Neutral Citation Number: [2022] EWHC 153 (Ch)

Case No: BL-2018-002566

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch)

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

Date: 28/01/2022

Before :

MR DAVID HALPERN QC SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

MANOLETE PARTNERS PLC	**Claimant**
- and -	
(1) RONOJAY NAG	**Defendants**
(2) AMANDA NAG	

- -
- -

Mr Joseph Curl QC (instructed by **Ashfords LLP)** for the **Claimant**
Mr Simon Harding instructed directly by the **Defendants**

Hearing dates: 18-21 January 2022

- -

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.

COVID-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to BAILII, following a trial in person. The date and time for hand-down is deemed to be 28 January 2022 at 10.30am.

.....

MR DAVID HALPERN QC SITTING AS A DEPUTY HIGH COURT JUDGE

Mr David Halpern QC :

1. The First Defendant ("**Mr Nag**") was a director of Quore Ltd ("**Quore**"), a company which was in serious financial difficulty by the end of 2012. The business of Quore was sold in 2013, but no part of the proceeds of sale, which exceeded £1.3m, was applied for the benefit of Quore's creditors. Quore was compulsorily wound up in 2015 and the benefit of all claims against Mr and Mrs Nag were assigned by the liquidator to the Claimant on 7 August 2017. The Claimant sues Mr Nag for misfeasance as well as for debts owing to Quore. Mr Nag has a number of defences, but his overarching point is that the transaction has been misinterpreted by the Claimant.

2. Mr Nag's wife is sued as a constructive trustee for dishonest assistance and knowing receipt. Mrs Nag's defence is that she trusted her husband and signed whatever documents he asked her to sign.

The facts

3. Quore was in the telecommunications business. Mr Nag became a director in 2004 and was the sole director from 2008 until he resigned on 10 May 2014 and was replaced by Mr James Wadley. Mr Nag said in his oral evidence that he appointed Mr Wadley and paid him £10,000 out of his own funds. Mr Nag held 90% of the ordinary shares in Quore, save for one period of time when the shares were held by Q Group and another period when they were held by Capital Bridge (two companies referred to below, both of which were controlled by him). In 2013 Quore changed its name to 1008 Ltd.

4. On 10 May 2010 Quore entered into an agreement with Vodafone Ltd ("**Vodafone**") which allowed it to market and promote Vodafone services and SIM cards in return for commission. Quore had a number of customers who were small businesses which had mobile phone contracts with Vodafone. Vodafone would make Quore a one-off payment when any customer first entered into a contract with Vodafone and would also pay commission to Vodafone on a regular basis in respect of each customer. Mr Nag referred in his evidence to Quore's main asset as being "*numbers*". I understood this to be a shorthand reference to Quore's right to receive commission from Vodafone in respect of the mobile phone number(s) of each customer. The one-off payment could be as high as £145 for every new "*number*". The amount of the ongoing commission depended on the terms of the dealership. Mr Nag said in evidence that the level of commission would rise if the number of customers increased above a certain level; he also said that this arrangement was dependent upon those customers being treated by Vodafone as customers of Quore.

5. In 2011 Mr Nag embarked on a strategy of "*buy and build*", i.e. buying other businesses whose customer base had contracts with other mobile phone

companies, such as O2, and procuring those customers to switch to Vodafone (which he referred to as "*churning*"). The reason for buying other businesses was to acquire the "*numbers*", i.e. the customer base and the resulting potential to earn both one-off payments and ongoing commission from Vodafone. Any new customer base which Quore acquired by buying another business would have a separate dealership number with Vodafone, which might be on different terms from Quore's pre-existing dealership. However, the increased commission per customer would not be payable if the customers were customers of any company other than Quore. Hence it was important that the new dealership was seen by Vodafone as belonging to Quore.

6. At this point I need to refer to four other companies with which Mr and/or Mrs Nag were associated:

   i) QL London Ltd ("**Q London**"), subsequently renamed Lila 8 Ltd, was incorporated in 2005. Mr and Mrs Nag were both directors from 2005 and 2006 respectively until 10 May 2014, when they resigned and were replaced by Mr Wadley. They were also both 50% shareholders, save for one period in 2010 when the shares were held by Q Group.

   ii) Quore Technology Ltd ("**QTL**") was incorporated in 2011. Mr Nag was director and Mrs Nag was secretary at all times until 28 March 2013. Initially Mr Nag was the sole shareholder, but the shares were then transferred to Q Group. On 25 January 2012 Q Group transferred the 100 issued shares to Mr and Mrs Nag equally.

   iii) Quore Group Ltd ("**Q Group**") was incorporated in 2005: Mr Nag was the director and Mrs Nag the secretary at all times until 1 May 2014. Mr Nag held 901 shares and Mrs Nag held 1 share. As stated above, Q Group was used as the holding company for the other Quore companies at various times.

   iv) Capital Bridge International Ltd ("**Capital Bridge**") is or was a company registered in the BVI. Mr Nag's evidence is that he was the sole shareholder and director.

The acquisition of ITC

7. The policy of buy and build was implemented by buying two businesses. The first to be bought was In Touch Cellular Ltd ("**ITC**"), a company owned by Dave and Sally Briggs. Heads of terms dated 14 March 2011 provided for the sale by ITC of its business to Quore. On 20 July 2011 Mr Briggs sent an email to Vodafone, copied to Mr Nag, in which he confirmed that the ITC customer base would be transferred to Quore on 25 July 2011.

8. However, the sale of ITC's business did not in fact take place in the manner set out in the heads of terms. Instead, on 12 August 2011 there was a share sale agreement by which Mr and Mrs Briggs sold their shares in ITC to QTL for an initial consideration of £288,000 plus further consideration payable in

certain events. Quore was a party to this agreement as guarantor, but only in respect of one small part of QTL's obligations.

9. On the limited documents available, it appears that the purchase money was provided by Quore. QTL's accounts for the year ended 31 December 2011 were prepared by Mr Nag's then accountants, Pritchard Fellows & Co, and were signed by Mr Nag as director. The balance sheet shows QTL's sole asset (apart from the share capital of £100) as being its investment in a subsidiary (which can only be ITC), valued at £288,984, and it shows QTL's sole liability as being a debt in the same amount. Quore's balance sheet as at the same date is consistent with this, in that debtors had increased by nearly £700,000 over the previous 12 months. In cross-examination Mr Nag accepted that the purchase money had been provided by Quore.

10. Following the purchase, ITC became a wholly owned subsidiary of QTL and Mr Nag became the director of ITC. However, the dealership was put into Quore's name and all commission was paid by Vodafone into Quore's bank account.

11. On 27 April 2012 Mr Nag, as director of ITC, passed a resolution putting ITC into creditors' voluntary liquidation, with a deficit of some £295,000. In cross-examination Mr Nag accepted that he had extracted ITC's valuable asset (its "*numbers*") whilst leaving ITC with its liabilities, but he sought to justify this by saying that it was for Mr and Mrs Briggs as the sellers to pay off ITC's debts. There was no corroborative evidence to support that contention.

12. Mr Nag's conduct in relation to ITC is not the basis for the claim in these proceedings, but it is a relevant part of the history and is a telling illustration of his approach to his duties as a director. In short:

    i) There was no proper justification for amending the purchase at the last minute, so as to substitute QTL as the purchaser, given that Quore was providing the money and that Vodafone was being told that Quore was the purchaser; and

    ii) There was no justification for extracting ITC's principal asset and leaving it with its liabilities.

The acquisition of Bridgwater

13. The second way in which Mr Nag implemented his policy of buy and build was by buying the business of Bridgwater Communications (South West) Ltd ("**Bridgwater**"), which was owned by the Leahy family. The transaction took the form of a share purchase agreement dated 9 February 2012, by which the Leahys sold the entire share capital of Bridgwater to Capital Bridge (which, as I have said, is or was a BVI company wholly owned by Mr Nag). The purchase price was £700,000 payable in instalments. The two final instalments, totalling £300,000, were dependent upon sufficient "*numbers*" being transferred; there was also provision for adjustment to the price in the

event of net assets being more or less than stated in the agreement. The seller gave warranties in relation to the customer base, and there was a provision for expert determination of any dispute in relation to the amount of net assets. Quore was a party to the agreement as guarantor of Capital Bridge's obligations.

14. Bridgwater had a dealership with O2, but Mr Nag's purpose in making the acquisition was to transfer the customer base to Vodafone in order to obtain a one-off payment for each customer plus enhanced commission through Vodafone being led to believe that Quore (not Capital Bridge) had increased its customer base.

15. A dispute subsequently arose between Mr Nag and the Leahys, in which he complained of breaches of contract and misrepresentation and they complained of failure to pay the last £300,000. I shall return to this in paragraph 41 below.

Quore's financial position by March 2013

16. The filed accounts for the year ended 31 December 2011 show an increase in the director's loan account from £106,223 to £269,523. This was money lent by the company to Mr Nag. On 3 August 2012 Mr Nag had an email exchange with his accountant at Pritchard Fellows, who wrote: "*Written off balance of DLA of £199.7k. Need to talk to your lawyers and ensure this is done properly so that there is no come back*". Mr Nag replied: "*Let me have a chat with tax experts.*"

17. The 2012 accounts are abbreviated and do not contain any reference to the director's loan account. However, Mr Nag sought to rely on two documents which he had failed to deliver to the liquidator at the outset of the liquidation. One is the nominal ledger for the director's loan account up to 17 September 2012 showing repayments totalling £158,960 and the other is a letter dated 2 October 2012 from Pritchard Fellows to Mr Nag stating that the director's loan account should be amended from £269,523 to £110,562. I therefore take as my starting-point that the director's loan remained at £269,523, save insofar as reduced by any repayments.

18. Despite the email exchange on 3 August 2012, it appears that the loan to Mr Nag had not in fact been written off by the date of the sale to Evolve, since it is referred to as outstanding in the disclosure letter which Mr and Mrs0 Nag signed upon the sale to Evolve. Mr Nag accepted in cross-examination that it had not been written off by that date, although he claims that it was written off in August 2014 in lieu of unpaid salary.

19. Meanwhile, on 28 July 2011 Quore had entered into a further agreement with Vodafone which amended their dealership agreement of 2010. The amendment provided for Vodafone to make an advance payment of commission to Quore in the sum of £250,000, to be repayable by instalments. In effect, this amounted to an interest-free loan by Vodafone to enable Quore

to acquire further customer bases. Importantly, the loan was secured by a personal guarantee given by Mr Nag.

20. Before entering into the amendment agreement, Mr Nag sent an email to Vodafone headed "*quore bank details*", which gave the correct details for Quore's bank account with Nat West; this was to enable Vodafone to transfer the money to the correct bank account. On 29 July 2011 Vodafone responded seeking confirmation that this was the relevant account for Quore's two existing dealerships, to which Mr Nag replied that the bank account for one of the dealerships was with Clydesdale. This email exchange corroborates Mr Nag's evidence that Vodafone were agreeable to Quore having multiple dealerships, provided that they were all in Quore's own name.

21. In the event, the sum advanced by Vodafone to Quore was some £203,253. On 28 August 2012 Mr Nag emailed Vodafone asking for a pause on repayments; Quore clearly had cash-flow difficulties by this time. Emails during October 2012 showed Vodafone progressively losing patience. On 28 November 2012 Vodafone emailed Mr Nag rejecting his proposals for repayment and saying that, unless the loan was repaid before the end of the financial year, Vodafone would suspend payments of commission. On 14 March 2013 Vodafone wrote a formal letter stating that Quore was in breach of its agreement and was required to pay £147,800 within one month.

22. Quore's accounts for the year ended 31 December 2012 were signed by Mr Nag as director. (The copy I have seen is unsigned but he accepts that he must have signed them, and they were filed at Companies House.) The balance sheet shows a deficit of £425,321. Mr Nag was constrained to accept in cross-examination that Quore was insolvent by this date on the balance-sheet test. The position was in fact considerably worse than was stated in the accounts, which made no provision for the liabilities to HMRC and the Leahys (I consider these liabilities below).

23. Mr Nag claims that in the second half of 2012 he, his mother Mrs Chakrabarti and his father-in-law Mr Brian Gough all lent money to Quore in order to help it to overcome its cash-flow difficulties. He says that his mother lent a total of £42,000 and that his father-in-law lent £5,000.

24. The Claimant points to the following debts or liabilities which Quore was unable to pay in March 2013:

    i) The sum of £203,253 due to Vodafone, for which Vodafone was insisting on repayment. Mr Nag accepted that this was due.

    ii) The sum of £300,000 plus interest which had not yet been paid to the Leahys under the agreement to buy the shares in Bridgwater. Mr Nag denied that that sum was due by March 2013, but this is a hopeless defence, given that the Leahys subsequently obtained judgment for this debt; and

    iii) A substantial liability to HMRC. Mr Nag claims that there was no liability as at March 2013. The relevant Company records have never

been disclosed, but it is clear from the email which is set out at paragraph 26 below and is discussed at paragraph 27.iv) below that Quore had significant liabilities to HMRC by March 2013. HMRC subsequently proved in the liquidation for £452,287.

iv) A debt to Pritchard Fellows of £10,944. Mr Nag admitted in cross-examination that a sum had become due to his former accountants before March 2013.

25. Mr Nag set about trying to sell the business. He found a potential buyer, Mark Geraghty of Olive Communications, who was willing to buy the business and take over the debt to Vodafone. However, Mr Nag chose not to proceed with Mr Geraghty. Mr Curl QC, for the Claimant, put to Mr Nag that the reason for not proceeding was that he wanted to be certain of Vodafone being repaid, so that he would not be liable under his guarantee. Mr Nag denied that this was the reason, but I found his denial unconvincing.

The sale to Evolve

26. On 14 February 2013 Christopher Lunn, who had by this become Mr Nag's accountant, emailed Evolve's accountant as follows:

> "*I have borne in mind throughout all of the advises* (sic) *given to Ronnie [Nag], that we should be finding the easiest possible route ...*
>
> *The business that is to be sold is currently owned by a company called Quore Ltd which is a subsidiary of Quore Group Ltd. This has a history of transactions of VAT, PAYE etc. and to avoid passing these all on to your clients, I believe it would be sensible if the trade and relevant assets were transferred to another company which used to be a subsidiary of the Group, namely Quore Technologies Ltd. That companies* (sic) *accounts for the year to 31st December 2012 will be ready in the next few days and will show its one asset being transferred back to Quore Ltd. I believe that it was 2 years ago that Quore Technologies Ltd was used as the vehicle to buy a further trading company, the assets and business of which have been transferred into Quore Ltd. For the purpose of the purchase, Quore Technologies Ltd took a loan from Quore Ltd and used that to make the acquisition. In the accounts to December 2012, both the loan and the assets are cleaned out of Quore Technologies Ltd, thereby leaving it with a completely clean balance sheet, subject to the importing of the relevant assets etc. Ronnie has valued these assets between £600,000-£700,000. I am suggesting that we take the midpoint and create a debt to Quore Ltd in Quore Technologies Ltd of £650,000. On completion (assuming that everything goes ahead) £650,000 will be advanced, by way of a loan, from your clients to Quote Technologies Ltd* [i.e. QTL], *who in turn will repay their debt to Quore Ltd . This will be on any terms that you and your clients think suitable. The balance of the completion sum, namely £850,000, will be paid by way of acquisition for the shares.*

In order to maximise these proceedings, Quore Technologies Ltd has transferred its shares from the ownership of Quore Group Ltd into the personal ownership of Mr & Mrs Nag."

27. The email is significant for several reasons:

    i) It confirms that the business belonged at that time to Quore.

    ii) The business was to be transferred by Quore to QTL for £650,000 and immediately transferred on to Evolve for the same amount. The sum of £650,000 was to be lent by Evolve to QTL, who would in turn pay it to Quore in repayment of QTL's debt to Quore.

    iii) The reason for using QTL was that it was a clean company with no assets or liabilities.

    iv) It is clear from the context that the "*history*" of VAT transactions is an acknowledgment that Quore had debts, or at least contingent liabilities, to HMRC, contrary to Mr Nag's denial in evidence that he was aware of any such liability at the date of the sale to Evolve.

    v) In addition Evolve would pay Mr and Mrs Nag £850,000 for their shares in QTL.

    vi) The email concludes with the cryptic phrase "*In order to maximise these proceedings*". Mr Curl put it to Mr Nag that what was being maximised was the amount to be paid to him and his wife. I accept that this was the intention.

28. In cross-examination Mr Nag sought to distance himself from this email, saying that it was sent without his authority. However, it was copied to him on 18 February 2013 and on 21 February he forwarded it without comment to Mr Jonathan Ebsworth of Devonshires, who was the solicitor to Mr and Mrs Nag and their various companies. It is plain that Mr Nag was happy for this to stand as the instructions to Devonshires.

29. Mr Nag agreed heads of terms for the sale of the business to Evolve Telecom Ltd ("**Evolve**"), which provided as follows:

    i) "*Evolve is willing to buy the business carried out by [Quore] by way of a purchase of the whole of the issued share capital of [QTL] from [Mr and Mrs Nag]*".

    ii) "*Immediately prior to completion [QTL] will purchase for £650,000 the following assets of [Quore]*". There followed a list of assets, which included the customer databases (i.e. what Mr Nag called the "*numbers*").

    iii) "*On completion [Evolve] will lend [QTL] the sum of £650,000 for the purpose of facilitating the Trading Asset Purchase*".

    iv) "*The price for the Shares [in QTL] is £1.1m*", payable to Mr and Mrs Nag equally.

v) The sale was subject to Vodafone's consent and to Quore's outstanding debt to Vodafone being repaid.

30. On 28 March 2013 a share purchase agreement was entered into between Mr and Mrs Nag, Evolve, QTL and Quore. The agreement was executed as a deed. It provided as follows:

i) Mr and Mrs Nag agreed to sell the entire share capital of QTL to Evolve for £817,430. (This was predicated on the business having been transferred from Quore to QTL.) Devonshires were to undertake to repay the Vodafone loan of £203,253 out of this sum and Devonshires and Evolve's solicitors were each to retain £100,000 pending various future events. This would leave a balance of just over £414,000 which was to be paid to Mr and Mrs Nag.

ii) The advance of £650,000 (from Evolve to QTL) was to be paid to Quore in repayment of QTL's indebtedness to Quore.

iii) Mr and Mrs Nag gave warranties to Evolve in relation to both QTL and Quore.

iv) Quore was a party to the agreement in order (inter alia) to assign to Evolve the benefit of contracts relating to its business.

31. The documents signed on 28 March 2013 also included the following:

i) A loan agreement whereby Evolve agreed to lend £650,000 to QTL in order to enable QTL to buy the ITC business from Quore.

ii) An amended agreement between Quore and QTL for the sale of the business by Quore to QTL for £650,000. (This was said to amend a previous agreement of 10 January 2013, which does not appear to have been carried into effect.)

iii) An agreement between Bridgwater and Quore for the sale of Bridgwater's business to Quore. The version I have seen is signed by Darren Outrim, an employee of Quore, on behalf of Bridgwater. It is not signed on behalf of Quore and it contains no price.

iv) A deed executed by Mr Nag on behalf of Quore releasing QTL from its liability to repay its debt of £288,000. This was the debt incurred by QTL when it borrowed the money from Quore to buy the share capital of ITC. There is no consideration for the release.

v) An undertaking y Devonshires, said to be given following instructions from Mr and Mrs Nag:

a) To pay to Quore the sum of £650,000 to be received from Evolve, in settlement of the price due to Quore upon the sale of the business to QTL; and

b) To pay the sum of £203,253 to Vodafone in settlement of Quore's debt.

32. There was also a disclosure letter signed by Mr and Mrs Nag on 28 March 2013, qualifying the warranties given by them in the share purchase agreement. In particular:

i) Warranty 2.1 was qualified as follows:

> "*[Quore] has power and authority to sell the Business and the Trading Assets by virtue of the following asset transfers:*
>
> *The entire share capital of [ITC] was purchased by [QTL] on 12 August 2011. The mobile numbers of [ITC] were subsequently transferred to [Quore] by automatic transfer when the numbers were switched from O2 to Vodafone. The remaining assets were transferred to the [Quore] by way of undocumented transfer. [ITC] has since been liquidated pursuant to a creditors' voluntary liquidation (please see the disclosure under warranty 3.5(b)) and hive up of remaining assets*
>
> *The entire issued share capital of [Bridgwater] was purchased by Capital Bridge Limited on 9 February 2012. The mobile numbers of Bridgwater were subsequently transferred to [Quore] by automatic transfer when the numbers were switched from O2 to Vodafone. All other assets of Bridgwater apart from the landline business were s* (sic) *transferred to [Quore] by undocumented transfer. The landline business was transferred to [Quore] by an asset purchase agreement with an effective date of 1 January 2013*."

ii) Warranty 8.1 was qualified as follows:

> "*Prior to 10 January 2013 [QTL] was dormant and did not hold any insurance policies. Following 10 January 2013, [Quore] has held the insurance policies as agent for [QTL]*".

iii) Warranty 14.1(a) was qualified as follows:

> "*Ronnie Nag has a director's loan account with [Quore]. This liability is not being transferred under the Asset Purchase Agreement and will remain outstanding to [Quore].*"

33. On the same day (28 March 2013) Devonshires emailed Mr Nag asking for Quore's bank details. He replied on 2 April 2013 (which was the next working day): "*Please find bank details, also need to confirm how the payment will be broken down as the loan payment to vodafone needs to come out of the quore payment not personal*." He provided bank details for what he called the "*Company payment*" and the "*Personal payment*". The details which he provided for the Company payment were in fact those for Q London, not for Quore.

34. Devonshires replied, asking for confirmation that the bank details for Quore were correct, and saying that, if the sum due Vodafone was to be paid out of the £650,000 payable to Quore, then their undertaking would need to be amended. Mr Nag replied, confirming that "*the bank details … are correct*"

and that the repayment to Vodafone should come from the £650,000. Devonshires then agreed with Evolve's solicitors to vary the undertaking, which they did in a revised letter of 2 April 2013, once again stating that they were doing so following instructions from Mr and Mrs Nag.

35. Also on 2 April 2013, Mr Nag emailed Mrs Nag saying: "*Just to let you know, I am cc on this email as I have requested Jonathan [Ebsworth] to transfer the funds, as we don't have a joint account to transfer it to my bank account …*". Mr Ebsworth then emailed asking her to "*confirm that you are happy for me to send monies due to you of £408,715 to Ronnie's sole account*." She replied to Mr Ebsworth saying: "*Please accept this email as approval for funds to be transferred into Ronnies account*".

36. Devonshires' client account ledger in the name of "*Ronnie Nag and Quore Ltd*" shows that £1,367,430 was received from Evolve's solicitors on 28 March 2013. This comprised £650,000 in respect of the loan to Quore and £717,430 in respect of the purchase of the shares in QTL. The sum of £100,000 plus interest was returned to Evolve's solicitors on 19 December 2014. The Claimant accordingly seeks damages in respect of £1,267,430.

37. Devonshire's ledger shows that:

    i) £203,253 was paid to Vodafone;

    ii) £574,338 was paid to Mr Nag;

    iii) £446,746 was paid to "Quore" (As explained above, unbeknown to Devonshires the payment intended for Quore had in fact been paid to Q London); and

    iv) £37,692 was transferred to Devonshire's office account in payment of legal fees.

38. Mr Nag said in his witness statement that, when he discovered that £446,746 had mistakenly been paid to Q London, he "*promptly*" paid it to Quore in April and May 2013. However, the bank accounts show that only £174,700 was repaid to Quore. I shall set out below what became of that money.

39. The balance of the sum of £446,746 was paid to various other persons and companies, including Mr Nag, his mother and father-in-law (in repayment of their loans to Quore), as well as in wages to employees of Q London. There were also two transfers to Ashiemymy Ltd ("**Ashiemymy**") exceeding £90,000. Ashiemymy was another company owned by Mr Nag. He claimed in cross-examination that he had done this in order to keep the money safe for the purpose of discharging Quore's debt to Mr Briggs.

40. It is not necessary in this judgment to trace exhaustively what became of the money that was not paid to Quore. It was prima facie a misfeasance to pay the money to anyone other than Quore, and hence the burden is on Mr Nag to justify these payments, which he has failed to do.

The subsequent history of Quore

41. Following the sale of its business, Quore ceased to trade. Mr Nag did not accept that it ceased activities altogether, but there is no evidence that it did anything other than attempt to wind up its business informally.

42. I have referred at paragraph 16 above to the director's loan account ledger, which purported to show a net repayment by Mr Nag of £158,960. However:

    i) This includes credit for two "*dividends*" totalling £100,000 paid by Q Group. In cross-examination Mr Nag accepted that Q Group did not have sufficient funds to able properly to declare dividends.

    ii) It also includes sums totalling £32,000 which he accepted in cross-examination were in fact loans by his mother, Mrs Chakrabarti, and not repayments by himself.

43. Mr Nag thereupon disclaimed any reliance on this nominal ledger which he had himself disclosed at a time when he thought it would assist his case. Mr Curl submitted, and I accept, that credit for reducing the loan account should be reduced from £158,960 to £26,961.

44. I referred in paragraph 15 above to a dispute with the Leahys over Quore's failure to pay £300,000:

    i) The Leahys invoked the mechanism for expert determination and the expert selected was a partner in the firm of Milsted Langdon LLP, who made a determination in the Leahys' favour.

    ii) The Leahys then issued proceedings on 29 May 2014 against Capital Bridge and Quore (as guarantor) for £300,000 plus interest and costs. On 5 August 2014 HH Judge Havelock-Allan QC gave summary judgment in favour of the Leahys for £300,000, together with interest of £30,698 and costs to be assessed. The Order recited that the defendants did not attend, "*for the reason set out in the letter to the court dated 1 August 2014.*" That letter was never produced to the liquidator or to this court, but it is self-evidently inconsistent with Mr Nag's evidence that he was unaware of the proceedings until the Leahys took steps to enforce their judgment.

    iii) On 21 April 2015 the Leahys presented a petition to wind up Quore, based on their judgment debt. A winding-up order was made on 22 June 2015.

The witnesses

The liquidator

45. The sole witness for the Claimant was Mr Timothy Close, the liquidator of Quore. He is a chartered accountant and licensed insolvency practitioner and is a partner in Milsted Langdon LLP. He had no personal involvement prior to being appointed liquidator, but his firm had acted as independent expert in

relation to a dispute arising out of the sale to Evolve. Accordingly, his evidence was necessarily of limited value, since he had no first-hand knowledge of events preceding the liquidation.

46. I found him to be a careful and reliable witness, whose evidence I accept in full, both in relation to his first-hand knowledge of events after the winding-up order and in relation to what he had seen (or not seen) in the documents pre-dating the liquidation. Mr Simon Harding, who appeared for Mr and Mrs Nag, realistically accepted that Mr Close was an honest and credible witness.

Mr Nag

47. Mr Nag was a thoroughly unsatisfactory and unreliable witness. I have concluded that I cannot accept any of his evidence unless it is independently corroborated or inherently probable.

48. The version of the witness statement which is in the trial bundle is missing at least one page which has never been seen by the Claimant. Mr Nag nevertheless confirmed at the start of his evidence that the contents of his statement were true. In response to a question from me, he confirmed that he was verifying the entire statement, including the missing page. Although the missing page was never produced, its absence has not been a significant problem in writing this judgment, given my conclusion that I can place no reliance on the pages which I have seen.

49. My overall impressions of him were as follows:

    i) His *modus operandi* was to ignore whatever question was put to him but instead to use the witness box as a platform for a diatribe against the liquidator and the Claimant's counsel. I lost count of the number of times I had to tell him to answer the question he had been asked and to warn him that his behaviour was not helpful to his case.

    ii) Although he accepted a degree of blame where he regarded it as impossible to avoid, he frequently sought to blame others for what happened.

    iii) His evidence contained inconsistencies, which I am satisfied arose because he was simply saying whatever he thought would help his case in answer to one question, forgetting that he had previously given an inconsistent response in answer to a different question.

50. I have set out in my summary of the facts specific instances in which I have rejected Mr Nag's evidence, but I will expand on my reasons in relation to two particular instances. The first is his provision of the bank details of Q London, instead of those of Quore, which resulted in Devonshires paying the money to the wrong company (paragraph 32.iii) above). Mr Nag's evidence that this was a genuine mistake is plainly a lie:

    i) In his Defence (which he signed with a statement of truth) he blamed an unnamed member of his staff for providing the wrong bank details.

However, given that the payment was for over £400,000, it is inherently implausible that he relied on a member of staff and did not check it for himself, especially since Devonshires specifically asked him to confirm the accuracy of the details.

ii) He had no difficulty in providing the correct bank details in order to obtain the loan from Vodafone (paragraph 20 above).

iii) If it was a genuine mistake, he would have rectified it as soon as he became aware of it.

51. The other instance to which I refer relates to a payment which Mr Nag made to Mr Briggs. During cross-examination Mr Nag said that he had made a substantial payment out of his own funds which related to Quore's liability to pay the Briggs for the purchase of ITC's business. It is not clear to me whether this is a reference to the fact that he had caused Q London to transfer almost £100,000 to Ashiemymy (see paragraph 39 above):

i) Even if that had been the real reason for the transfer to Ashiemymy, there can be no possible justification for transferring Quore's money to a different company.

ii) When I asked where I could find any documents to support his contentions, he told me that he would like to show me the document but was prevented from doing so by a confidentiality clause in the schedule to the Tomlin order which compromised the proceedings brought by Mr Briggs. I pointed out that, if (as he claimed) he was precluded by a confidentiality clause from disclosing the settlement with Mr Briggs, then he was also precluded from referring to its contents.

iii) However, in view of Mr Nag's claim that Quore was a party to the Tomlin order and agreement, Mr Curl submitted that the liquidator was entitled to see the document. After a brief adjournment, during which the document was shown to the liquidator, it became apparent that the paying party was QTL and not Quore. (This accorded with the ITC agreement, in respect of which Quore had given only a very limited guarantee: see paragraph 8 above).

iv) This episode illustrated several consistent features of Mr Nag's evidence:

a) Saying whatever he thought would help his case in answer to the question he had just been asked;

b) Belated reference to the document when it suited Mr Nag's case (and, moreover, reference to the document in apparent breach of confidentiality); and

c) Reliance on a significant document which had been withheld from the liquidator, with the result that the true effect of the

document could not be ascertained (and was only ascertained because the liquidator asked to see it during cross-examination).

Mrs Nag

52. Mrs Nag was understandably nervous and distressed when giving evidence. She said that she had once worked in marketing but had been a full-time mother and housewife since 2006. She admitted the following:

i) She knew that "*on paper*" she was a director or secretary of various companies (as set out above);

ii) She was a 50% shareholder in QTL;

iii) She had never paid for her shares in QTL;

iv) She had made "*quite a lot of money*" out of the sale of those shares (I interpose to say that Mr Nag's email to her of 2 April 2013 (paragraph 35 above) stated that over £400,000 was payable to her for her shares, and that her email in response expressed no surprise);

v) She had signed a number of documents in connection with the sale of her shares to Evolve;

vi) She had authorised Devonshires to pay the proceeds of sale in respect of her shareholding into Mr Nag's bank account; and

vii) The transaction could not have happened without her authorisation.

53. She said that she never read any of the documents but simply signed them because Mr Nag asked her to do so and because she trusted him totally. However, she agreed, when shown the documents which she had signed, that they were important documents.

54. The following exchange took place between Mr Curl and Mrs Nag:

"*Q. Now, based on the share purchase agreement we just looked at, that money really belonged to Quore Limited, didn't it?*

A: Sure. Sorry, I'm – I don't know. I literally can't answer your question and you're asking me many questions and I understand because my name's here, I can see my name here, but, as I've tried to say, I – my husband was running the business wonderfully well and I was doing everything at home. So I understand that my name's here. I can't give you facts because I don't know what I'm meant to be answering. I do apologise, but I really –

Q: Do you agree that the honest and reasonable thing to have done at this point would have been to read the documents to make [sure] you understood where this money was coming from?

A: But I wasn't really involved in that.

Q: Do you agree that the honest and reasonable thing to have done would have been to read the documents so you knew where the money was coming from?

A: Well I suppose so, looking back.

Q: So is the answer yes?

A: Oh, okay, yes."

55. Mr Curl placed reliance on the first answer in this extract, saying that she initially accepted that the money belonged to Quore, but then realised the consequences and backtracked. Whilst I accept that this is a possible inference, I am not satisfied that I should draw it. It is equally possible that she was genuinely confused.

56. There was another important exchange in which Mr Curl questioned her reliance on her husband:

"*Q: So in matters of business are you happy to do whatever your husband asks without –*

A: Well, I trust him.

Q: Whether it's right or wrong.

A: I don't know whether it's wrong. I trust him. He's never going to put me in a position - well, I'm here, but he wouldn't do that.

Q: So if your husband asks you to do something, you don't need to check whether it's right or wrong.

A: I trust him.

Q: You don't feel that you need to make any enquiries whether it's right or wrong?

A: I don't see why I would."

57. I do not find her to be a dishonest witness, unlike Mr Nag. The issue is what consequences in law flow from her having acted as she did, given the state of mind which she sets out in her evidence.

The paucity of the documents

58. Following his appointment, the liquidator wrote to Mr Nag on 22 October 2015 asking him, as a former director, to complete a questionnaire and to deliver up Quore's manual and electronic books and records. Despite a number of requests, Mr Nag failed to do so and also failed to respond to a request to meet the liquidator. I am told that the liquidator wrote in similar terms to Mr Wadley and again had no success. It was only after Ashfords wrote on the liquidator's behalf that Mr Nag finally responded on 1 November 2016, saying that he had resigned as a director in 2013 and no longer had access to the Company's books and records. Mr Close described Mr Nag as

having been "*helpfully unhelpful*", by which he meant that, after Ashfords had written to him, Mr Nag said the right things about cooperation with the liquidator but failed to deliver. Ashfords threatened to make an application against Mr Nag under section 235 of the Insolvency Act 1986, but in the event this did not happen.

59. Mr Harding submitted that the liquidator could have done more to obtain further evidence. It is not clear what conclusion I am asked to draw from this criticism, given that Mr Harding accepted that Mr Close had not acted improperly or negligently as liquidator. In my judgment it is clear that the paucity of documents is no fault of the liquidator. Any doubts which arise from the absence of books and records of Quore are to resolved in favour of the Claimant and against the Defendants, for the following reasons:

i) Mr Nag, as a director of Quore until 2013, was in clear breach of his duty under section 235 to cooperate: *Re Mumtaz Properties* [2012] 2 BCLC 109 *per* Arden LJ at [16] and [17].

ii) I am satisfied that it was within Mr Nag's power to procure Mr Wadley to deliver up the books and records, bearing in mind that Mr Nag owned 90% of the shares in Quore and claimed to have paid Mr Wadley fees out of his own funds.

iii) I bear in mind that Mr Nag sought to place considerable, but unjustified, reliance on documents which were not available to the court. One example is the Tomlin order and agreement with Mr Briggs (see paragraph 51 above); another is the missing Clydesdale bank statements which the liquidator never saw, but which cannot have made any difference, given (i) Mr Nag's evidence that Quore's account with Clydesdale was overdrawn and that he personally paid off the debt and (ii) the net deficit on the balance sheet in the 2012 accounts, which must have taken into account the positive balance (if any) in the Clydesdale bank account.

iv) The Claimant has established a prima facie case against the Defendants without the need to rely on any missing documents. The missing documents are therefore relevant only to Mr and Mrs Nags' defence, as to which they bear the burden of proof.

Devonshires' role

60. Mr Nag placed considerable reliance on advice allegedly given by Devonshires to him both in his personal capacity and as a director of Quore and QTL that the transaction was a proper one for Quore and QTL to enter into. No written advice to that effect has been produced, despite Mr Nag authorising Devonshires on 24 February 2017 to release all documents sought relating to their retainer by Mr and Mrs Nag, QTL and Q London. In the course of his oral evidence Mr Nag expressed it differently, saying that

Devonshires never advised him against the transaction and that he was entitled to take this as being confirmation that the transaction was a proper one.

61. Mr Harding referred me to the line of cases which says that a solicitor may be under a duty to offer advice to his client even where advice has not been sought. He submitted that Devonshires, as honest and competent solicitors, would have advised Mr Nag if they thought that the transaction was improper, and that Mr Nag was therefore entitled to rely on the absence of any such advice.

62. In my judgment this line of cases has no relevance, for the following reasons:

i) As Sir Alastair Norris said in *Sharp v Blank* [2019] EWHC 3096 (Ch) at [629]: "*In general, a director who takes and then acts upon expert advice has gone a long way to performing his duties with reasonable skill and care. But the taking and acceptance of advice is not a substitute for the exercise of reasonable skill and care: it is only part of the discharge of that duty*."

ii) I respectfully agree and would add that the final sentence from that quotation applies with even greater force in a case of breach of fiduciary duty, since a director should not need a solicitor to tell him whether his actions are bona fide and likely to promote the company's interests for the benefit of its creditors.

iii) Further, it is obviously that much more difficult to justify reliance on solicitors where the defendant did not expressly ask the question and was not given the answer.

iv) In the present case the documents executed on 28 March 2013 are curious and convoluted. Any honest and reasonable company director who was in any doubt would have asked his solicitor for advice on whether it was proper to structure the transaction in this roundabout way. In my judgment Mr Nag deliberately refrained from asking because he did not wish to receive unwelcome advice.

v) The transaction of 28 March 2013 is so obviously improper that I cannot infer that Devonshires considered the point and decided that it was proper. The more likely explanation is that they were instructed on an execution-only basis and that Mr Ebsworth was not asked to consider, and did not in fact consider, whether the transaction was a proper one for Quore to enter into. However, I reach no concluded view on the matter, given that Devonshires are not a party to these proceedings and that Mr Ebsworth was not called as a witness. I merely conclude that Mr Nag has not satisfied me that he can avoid liability by claiming to have relied on his solicitor.

The claim against Mr Nag

63. Mr Nag, as director of Quore at the time of the sale to Evolve, owed duties of care and fiduciary duties under sections 170 to 177 of the Companies Act 2006. In particular, he had a duty to Quore under section 172 to act "*in the way he considers, in good faith, would be most likely to promote the success of the company*", having regard to any common-law duty to consider the interests of creditors. This common-law duty arises where "*the company is or is likely to become insolvent*": see *BTI 2014 LLC v Sequana* [2019] 2 All ER 784 at [220] *per* David Richards LJ.

64. Mr Nag signed accounts which admitted that Quore was insolvent on the balance-sheet test and he admitted in cross-examination that he knew this to be the case. He came close to admitting that Quore was also insolvent on the cash-flow test when he said in cross-examination that "*there was a liquidity problem, yes*". However, he later resiled from this. When cross-examined about an email he had written to the liquidator on 13 August 2018, admitting that "*Quore was insolvent by January 2013*", he agreed that he had written this but said it was a mistake and that Quore was not insolvent at that time.

65. I am satisfied that Mr Nag knew by late 2012 (if not earlier) that Quore was insolvent on the cash-flow test as well as the balance-sheet test. He said in his witness statement: "*I had two options under my fiduciary duties, either put the company and QTL into administration or find a buyer.*" If Quore had not been insolvent, he would have ensured that Quore repaid Vodafone, in order to discharge his liability as guarantor.

66. Mr Nag's realisation that Quore was insolvent under both tests was reached without reference to Quore's liabilities to the Leahys and HMRC. If those additional liabilities are included, as they must be, the position is that much worse. He gave firm evidence that in his mind Quore had no liability to the Leahys or HMRC in early 2013, because both debts arose considerably later. This is untenable A company's ability to pay debts as they fall due includes provision for debts which will fall due in the reasonably near future: *BNY Corporate Trustee Services Ltd v Eurosail-UK 2007-3BL plc* [2013] 1 WLR 1408 at [37] *per* Lord Walker.

67. The Claimant claims under three heads:

    i) £1,267,430, being the net payment made by Evolve;

    ii) £288,294, being QTL's debt to Quore which was wrongfully released; and

    iii) £242,562, being Mr Nag's debt to Quore which was wrongfully released.

68. Mr Curl made detailed closing submissions, both orally and in writing, in relation to these three heads of claim. Mr Harding based his submissions on Mr Nag's evidence that the transaction had been misinterpreted. I invited Mr Harding to respond, paragraph by paragraph, to Mr Curl's written

submissions, and it became apparent that he broadly accepted them if, contrary to the Defendants' case, the transaction had not been misinterpreted. I therefore move straight to my analysis of the three heads of claim, which is largely based on Mr Curl's submissions.

The claim for £1,267,430

69. The manipulation of the assets between the various companies controlled by the Nags appears to have had no commercial justification. A number of these transactions might well be shams. However, no such allegation was made by the Claimant, who was content to proceed on the basis that all the documents were genuine transfers, and I will therefore proceed on the same basis.

70. The sale to Evolve was structured so that £817,430 would be paid to Mr and Mrs Nag for their shares in QTL and £650,000 would be a loan to QTL to enable it to buy Quore's business:

    i) Although it is not clear how the business of ITC came to be re-vested in Quore, it is clear from the documents (and in particular the reference in the disclosure letter signed by Mr and Mrs Nag to paragraph 2.1 of the warranties on the sale to Evolve: see paragraph 32.i) above) that Mr and Mrs Nag accepted that the entirety of the business (i.e. Quore's original business, the ITC business and the Bridgwater business) belonged to Quore at the start of the day on 28 March 2013. (The ITC and Quore businesses had been bought with Quore's money, as had the original business; hence I would have reached the same conclusion if I had decided that the earlier transactions were shams.)

    ii) I am also satisfied that QTL was nothing more than an empty shell which had no business of its own. This is consistent with the reference in the disclosure letter to paragraph 8.1 of the warranties on the sale to Evolve. It is also consistent with QTL's accounts.

    iii) I therefore conclude that Mr Nag knew, when he signed the agreements on 28 March 2013, (i) that the entire consideration for the sale of Quore's business should have been paid to Quore, (ii) that Quore was insolvent and (iii) that it was contrary to the interests of its creditors that any part of the payment should not be paid to Quore. He committed a breach of fiduciary duty in signing documents which diverted a significant part of the purchase price to himself and his wife as shareholders in QTL. He committed a further breach of fiduciary duty in directing that the payment to Vodafone should come out of the sum payable to Quore and not out of the sum payable to himself and his wife (paragraph 33 above).

71. Devonshires in fact received £1,267,430 from Evolve's solicitors (excluding the £100,000 which they returned to Evolve (see paragraphs 36 and 37 above)). I shall now consider the four principal payments made by Devonshires out of this sum.

72. The payment £203,253 to Vodafone had the effect of preferring that creditor. Were it necessary to do so, I would have found that this constituted a preference under section 239 of the Insolvency Act 1986. I am satisfied that Mr Nag's intention was to prefer Vodafone, his overriding concern being to obtain a discharge from his personal guarantee. That is why he chose to reject the offer made by Mr Geraghty (paragraph 25 above). However, it is not necessary to make this finding. Mr Nag's duty as director of an insolvent company was to consider the interests of creditors as a class: *GHLM Trading Ltd v Maroo* [2012] 2 BCLC 369 at [168] *per* Newey J. He committed a breach of that duty by making this payment which was not in the interests of the creditors as a class, whether or not it amounted to a preference under section 239. He sought to justify his action by saying that the business was unsaleable without Vodafone's cooperation. That might be so, but I am satisfied that his intention was to sell the business so as to obtain a profit for himself and his wife, not for the creditors as a whole.

73. The payment of £574,338 into Mr Nag's personal account is self-evidently a breach of fiduciary duty.

74. As regards the £446,746 paid to Q London:

    i) I have concluded that Mr Nag deliberately gave the wrong bank details to Devonshires (paragraph 50 above). That, too, is self-evidently a breach of fiduciary duty.

    ii) Even if I am wrong about this, it was nevertheless a misfeasance to have failed to forward the money to Quore as soon as he discovered his error. If he had forwarded the money promptly to Quore, his breach of duty would have caused no appreciable loss.

    iii) The burden of proof is on Mr Nag to establish that any credit should be given against the full sum of £446,746. I am satisfied that he has failed to establish this. Some of the money was used to repay creditors of Quore whom he chose to prefer, such as his mother and his wife's father. Were it necessary to consider section 239, the burden of proof would have been on him to disprove a desire to prefer these creditors: sections 249 and 435. However, for the reason explained in paragraph 72 above it is not necessary to go that far; I am satisfied that any payments which he made to creditors of Quore were not made in the interests of the creditors as a whole.

    iv) The application of part of the moneys in payment of preferred creditors might arguably be said to have been of some limited benefit to Quore, insofar as it reduced the total sum owed to creditors and meant that whatever moneys remained were divisible among fewer creditors. This is plainly incapable of being a defence to breach of duty, but I can see that theoretically it might be relevant to quantum, albeit that there might well be enormous practical difficulty in valuing that benefit.

v) However, in the present case, I am satisfied that no such credit is to be given (and none was sought by Mr Harding). In the first place, the misfeasance for which the Claimant sues arose at the earlier stage when the money was wrongly paid to Q London. Mr Nag asserts that he used some of the money to pay Quore's debts and it is up to him to prove his defence, which is met by the contention that these payments to selected creditors were themselves wrongful. Secondly, I am not satisfied as to how the money was in fact applied and what liabilities it in fact discharged, given the paucity of the documents (including the absence of ledgers), for which Mr Nag as a former director is responsible (see paragraph 59 above).

75. As for the £37,692 paid to discharge Devonshires' fees, Mr Harding did not seek to argue that any credit should be given for such part of the fee as should properly have been paid by Quore. Had he done so, I would not have been in a position to decide what, if any, amount should properly be allowed, given the paucity of documents in this case.

76. I have looked at the four principal payments out of the money paid to Q London, but my overall conclusion is simply that the money was wrongfully paid to Q London and that Mr Nag has failed to convince me that any of the money was in fact used for the benefit of the general body of creditors of Quore.

77. I therefore conclude that Mr Nag is liable for the full sum of £1,267,430.

78. I have reached this conclusion on the basis of my findings of fact as to Mr Nag's subjective intentions. However, if I am wrong about this, I would reach the same conclusion applying an objective test, for the reason given in *Re HLC Environmental Projects Ltd* [2014] BCC 337 at [92] *per* Mr John Randall QC:

> "*The subjective test only applies where there is evidence of actual consideration of the best interests of the company. Where there is no such evidence, the proper test is objective, namely whether an intelligent and honest man in the position of a director of the company concerned could, in the circumstances, have reasonably believed that the transaction was for the benefit of the company*."

The claim for £288,294

79. As part of the sale to Evolve on 28 March 2013 Mr Nag executed a deed on behalf of Quore releasing QTL from its liability to repay £288,294 (paragraph 31.iv) above). This was the debt incurred by QTL when it borrowed the money from Quore to buy the share capital of ITC.

80. The release was plainly contrary to the interests of Quore's other creditors, and hence a breach of fiduciary duty.

The claim for £242,562

81. I note in passing that I have seen no evidence to show that it was proper for Mr Nag to have borrowed any money from his company. However, that was not the basis of the Claimant's claim. Instead the Claimant focused on the amount outstanding but then written off.

82. Mr Nag claimed that it was written off in lieu of salary, but this is a hollow justification, since (i) Quore ceased trading in March 2013, (ii) there is no evidence of any director's service agreement, and (iii) it would have been a misfeasance to have paid himself ahead of other creditors.

83. The only clear evidence I have as to the amount outstanding is the figure of £269,523 in the 2011 accounts (paragraph 16 above). From this I deduct £26,961 (paragraph 43 above), resulting in a liability of £242,562. As I have stated, no proper basis was shown for writing off this debt.

The claim against Mrs Nag

84. In his closing submissions Mr Curl withdrew the claim that Mrs Nag was a *de facto* or shadow director and confined the Claimant's case to accessory liability for dishonest assistance and/or knowing receipt.

Dishonest assistance

85. A claimant alleging dishonest assistance must establish:

    i) That there is a trust: for this purpose, company assets are treated as trust property and the director is treated as a trustee: *Burnden Holdings (UK) Ltd v Fielding* [2018] AC 857 at [11].

    ii) That Mr Nag committed breach of trust as a director: this is clearly established, as set out above.

    iii) That Mrs Nag assisted him: this is also clearly established, in that Mrs Nag's signature was needed on the various documents signed on 28 March 2013, as well as her authorisation to Devonshires to provide the required undertaking. She accepted in cross-examination that the transaction could not have proceeded without her cooperation.

    iv) That Mrs Nag acted dishonestly, which means: "*simply not acting as an honest person would in the circumstances. This is an objective standard*": *Royal Brunei Airlines v Tan* [1995] 2 AC 378 at 389C-D.

86. The definition of dishonesty for the purpose of dishonest assistance has been authoritatively restated by the Supreme Court in *Ivey v Genting* [2018] AC 319 at [74]:

> "*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a*

matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

87. Accordingly, there are two stages in considering whether dishonesty has been proved. The first stage is to decide what facts were actually known to Mrs Nag when she signed the documents on 28 March 2013. I have summarised these facts at paragraphs 52 and 53 above.

88. The second stage is to consider whether an ordinary decent person in her position, and with the knowledge which she actually had, would have signed the documents and authorised Devonshires to pay her share to Mr Nag. The function of the judge as fact-finder in a civil case has memorably been described as being "*to condense in words the dialogue of the intracranial jury room*": *O'May v City of London Real Property Co Ltd* [1983] 2 AC 726 at 742A. I have to consider whether ordinary decent members of the public who are not legally trained would have signed whatever their spouse asked them to sign in the particular circumstances of this case.

89. In my judgment the intracranial dialogue would proceed along the following lines:

i) Mrs Nag acquired a 50% shareholding in QTL some 15 months before the sale. She did not pay anything for those shares and there is no evidence that they ever had any value before the date of the sale. It should therefore have been a matter for surprise that they were being sold for more than £400,000.

ii) She realised that the documents she was being asked to sign were important documents, one of them requiring formal execution as a deed.

iii) She also realised that the transaction was dependent on her signing the documents and giving authority to Devonshires.

iv) She admitted that in those circumstances the honest and reasonable course would have been to read the documents (see paragraph 54 above). The transaction documents were extremely complicated and she probably would not have understood them, but in that case she should have asked that the transaction be explained to her.

v) She did not do so but simply signed at her husband's request because she said she trusted him.

vi) It is understandable that a person might place great trust in their spouse. This is particularly so in the case of a person who had not

worked for the previous seven years, but had been a full-time mother and home-maker, leaving all matters of business to her husband.

vii) But would a spouse who had a high degree of trust in her husband sign whatever business documents he asked her to sign, in the circumstances set out in subparagraphs i) to iv) above?

viii) There is a difference between having a high level of trust in your spouse and simply doing whatever your spouse asks you to do, regardless of whether it is right or wrong.

ix) Her approach was to refrain from considering whether it was right or wrong but simply to do whatever her husband asked (see paragraph 56 above). She chose to allow him to be the arbiter of whether it was right or wrong.

x) This amounts to wilful blindness, which is not the way that an ordinary decent person would have behaved in the circumstances of this case.

Knowing receipt

90. In order to establish knowing receipt, the Claimant must establish:

i) A disposal of Quore's property in breach of trust or breach of fiduciary duty;

ii) Beneficial receipt by Mrs Nag; and

iii) Knowledge by Mrs Nag that this was Quore's property.

91. The first requirement is clearly satisfied in relation to the payment of £574,338 to Mr Nag. Mrs Nag's share of this was £287,169.

92. As regards the second requirement, Mrs Nag directed Devonshires to pay her 50% share to Mr Nag (see paragraph 35 above). Mr Curl submitted that this was sufficient to establish beneficial receipt, and Mr Harding made no submission to the contrary. In my judgment Mr Curl is correct: a power to direct who it is to receive the money is sufficient to constitute receipt in relation to knowing receipt. I respectfully agree with Morgan J who reached the same conclusion in *Pulvers v Chan* [2008] PNLR 9 at [379]:

> "*In general, the monies which [the defendant] caused to be paid over in breach of trust were not received by him into his own bank account but were, it seems, received by companies controlled by him. In my judgment, the receipt by the company should properly in this case be regarded as receipt by a nominee for [the defendant] and therefore sufficiently a receipt by [the defendant] personally for the purposes of the personal liability which attaches to a knowing recipient of trust.*"

93. As regards the third requirement, Stephen Morris QC (now Morris LJ) held in *Armstrong DLW GmbH v Winnington Networks Ltd* [2003] Ch 156 at [132] that it was sufficient for the Claimant to establish that:

"*on the facts actually known to this Defendant, a reasonable person would either have appreciated that the transfer was probably in breach of trust or would have made enquiries or sought advice which would have revealed the probability of the breach of trust*".

94. This is a lower threshold than is required for dishonest assistance. Given my conclusion on dishonest assistance, it follows that I am satisfied that Mrs Nag had the relevant degree of knowledge.

Disposition

95. For the reasons set out above, Mr Nag is liable for the following sums:

i) £1,267,430, being the entire consideration paid by Evolve (after deducting the £100,000 retention which was returned to Evolve);

ii) £288,294, being the amount of QTL's debt to Quore which was wrongfully released; and

iii) £242,562, being Mr Nag's net liability in respect of his director's loan account which was wrongfully released.

96. Mrs Nag is liable to account as a constructive trustee on the ground of dishonest assistance for the same sum of £1,267,430. If I had not found her liable for dishonest assistance, I would nevertheless have found her liable for knowing receipt in the sum of £287,169; however this sum is comprised in the larger sum.

97. Following circulation of my draft judgment, the parties have agreed an order which I approve in the following terms:

i) Mr and Mrs Nag shall jointly and severally pay equitable compensation to the Claimant of £1,802,179.62, comprising £1,267,430 principal together with interest from 28 March 2013 at the rate of 4% compounded with quarterly rests in the sum of £534,749.62;

ii) Mr Nag shall additionally pay to the Claimant:

a) equitable compensation of £409,929.99, comprising £288,294 together with interest from 28 March 2013 at the rate of 4% compounded with quarterly rests in the sum of £121,635.99; and

b) £308,326.21, comprising £242,562 together with interest from 21 April 2015 at the rate of 4% in the sum of £65,764.21.

iii) Mr and Mrs Nag shall pay the Claimant's costs of these proceedings, to be subject to detailed assessment on the indemnity basis if not agreed, and shall pay £180,000 on account of the said costs.