure, the flows of monies and the residency of the companies holding the properties*"

103. Grant Thornton informed HMRC that the monies expatriated from South Africa were owned by the South African businessmen and that the offshore structure was set up for their benefit in order to protect their investments primarily in UK property. The

properties were managed by Richmond Lodge Management Ltd. The relationship between the Defendant and the South African businessmen is described as a trust arrangement and the Defendant claims to have no interest in almost all of the properties mentioned in the report. The Grant Thornton report, and the basis upon which HMRC taxed the Defendant, is inconsistent with his position in the Hathurani proceedings that he had borrowed monies from Mr Hathurani. The consequence of that will have been that many of the Jersey companies and the properties which are the subject matter of the report were owned by the Defendant and not Mr Hathurani. It is also inconsistent with his case in these proceedings that in 2009 he took over ownership of A&F and Eastover. The report confirms that the monies for the purchase of Eastover were provided by Mr Ganagat. It makes no mention of an agreement in 2009 that Eastover/A&F would belong to the Defendant in return for £653,009 which would remain outstanding as an interest free loan.

104. I have identified earlier in this judgment specific areas where the report undermines the Defendant's case and his evidence to this court. I note generally, however, that the report suggests much greater dealings with the Claimants' monies than the Defendant admits, and reinforces my view that the Richmond Lodge document is intended to record what the Defendant owed the Claimants at its date. For example it asserts that the Defendant opened accounts on the instructions of Mr Gangat in the name of Faircliff Financial SA and managed them between 2004 and 2008. That company and its dealings were barely explored during the trial. The Defendant, in his comments on the Grant Thornton annexed to his witness statement, accepts that he opened Faircliff Financial SA for Mr Gangat but says he did so without Mr Gangat's knowledge.

105. The Defendant says that he did not read the report until these proceedings had begun and that it is wrong to suggest that the Claimants had an interest in any property other than Eastover. I was referred to the notes of a meeting between Grant Thornton and HMRC on 28 January 2014 which refers to the problems Grant Thornton were having with payment by the Defendant. At that point in time the Defendant was not speaking to Grant Thornton. I do not accept that the report was not based on the Defendant's instructions and I do not accept that he did not approve of its contents

before it was sent to HMRC. It is clear from the terms of the report that in places Grant Thornton are reliant on and are reporting to HMRC what the Defendant has expressly told them. There may have been temporary breakdowns in the relationship between Grant Thornton and the Defendant but they were mended and Grant Thornton continued to represent the Defendant and maintain the position set out in its report throughout 2015.

Emails

106. By 2015 the Claimants were getting increasingly frustrated at being unable to pin the Defendant down to giving them information or indeed their assets. Mr Bhawan described the Defendant as constantly "*ducking and diving*".

107. In August 2012, while the HMRC investigation was ongoing there was an exchange of emails between Mr Gangat and the Defendant. On 7 August 2012 Mr Gangat sent the Defendant an email saying the Claimants' and Mr Seetha's lawyer "*would like to know when can you transfer the properties onto our names".*

108. On 7 August 2012 the Defendant replied inviting Mr Gangat to London when he would make appointments with the lawyers and the directors of the offshore companies. Further emails were exchanged arranging a meeting in London where the Claimants would meet Edwin Coe (the Defendant's lawyer), Grant Thornton (who were acting for the Defendant in the HMRC inquiry) and Mr Morgan as director of the offshore companies. The meeting was supposed to happen in October 2012 but it did not take place.

109. This email exchange is not consistent with the Defendant's case that from 2009 his only obligation to the Claimants was to pay them £653,009 which was an interest free loan to him. It is quite clear from this exchange that the Defendant acknowledged that the Claimants were entitled to one or more properties in the UK which were held within the offshore structure.

110. There was a further relevant email exchange in 2015, this time between Grant Thornton and Mr Gangat. On 15 May 2015, Mr Brassey of Grant Thornton wrote to Mr Gangat explaining that his firm was engaged by the Defendant to liaise with the UK tax authorities with regards to his historic tax affairs and saying:

> *"As part of this engagement I am required to quantify and disclose Mr Jassat's personal assets and liabilities. I met with Mr Jassat recently and he has advised that he owes an amount of money to you along similar lines to the monies claimed and repaid to Mr Hathurani. At this point Mr Jassat does not know the exact quantum of monies believed to be owed to yourself. I am therefore writing to you in order that the figure can be quantified and disclosed as part of my engagement*."

111. The response from Mr Gangat on 18 May 2015 to Grant Thornton was brief:

> *"Kindly request Mr Jassat to provide a breakdown of the amount he believes is due and WE will then consider whether these are correct or not."*

112. Again, this exchange is not consistent with there being merely an interest free loan of £653,009 outstanding to the Claimants. If that were the only obligation of the Defendant to the Claimants, he would have said so to Mr Brassey and there would have been no need for Mr Brassey to reach out to Mr Gangat. It is also not consistent with the Defendant only ever having held one property, Eastover, for the Claimants. Again, if that were the case, then there would have been no need for Mr Brassey to contact Mr Gangat. This exchange alludes to a much more involved and complicated accounting exercise being necessary, as would be the case if the Richmond Lodge Document was a more accurate record of the assets which the Defendant had to account for.

113. In the compromise agreement between Mr Hathurani and the Defendant, Mr Hathurani accepted that the monies used by the Defendant had been loaned by him. I have already observed that Grant Thornton's report to HMRC contradicted this position and analysed the relationship between the Defendant and Mr Hathurani as an

informal bare trustee relationship rather than a loan arrangement. When challenged by HMRC, Mr Brassey defended his position in a letter dated 3 August 2015, concluding:

> *"This demonstrates further proof that the arrangement is along the lines of an informal bare trust relationship rather than a loan agreement…*
>
> *Please note that the monies in Switzerland, that* [Mr Jassat] *utilized in his role as bare trustee, were originally from* [Mr Hathurani] *and his business partners. The settlement between* [Mr Jassat] *and* [Mr Hathurani] *only accounted for the monies owed to* [Mr Hathurani] *and therefore a substantial amount yet to be quantified is still owed to the other individuals in South Africa***"**.

In light of his earlier email to Mr Gangat, the reference to other individuals in South Africa plainly included the Claimants. The reference in his earlier email to the Defendant owing the Claimants money *"along similar lines to the monies claimed and repaid to Mr Hathurani"* therefore appears to acknowledge that the Defendant had invested the Claimants' monies and a substantial unquantified amount was due to them. Again this is not consistent with his case that he had only ever acquired one property with their money (the amounts due being easily quantifiable), nor with his case that in 2009 it was agreed that the Claimants' interest in Eastover would be converted into an unsecured interest free loan of £653,009.

114. On 3 July 2015, Mr Gangat and the Defendant exchanged emails. Mr Gangat forwarded a copy of the Richmond Lodge Document to the Defendant and said:

> *"*[Mr Bhawan] *asked me to forward this promise and acknowledgment. I have left several messages for you to return my call. I just feel that the way you are treating us is definitely unfair. "*

The Defendant responded the same day saying:

> *"My apology if you think I am treating you unfairly but I swear on my parents grave I do not have the intention of misleading or stealing any of yours Suru or Steves funds. I am in a difficulty financially and am in no means of paying or*

settling at present. I think it would be good for me to come to SA or for you to come to the UK and see for yourselves."

This is again inconsistent with the Defendant's case. The Defendant did not disown the Richmond Lodge Document, as he surely would have done if, as he now says, most of it was not correct and "*irrelevant as between us*". He did not, as one would naturally have expected if his case was true, assert that all he owed the Claimants was £653,009. The reference to "*yours Suru or Steves funds*" again suggests that the Defendant believed he had assets belonging to the Claimants and Mr Seetha for which he had to account – and is not consistent with him simply owing the Claimants a debt.

F) The claim for an Account

115. Much of the submissions from both parties focussed on the principal contention pleaded in the Amended Particulars of Claim that the Defendant held the Claimants' monies derived from the Swiss accounts and/or the assets set out in the Richmond Lodge document on an express trust for the Claimants. The difficulty with that contention is that the evidence suggests that while the Defendant had control over the Claimants' monies, and they were invested and dealt with at his direction, they were actually held in offshore structures held initially by Jersey entities for the Claimants and then transferred to the Richmond Trust. The Claimants have been unable to identify any property vested in the Defendant as trustee, nor it seems was there ever any intention that it should be. It is a principle of trust law that in cases of a lifetime trust where the settlor and the trustee are not one and the same, there needs to be a complete and enforceable transfer of trust property to the trustee to constitute the trust; see *Lewin on Trusts* 20th ed Chapter 3. The Defendant is not therefore a trustee of an express trust.

116. The Claimants have however, also pleaded (paragraph 35 to 38 of the Amended Particulars of Claim and paragraph 7 of its prayer) that the Defendant's "*dealings with the Claimants … gave rise to a relationship of complete trust and confidence with the Claimants*" and it is averred that the Defendant owed fiduciary duties to the Claimants including a duty to account.

117. In *Al- Dwaisan v Al-Salam* [2019] EWHC 301 HHJ Hodge QC sitting as a judge of the High Court began his analysis as follows:

> "I take as my starting point the observations of Baker J, sitting in the High Court of Ireland, in the case of Best v Ghose [2018] IEHC 376 at paragraphs 42 to 44:
>
> "42. ... An obligation to account is implicit in a fiduciary relationship, but it is not always easy to ascertain if a relationship imports fiduciary obligations.
>
> 43. I find of particular benefit the statement of principle contained in McGhee: Snell's Equity (33rd ed., Sweet & Maxwell, 2015), where the obligation to account is explained as one which arises out of the receipt by a person of property 'in an accountable capacity', at para. 20-015, and although that description might appear to be tautological, it is useful as it identifies the key component. The accountable capacity is one that arises in any circumstance where it can be shown that a person has control of property which belongs to another. As Snell says, the central case is that of an express trustee but the principles apply to various categories of relationships, including 'agents who control property belonging to the principals', at para. 20-012.
>
> 44. Snell also suggests that '[t]he claimant bears the onus of proving that the defendant has received property into their control in circumstances sufficient to import an equitable obligation to handle the property for the benefit of another', at para. 20-015."

118. In other words, where A has control of property belonging to B in circumstances where viewed objectively B is entitled to expect A to administer that property for the benefit of B, then equity enforces A's obligation of due administration by requiring A to account for his dealings with B's property.

119. In many cases, the property will be vested in A, but that is not a requirement. It is sufficient that A has control over it, that being the "*key component*".

G) Conclusions

120. The Defendant has had control of the Claimants' monies and the investments made from those monies. The Claimants expected the Defendant to administer those assets for their benefit, and were entitled to do so. The Defendant accepted a power of attorney over the Claimants' Camelot account and thereby agreed to be their agent in managing that account (see paragraph 45 above). The Defendant also agreed to invest their monies on behalf of the Claimants and controlled those investments by giving instructions to the offshore entities which held them (see paragraph 56 to 58 above). It is no surprise, therefore, that a court of equity will make the Defendant account for his dealings with those assets.

121. It was contended on behalf of the Defendant that the funds in the Swiss bank accounts were subject to the ultimate control and supervision of Mr Hathurani. This is part of a submission that if the Defendant is accountable to anyone, it is to Mr Hathurani alone. I reject that submission. I accept that Mr Hathurani was the dominant character, and took charge of the process of expatriation, but he did not have any authority from the Claimants to deal with their share of the expatriated funds save as directed by them. The monies were paid in the first instance into a main account which was regarded as an account held for Mr Hathurani and he may have exercised a degree of control over when a division of those funds was to occur. He did not have authority to allow the Defendant to make withdrawals from that account by way of loan or for the purposes of investment save in respect of his share. The Defendant was aware that the funds credited to Mr Hathurani's account represented funds which belonged to the South African businessmen together, and he was therefore accountable to them all for his dealings with their money. Once an apportionment of those funds had occurred and had been paid into individual accounts, the Defendant was bound to deal with the funds in the Claimants' account on the instructions of the Claimants alone. In practice Mr Hathurani may well have been consulted by the Defendant and in practice the Defendant may not have done anything without Mr Hathurani's approval. Mr Hathurani clearly had an interest in ensuring that his colleagues did not use their monies in a way which attracted the attention of the South African authorities. However, the funds in the Claimants' original Swiss bank account (Camelot) belonged to the Claimants as the Defendant well knew, and the only reason he was in a position

to control those funds was because Mr Gangat had given him a power of attorney over that account. He is therefore accountable to the Claimants. Further his investments in UK property were initially authorised by the Claimants, not Mr Hathurani, and he is answerable to them in respect of what came of those investments.

122. It seems that some of the Claimants' assets have been transferred on the Defendant's instructions to the Richmond Trust. That Trust has a governing law which is not the law of England and Wales and has trustees outside the jurisdiction who are not parties to these proceedings. The transfer of the Claimants assets to it was not authorised by the Claimants and the Defendant readily accepts that the Claimants were unaware of the transfer. That was a breach of fiduciary duty by the Defendant. If the Claimants' assets have been lost then the Defendant is personally liable for the consequences of his breach of fiduciary duty.

123. I will therefore order an account and all necessary and consequential inquiries together with judgment for the sums found due on the taking of the account. I will hear submissions on the form of the order, but the starting point for any accounts and inquiries should be the Richmond Lodge document which is in my judgment an acknowledgment by the Defendant of the state of the account as between the Claimants and the Defendant which the Claimants accepted and agreed. It is effectively an account stated as at that date.

124. I should add that there was a dispute as to whether at some point in or around 1991 the Defendant asked the Claimants if he could borrow $1m to repay Mr Seetha monies which he had appropriated from Mr Seetha. I accept the Claimants' evidence on this issue but there is no evidence that the Defendant in fact took any monies from the Claimants or whether he paid those monies back. On the basis of the account I am proposing to order, commencing with the Richmond Lodge Document as a statement of the account as at its date, it is not necessary to investigate that issue further.