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Case No: CR-2018-002980

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

Rolls Building
Royal Courts of Justice
7 Rolls Buildings
London EC4A 1NL

Date: 16 April 2024

Before:

INSOLVENCY AND COMPANIES COURT JUDGE GREENWOOD

- -

IN THE MATTER OF M.M. APARTMENT LETTING LIMITED (In Liquidation)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between:

1. KIERAN MICHAEL BOURNE (As Liquidator of M.M. Apartment Letting Ltd)	**Applicant**
2. M.M. APARTMENT LETTING LIMITED	
- and -	
1. MANUK MANUKYAN	**Respondents**
2. YOLANDA ANNE MANUKYAN (AKA YOLANDE MANUKYAN)	

- -

Amit Gupta (instructed by **Morgan Phelps Solicitors**) for the **Applicant**
The First Respondent appeared in person
The Second Respondent was neither present nor represented

Hearing dates: 30, 31 October and 1 November 2023

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This judgment was handed down remotely at 10.30am on 16 April 2024 by circulation to the parties or their representatives by e-mail.

ICC JUDGE GREENWOOD:

Introduction

1. This is the trial of an application made by Mr Kieran Bourne in his capacity as the liquidator of M.M. Apartment Letting Ltd ("**the Company**") and by the Company itself, by Insolvency Act Application Notice dated 6 January 2022, against the Company's former sole director, Mr Manuk Manukyan, and his wife, Mrs Yolanda Manukyan, formerly its company secretary. The Company is in compulsory liquidation, a winding-up order having been made against it on 28 June 2018 in the Birmingham District Registry on the first hearing of a petition presented on 13 April 2018 by a creditor, Nell Gwynn House Apartment 2 Ltd ("**NGH**"). The petition was founded on the Company's failure to pay a debt in the sum of £243,898.87, said to have been due as at 29 March 2018, and admitted as to about £184,000.

2. The Applicant sought relief:

   2.1. first, against Mr Manukyan alone, under ss. 212 and/or 238 and/or 239 of the Insolvency Act 1986 ("**the IA 86**") and the Companies Act 2006 ("**the CA 2006**"), in respect of a £10,000 dividend, admitted to have been declared and paid to Mr Manukyan in June 2018 ("**the June Dividend**") and therefore after the deemed commencement of the winding up, without the benefit of a validation order under s.127 of the IA 86, at a time when the Company was admittedly insolvent; and,

   2.2. second, in respect of various payments (including cash withdrawals) admitted to have made by the Company, acting by Mr Manukyan, from its sole bank account (at Lloyds Bank, Upper St., Islington Branch, account number 00284404 - "**the Bank Account**") between 14 August 2017 and 13 April 2018, in the aggregate sum of £93,003.73 ("**the Payments**"):

      2.2.1. against Mr Manukyan, under ss.212 and/or 238 and/or 239 of the IA 86, in respect of the whole sum (albeit that in closing, it was said the Applicant's case was principally advanced under ss.212 and 238);

      2.2.2. against Mrs Manukyan, under s.239 of the IA 86, in respect of an amount no more than £76,670.57, if and to the extent that by virtue of the Payments, she was repaid in respect of certain loans and/or financial assistance admitted to have been given by her to the

Company between March 2017 and 15 January 2018 in that aggregate sum. Plainly, if and to the extent that Mrs Manukyan was repaid a debt by means of the Payments or any of them, the claim against Mr Manukyan under s.238 could not succeed: repayment of a debt is not a transaction at an undervalue.

3. Mr Manukyan was present at the trial, albeit without representation; he gave evidence and was cross-examined by Mr Amit Gupta of Counsel who appeared for the Applicant; Mrs Manukyan was not present, and although Points of Defence (drafted by their counsel) had been served on behalf of both Respondents together, Mrs Manukyan did not herself make or serve a witness statement or serve any other evidence. Otherwise, the evidence at trial comprised the first witness statement of Mr Bourne made on 11 October 2022, and his second statement made on 18 January 2023. His evidence was admitted without attendance or cross-examination, by virtue of an Order made by Deputy ICCJ Agnello QC (as she then was) on 2 September 2022. As a preliminary point, I was satisfied that Mrs Manukyan was aware of the trial (which was fixed by order made on 26 September 2022, about two months after the Defence was served, at a time when both Respondents were represented) and chose not to attend; indeed, notwithstanding that Mr Manukyan appeared in person, the Respondents' solicitors (Morgan Has) remain on the record.

4. In summary - I shall deal with its detail at appropriate points below - Mr Manukyan's case, which certainly he purported to advance on behalf of Mrs Manukyan also, was that he alone was responsible for the operation, management and financial affairs of the Company; that the sums in issue were all paid or used by him for the proper purposes of the Company's business (and in return for valuable consideration); and that to the extent Mrs Manukyan was repaid, those repayments were not made under the influence of a desire to improve her position in the event of an insolvent liquidation.

The Background

5. The Company was incorporated on 24 July 2002, and its 100 issued shares were held, as to 60, by Mr Manukyan, and as to the remainder, by his daughters, Dora and Natalie, each of whom held 20, but neither of whom was otherwise involved in its affairs. From the beginning, Mr Manukyan was the Company's sole director, and owed duties

accordingly; Mrs Manukyan was the company secretary, but according to Mr Manukyan, had "*no idea*" about its affairs, and was not involved in its management. He said they had been separated for some 20 years. As mentioned above, the Company had only one bank account, in respect of which Mr Manukyan was the sole signatory, and only he held a debit card; he accepted that he alone was responsible for all payments and transfers out of the Bank Account.

6. Essentially, the Company provided agency services, referring customers (mostly in Turkey, but also Spain) who were seeking short-stay holiday accommodation in London, for two to three days, to various accommodation providers. NGH was one such provider, and had been since 2005; from 2015, according to Mr Manukyan, it provided a "*large share*", indeed, almost all of the required accommodation.

7. Mr Manukyan described the business as "*low-margin*" (5-10% "*maximum*"), only able to charge customers sums "*slightly above*" those payable to the accommodation providers. Because it was often required to pay providers before itself receiving payment, the Company, according to Mr Manukyan, "*regularly suffered from cashflow difficulties*". It had no office in England, but traded from Mr Manukyan's home; it paid for the services of a contract manager, one Mr William Bailey, who was paid, according to Mr Manukyan, £2,500/month. In addition, Mr Manukyan described the existence of various other general costs and expenses, such as "*business lunches*", telephone bills and travel expenses.

8. According to its abbreviated accounts to 31 July 2016 ("**the 2016 Accounts**") produced by its accountants, Champ Consultants Limited ("**Champ**") and dated 12 December 2016, the Company had £7,123 cash at bank and in hand, and net liabilities of £3,576 (compared with £5,903 in the previous year); it had shareholders' funds in the negative sum of £3,576. Mr Manukyan understood that it was important to maintain the Company's financial books, records and other documents, and said that he gave Champ "*whatever they needed*"; he did not criticise or seek in any way to undermine or cast doubt on their work or its product; on the contrary, he accepted that he could not dispute it.

9. According to its "*Report and Accounts*" in respect of the year to 31 July 2017 ("**the 2017 Accounts**"), dated 25 January 2018, and also produced by Champ, the Company's

turnover increased significantly, to £558,381 from £286,148 in the previous year, producing a profit of £26,441, and net assets in the sum of £1,365. The Notes to those Accounts recorded the fact of debtors owing £7,483 to the Company; in response to an enquiry from the Official Receiver, by letter dated 24 July 2018, it was explained by Champ that the whole of that sum was owed by Mr Manukyan.

10. Mr Manukyan's evidence was that the increased turnover after July 2016 "*put further strain*" on the Company's cashflow, because it meant that it was obliged to find ever larger sums to pay for accommodation in advance of payment by its own customers. In those circumstances, in about March 2017, whilst in Turkey, he was (according to his witness statement) telephoned by a Mr Jamal Watfa from NGH, or (according to his oral evidence) by Mr Watfa's manager, one Ms Belinda Nolan, but in any event, was told that NGH was owed £40,000 (according to his witness statement) or £50,000 (according to his oral evidence) and would not allow customers to use booked rooms without immediate payment. The Company did not have that sum. Accordingly, Mr Manukyan asked his wife, who agreed, to lend £40,000 to the Company, which she sent directly to NGH; there was no written loan agreement and Mr Manukyan agreed that there was no immediate prospect of repayment. Moreover, he agreed in cross-examination that notwithstanding that payment, in about March 2017, the Company still had an outstanding debt due to NGH.

11. In addition to the sums owed to Mrs Manukyan and NGH, as at 31 March 2017, according to a Schedule produced by Champ and sent to the Applicant's Solicitors by letter of 18 November 2018, the Company owed Mr Manukyan (on his directors loan account) £38,059.23. By contrast, by 31 July 2017, Mr Manukyan owed the Company £7,483, and as at the date of its liquidation, owed it £27,3393.89 (a sum which he has been ordered to repay, by paragraph 1 of the Order of Deputy ICCJ Agnello QC on 2 September 2022).

12. On his return to England, Mr Manukyan spoke to Ms Nolan, and was told that NGH was no longer willing to extend credit to the Company, which would henceforth be expected to pay immediately on booking, rather than, as before, within 60 days (an agreement which appears to have been made orally and informally by Mr Manukyan with Mr Watfa). By contrast, the Company extended 42 day credit terms to its customers; its cash flow problems were therefore seriously exacerbated. Mr Manukyan's belief was, he said, that NGH was attempting to steal his business and client connections, and to take the

Company's profits for itself; to that end, he said that he was continuously "*bullied*" by Ms Nolan.

13. As a solution of sorts to the Company's continuing cashflow problems, Ms Nolan was apparently given by Mr Manukyan certain store credit cards held in Mrs Manukyan's name, and allowed to use them to make payments from time to time to NGH on behalf of the Company; if and to the extent that those sums, which ultimately amounted to £36,670.57, were repaid by the Company by means of the Payments, they fall within the scope of the Application. Mr Manukyan said that they were repaid in order to allow for future payment of additional sums, and because otherwise they would have attracted (as sums overdue on credit cards) interest in the order of 40%.

14. It was common ground that the card payments made by Mrs Manukyan (or in her name, using her cards) to NGH on behalf of the Company were as follows: £1,680 on 24 May 2017 (by her House of Fraser card); £1,780 on 27 June 2017 (again, by her House of Fraser card); £3,800 on 19 June 2017 (by her Debenhams card); £2,640 on 1 August 2017 (by her M&S card); £4,720 on 31 July 2017 (again, by her Debenhams card); £7,250 on 22 August 2017 (by her John Lewis card); £2,700 on 29 September 2017 (again, by her M&S card); £2,910 on 2 November 2017 (by her M&S card); and finally, £9,190.57, on 15 January 2018 (by her John Lewis card). Each of those payments was evidenced by a relevant statement of account issued by the card provider.

15. Together with the payment of £40,000 made on 17 March 2017 (of which there was no documentary evidence) it follows that Mrs Manukyan lent to or paid on behalf of the Company the aggregate sum of £76,670.57 between March 2017 and January 2018. The Respondents' case was that the sum of £40,000 was not repaid, but that the card payments were repaid in full (or at least, substantially so, in the sum of £35,810).

16. According to Mr Manukyan, part of the reason for the Company's inability to repay Mrs Manukyan immediately (and, presumably, for its inability to pay NGH the sum demanded, even with Mrs Manukyan's assistance) was that it was at that time, seeking to expand its business in Turkey, and was incurring significant costs and expenses in doing so. Mr Manukyan accepted that it was experiencing "*difficulties*", and accepted also that after March 2017, its cash flow position did not improve. However, he explained that having invested such time and money in the proposed Turkish expansion - which he

hoped would succeed, would enhance the business and would allow for payment of both its debts and greater profits - he was unwilling to abandon it.

17. In connection with the alleged expansion of the business in Turkey, where he said that the Company traded under the name "*SIA Turzim*", Mr Manukyan produced various documents comprising invoices and records of expenses said to have been incurred. The documents were said to show:

    17.1. payment of over £18,000 to "*Image PR*" for public relations work and consultancy in about August 2017;

    17.2. payment of about £4,000 for electrical, IT and plumbing works, charged by "*Tinarsoy Elektirik Market Ltd*" in about June 2017;

    17.3. payment of £6,000 for general renovation and building works, to "*Guney Yapi Insaat Malzemesi Sirketi*" in about July 2017.

18. Each of those payments was said to have been made in cash, and no other surrounding or supporting documents or evidence was produced. In addition, said Mr Manukyan, the Company had paid rent of £2,000 per month for office space in Turkey, and £10,000 to a Ms Cigdem Dur to operate the office, although again, there was no documentary evidence of those payments, or of the obligations which they were said to have satisfied. He said that in or from about February 2018, he had closed the Turkish office.

19. As a result of its rapid expansion (and of the larger sums therefore owed to NGH) Mr Manukyan explained that in about April or May 2017 (although in his written evidence, he said September 2017) he was approached by Ms Kim Beresford and Mr Frank Hunter, on behalf of NGH, and asked whether he would give a written personal guarantee of the Company's liabilities to NGH. Although he agreed, he said that in return he wanted NGH's agreement not to "*poach*" the Company's business and customers. NGH was unwilling to give that assurance, and from about June or July 2017, he said that the relationship "*soured*", although for some time it continued. He said that he was warned by Mr Watfa that NGH would end the relationship, and was warned by him to work out what was owed, a sum which he thought would have been, at that time, about £60-70,000. According to his written statement, NGH terminated its relationship with the Company

in "*around December 2017/January 2018*" (pleaded in the Defence as having been "*largely terminated*" in November 2017), although there were still a "*few outstanding customers*" who had either pre-booked or pre-paid. The Company therefore lost its main – almost its exclusive – source of accommodation provision. In cross-examination, Mr Manukyan said that by then, the Company owed NGH more than £60-70,000, and "*possibly*" as much as £100,000.

20. In cross-examination, Mr Manukyan said that Mr Bayliss defected to NGH in about December 2017, and took with him the Company's customer contact list. He also said that at about that time, Ms Nolan had contacted other accommodation providers (for example, at Chelsea Cloisters) and told them not to work with the Company. He said that ultimately, NGH had "*won*", and had succeeded in taking his business after he had done "*all the dirty work*".

21. The Company was, as I have said, wound up by an order made on 28 June 2018. Soon afterwards, on 25 July 2018, Mr Manukyan completed a Preliminary Information Questionnaire, which he signed, with answers "*true to the best of* [his] *knowledge and belief*", having confirmed that he had read s.5 of the Perjury Act 1911. The PIQ was signed as having been completed in the presence of Champ. Amongst other things, he said:

    21.1. that neither he nor any other officer had made a loan to the Company which had been repaid; in cross-examination, Mr Manukyan said that he had not realised that he ought to refer to the sum (of c. £76,000) lent by Mrs Manukyan; in any event, he said, of that sum, only the first part, of £40,000, was a "loan" – the other sums, paid by card, were not (to his mind at any rate); Mr Manukyan sought to draw a distinction between "loans" and "help" – a distinction which I do not accept as a matter of principle, but which perhaps reflected in his mind a different degree of formality;

    21.2. that various debtors owed various sums, amounting in aggregate to £16,747 (although he did not include himself, in respect of the sum which subsequently he admitted to be due, and was ordered to pay); the Company's only other asset was said to be cash in hand, of £2,515.57;

21.3. that the Company's only creditors were HMRC, Champ and NGH (which he said was owed £184,768); accordingly, he did not say that Mrs Manukyan was owed anything at all.

22. On 26 July 2018, Mr Manukyan completed and signed a supplement to the PIQ, again having confirmed that he had read s.5 of the Perjury Act. Amongst other things, he wrote as follows:

22.1. in his description of the Company's history, "*About 8-9 months ago* [NGH] *asked for a PG from me, as the turnover was getting high. I said this was fine, but I would like a written contract with them in return. Before anything could be agreed* [NGH] *changed their mind, and cancelled all arrangements. As I had feared, they cut me out and went direct. They also started using William Baylis* (sic) *a man who had been helping me with the bookings, themselves. The company carried on with minimal residual trading until June 2018. I believe* [NGH] *said things to other potential clients which damaged my reputation*."

22.2. that the debt to NGH (which he admitted to have been £184,000) was incurred between November 2017 and February 2018;

22.3. that his explanation of the significant deficiency, and of the "*large loss in the last period of trading*" from 1 August 2017 to June 2018 (of about £186,000) was that the Company had spent "*about*" £60,000 in Turkey during that period, had paid "*about*" £23,000 to Mr Manukyan as dividends, and otherwise (as to the remaining £103,000), "*I can only explain this as a trading loss caused by the substantial growth in turnover in the last few years. The company suffered through having to pay for no shows, and overcharging etc by Nell Gwynn. I admit the growth in turnover meant I lost some control over the paperwork. Mr Holder has asked if I benefitted in any other way from the company, either directly or indirectly (ie payments to me or associates), from 01 August 2017 onwards, other than through the dividends I refer to above. I replied that the company also paid maybe about £8k to my wife …. in the period, for secretarial work. My daughter (Natalie) also received about £3k in the period, for dealing with booking problems etc. They were paid sometimes in cash, sometimes from the bank. They were not employees and did not invoice the company for the*

work. They did declare the payments in their personal tax returns. Other than this, I did not benefit in the way asked by Mr Holder."

23. In cross-examination, Mr Manukyan said that as at liquidation, all of the Company's creditors had paid their debts, other than in respect of sums amounting to about £25,000, which he said were "*bad debts*".

24. It was therefore against this background that the Payments were made from the Account, and the June Dividend was declared and paid.

Mr Manukyan as a Witness

25. Other than where supported by reference to independent documentary evidence or an independently verified or agreed fact, I was disinclined to accept or attach any real weight to any of Mr Manukyan's written or oral evidence, which was, in material respects, wholly unconvincing, for at least the following reasons.

26. First, his evidence (and so the Respondents' case) was undermined by the fact of Mr Manukyan having provided various starkly conflicting explanations and responses at different times, but without any adequate explanation for his change of position. Examples are as follows (and others are referred to in my discussion of the merits, and indeed, above, in setting out the background).

27. In respect of the allegation that Mrs Manukyan lent £76,670.57 to the Company, of which all but £40,000 lent in March 2017 was repaid, Mr Manukyan's position emerged and developed as follows.

    27.1. In the PIQ dated 25 July 2018, he made no reference at all to sums lent by and repaid to a company officer, and made no mention of a debt owed as at the date of liquidation to Mrs Manukyan (who has not, I was told, proved for a debt in the liquidation).

    27.2. As a result of an order made by DJ Rich on 30 April 2020, Mr Manukyan was, amongst other things, ordered to produce a witness statement with supporting documentation, giving an account of the payments listed at Schedule 1 to that order, including all or most of the Payments. In direct response to that order,

although he failed to produce a sworn statement, Mr Manukyan met and instructed Ms Chantal Baker of Champ (to whom he said he gave all necessary documents) to reply by letter to the Applicant's solicitors, Morgan Phelps.

27.3. Champ's letter was dated 27 August 2020, and said, in the final paragraph, "*On a separate matter we wish to draw your attention to payments that were made by Mr Manukian's* (sic) *wife on his behalf to Nell Gwyn. Mr Manukian's wife paid Nell Gwyn £40,000 directly and some of the money taken out of the company was used to repay his wife. In addition to this £40,000 Mrs Maunkian used her personal credit card for payments to Nell Gwyn. The payments made by her credit card totalled £26,500.57 and were made up as follows: 31.07.2017, £4720, Debenhams card; 01.08.2017, £2,640, Marks & Spencer's card; 22.08.2017, £7,250, John Lewis card; 29.09.2017, £2,700, Marks & Spencer's card; 15.01.2018, £9,190.57, John Lewis card.*" This was, as far as the correspondence or documents are concerned, the first time that Mrs Manukyan's loans to the Company (and/or their repayment) were mentioned - some two years after the winding up order - albeit not in the aggregate sum later alleged.

27.4. On 21 September 2020, Morgan Phelps sent to Mr Manukyan a formal letter before action, on behalf of the Applicant. Amongst other things, the letter set out each of the Payments in respect of which a claim was threatened, and said that the Applicant was "*genuinely (and in his view, justifiably) sceptical of your attempts to explain the Payments as genuine Company expenditure and rejects those attempts where no contemporaneous evidence has been provided*".

27.5. In response, on behalf of Mr Manukyan, Morgan Has solicitors replied by letter dated 5 November 2021. Amongst other things, they said that Mrs Manukyan had lent £76,670.57 to the Company, including £36,670.57 paid using store cards (in respect of which statements were provided) and - expressly - that the <u>whole</u> of that sum had been repaid by means (to that extent) of the Payments (although confusingly, in their explanation of the Payments themselves, only £65,341.91 was explicitly attributed to her repayment).

27.6. As a result of that reply, on 15 November 2021, Morgan Phelps sent a letter before action to Mrs Manukyan, setting out a claim to £76,670.57 said to have been a preference under s.239 of the IA 86. That claim was in due course reflected in the Applicant's Points of Claim.

27.7. However, in the Respondents' Defence, contrary to the position set out in the Morgan Has letter of 5 November 2021, it was said that although £35,810.80 of Mrs Manukyan's loans had been repaid by the Company (essentially, the sums paid using store credit cards, by means explained below, at paragraphs 76-79) some £40,000 remained outstanding. There was no explanation of that very significantly different position, which in itself contradicted the information provided by Mr Manukyan to the Official Receiver in the PIQ. Most probably, it seemed to me, it was an attempt by Mr Manukyan to avoid or reduce the prospects of an order against his wife under s.239.

28. The same documents reflected other similarly unexplained changes of position. For example, the order of 30 April 2020 required Mr Manukyan to explain payments made with reference "*FRM*" totalling £2,200. The letter of response to that order said, in respect of those payments, that "*cash was withdrawn from the account and used to pay various expenses including the costs of running the office in Turkey*". However, the Respondents' pleaded case was different - that these were payments to a landlord or agent in return for accommodation. Moreover, in his subsequent witness statement - for the first time - Mr Manukyan referred to two properties - "*Flat 12, 1 Hyde Park Square W2 2J2*" and "*Flat 4, 1 Hyde Park Square W2 2J*" - in respect of which he exhibited alleged tenancy agreements said to have been made by the Company but which (for reasons that Mr Manukyan was unable to explain) were both on a form stated to be appropriate to the creation of a "*Short Assured Tenancy within the meaning of section 32 of the Housing (Scotland) Act 1988*", albeit made with two different, unrelated landlords. His oral evidence (although again, not specifically said in this statement) was that the payments made with reference "*FRM*" (on 12 March 2018 and 11 April 2018, and although he was unable to explain the meaning of the reference) were made in respect of Flat 12. Had this explanation been true, it is likely that it would have been given previously.

29. Moreover, the evidence of the tenancy agreements, belatedly introduced, was itself vague and unsatisfactory. For example, in respect of Flat 12, Mr Manukyan's oral evidence was

that he had been the owner of the property "*years ago*" and had contacted the owner and agreed to rent the property in 2018 when the Company's arrangements with NGH came to an end. He said that the owner was overseas, in Jersey, and that he had spoken by telephone to a manager whose full name he could no longer recall. Neither could he recall the name of the person alleged to have signed on behalf of the alleged landlord, "*Successful Property*" (the signature is illegible). Although Mr Manukyan said that the tenancy agreement was with the Company (and was signed on its behalf) the Company's name was not inserted at paragraph 2 under the heading "*Parties and Premises*", and neither was the address of the landlord.

30. Another example concerns those of the Payments made with reference "*Chelsea*", amounting to £19,200. In response to the order of 30 April 2020, it was said that these related to "*payment of a credit card. Credit cards were occasionally used to pay Nell Gwyn and this payment from the bank is the payment to the credit cards. Therefore, this is treated as payment to Nell Gwyn*." Contrary to that explanation, the Respondents' pleaded case was that all "*Chelsea*" payments were to Mrs Manukyan, save for £4,000 on 18 October 2017 (which they could not explain), and £1,000 on 1 December 2017 and £500 on 3 January 2018 (both of which were said to have been to meet expenses such as travel and accommodation). Orally however, at the trial, Mr Manukyan could give no satisfactory explanation of the "*Chelsea*" reference, and said that he could not recall the purpose of the payments.

31. Second, in many respects, Mr Manukyan simply failed to give oral evidence consistent with (or supporting) his written evidence. For example, included within the "*Miscellaneous Payments*" (explained below) was an aggregate sum of £15,673.16, paid (on 3 separate occasions) with reference "*Multiple Payment*". In Mr Manukyan's statement he said that (other than £2,200 paid on 18 March 2018) these payments were repayments to Mrs Manukyan. In his oral evidence however he said that he could not remember the purpose of the payments, and could not explain the reference to "*Multiple Payment*". Moreover, in Champ's letter of 27 August 2020, the "*Multiple Payment*" sums were explained as having been that "*cash was withdrawn from the account and used to pay various expenses including the costs of running the office in Turkey*".

32. Third, Mr Manukyan's evidence (and the Respondents' case) contained various broad explanations made subject to certain very particular exceptions, which although not in

themselves impossible, were not supported by a document, or any clear memory or inherent probability. For example, it was said that the sum of £7,100 withdrawn in cash between 14 August 2017 and 13 April 2018 (by means of 21 separate withdrawals) was used to pay staff and expenses, other than £500 withdrawn on 24 August 2017 which was paid to a landlord or agent in return for accommodation, and £500 withdrawn on 8 February 2018 which was used to repay Mrs Manukyan. Given that Mr Manukyan frequently said that he was simply unable to recall the particular purpose of a payment, and given also the passage of time and that these specific payments were not evidenced by a document, it was very difficult to accept that Mr Manukyan had any real or genuine recollection of these (and other similar) specific occasions and payments in comparatively small sums – and for example, consistently with that, he was not able to say which landlord or agent had been paid using the sum withdrawn on 24 August 2017.

33. Finally, in my judgment, more broadly, Mr Manukyan has knowingly provided only a partial and obviously inadequate account of the Company's affairs and the circumstances of its liquidation. In particular, in the context of a simple, low-margin business, in which the sums paid by customers for accommodation were greater by a comparatively small amount than the cost of acquiring that accommodation, and in which, for example, the July 2017 Accounts showed a profit of £26,441 and net assets of £1,365, it is difficult to conceive of circumstances in which, as a result of its ordinary business, the Company went into liquidation in 2018, less than a year later, with a debt of about £184,000 owed to NGH but owed only about £25,000 (albeit irrecoverable) by debtors other than Mr Manukyan. Mr Manukyan's explanation of that situation as provided in the PIQ - that "*I can only explain this* [the trading loss of about £103,000 between 1 August 2017 and June 2018] *as a trading loss caused by the substantial growth in turnover in the last few years. The company suffered through having to pay for no-shows, and overcharging etc by Nell Gwynn*" - was not adequate or comprehensible. In my judgment there has been a failure to explain the very significant discrepancy between the unpaid sum owed to NGH, and the sums owed (and presumably paid) to the Company.

The Law

Section 212: Misfeasance

34. As the Company's director, Mr Manukyan was a fiduciary, obliged to act in accordance with the duties in set out ss.171-177 of the CA 2006. By virtue of s.212 of the IA 86,

amongst other things, any company officer who has misapplied or retained or become accountable for any money or other property of the company, or is guilty of any misfeasance or breach of any fiduciary or other duty may be ordered to repay, restore or account for the same.

35. Of particular relevance in this case, Mr Gupta cited the decision of Ms Lesley Anderson QC sitting as a Deputy High Court Judge, in Re Idessa (UK) Ltd [2011] EWHC 804, between [24] – [28], and in particular at [28], where the judge said as follows:

> "*28. I am satisfied that whether it is to be viewed strictly as a shifting of the evidential burden or simply an example of the well-settled principle that a fiduciary is obliged to account for his dealings with the trust estate that* [counsel for the applicants] *is correct to say that once the liquidator proves the relevant payment has been made the evidential burden is on the Respondents to explain the transactions in question. Depending on the other evidence, it may be that the absence of a satisfactory explanation drives the Court to conclude that there was no proper justification for the payment. However, it seems to me to be a step too far … to say that, absent such an explanation, in all cases the default position is liability for the Respondent directors. In some cases, despite the absence of any adequate explanation, it may be clear from the other evidence that the payment was one which was made in good faith and for proper company purposes.*"

36. That principle has been stated and applied in numerous other cases subsequently, for example, by Newey J (as he then was) in GHLM Trading Ltd v Maroo [2012] EWHC 61 (Ch) at [143] *et seq*; in Re Umbrella Care Ltd [2022] EWHC 86 at [97], per Edwin Johnson J; and in Aston Risk Management Ltd v Jones [2023] EWHC 603 (Ch) at [185]-[193], per HHJ Cawson KC sitting as a Judge of the High Court.

Section 238: Transactions at an Undervalue

37. Section 238 provides, in relevant part:

> "*(1) This section applies in the case of a company where —*
>
> *(a) …,*
>
> *(b) the company goes into liquidation;*
>
> *and "the office-holder" means … the liquidator ….*
>
> *(2) Where the company has at a relevant time (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.*

(3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(4) For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if—

(a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(5) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—

(a)that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and

(b)that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company."

38. For present purposes, by virtue of s.240, the transaction is at a relevant time if within a period of two years prior to "*the onset of insolvency*", being the date of commencement of the winding up, which was, in this case, 13 April 2018 (by virtue of s.129(2) of the IA 86). All of the Payments, the first of which was made on 14 August 2018, fell within this period. However, even if within that period, the time is not a relevant time (see s.240(2)) unless the company was at that time insolvent (or became insolvent as a result of the transaction) albeit that requirement is presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company (as were both Mr and Mrs Manukyan, admittedly, by virtue of s. 435 of the IA 86).

39. As to the requirements of the provision, Mr Gupta cited Re MC Bacon [1990] B.C.C. 78 at 92, *per* Millett J (as he then was):

"*To come within that paragraph* [this was a reference to s.238(4)(b)] *the transaction must be:*

(1) entered into by the company;
(2) for a consideration;
(3) the value of which measured in money or money's worth;
(4) is significantly less than the value;
(5) also measured in money or money's worth;
(6) of the consideration provided by the company.

It requires a comparison to be made between the value obtained by the company for the transaction and the value of consideration provided by the company. Both values must be measurable in money or money's worth and both must be considered from the company's point of view."

40. To that, I would add that although "*transaction*" is certainly to be widely understood (see s.436 of the IA 86, and for example, Phillips v Brewin Dolphin Bell Lawrie Ltd [1999] 1 WLR 2052) it is not the case that every form of interaction necessarily constitutes a "*transaction*". Thus, for example, the unilateral misappropriation by a director of a company's property has been found not to constitute a transaction between a company and its director: see Re Taylor Sinclair Capital Ltd [2001] 2 BCLC 176. The burden in this respect is on the applicant office-holder.

Section 239: Preferences

41. Section 239 provides, in relevant part:

"*(1) [Application] This section applies as does section 238.*

(2) [Application to court by office-holder] Where the company has at a relevant time (defined in the next section) given a preference to any person, the office-holder may apply to the court for an order under this section.

(3) [Court order] Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.

(4) [Interpretation] For the purposes of this section and section 241, a company gives a preference to a person if–

(a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and

(b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.

(5) [Restriction on court order] The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b).

(6) [Presumption] A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5).

(7) …."

42. Again for present purposes, by virtue of s.240, a preference is at a relevant time if given to a connected person (as were the Respondents) within a period of two years prior to "*the onset of insolvency*", being 13 April 2018 (by virtue of s.129(2) of the IA 86), again subject to proof that the company was at that time insolvent (or became insolvent as a result of the preference) in respect of which requirement (unlike in respect of certain applications under s.238) there is no presumption.

43. Finally, again because of the admitted connection between Mrs Manukyan and the Company, there is a presumption that the Company was influenced by the requisite "*desire*" to improve her position, by virtue of s.239(6).

44. As to the need to show (or disprove, as in the present case) the requisite "*desire*", in Re M C Bacon Ltd [1990] B.C.C. 78 at 87, Millett J held that it is not necessary to establish a dominant intention to prefer, nor is it sufficient to establish an intention: there must be a desire to produce the effect mentioned in the section: "*Intention is objective, desire is subjective. A man can choose the lesser of two evils without desiring either … A man is not to be taken as desiring all the necessary consequences of his actions … It will still be possible to provide assistance to a company in financial difficulties provided that the company is actuated only by proper commercial considerations. Under the new regime a transaction will not be set aside as a voidable preference unless the company positively wished to improve the creditor's position in the event of its own insolvent liquidation*." The desire need not be dominant or decisive; merely, but crucially, it must in fact influence the act. Accordingly, in that case, it was held that a decision by a company to give its bank a charge to secure existing borrowings (when the only alternative, if the bank withdrew its support, was liquidation) was not voidable as a preference under the present section.

Dividends & Distributions

45. Pursuant to the CA 2006, where a company proposes to make a distribution:

45.1. it must have "*profits available for distribution*" (in other words, distributable profits/reserves) to make the distribution: s.830(1) of CA 2006;

45.2. s.830(2) of the CA 2006 defines a company's "*profits available for distribution*" as, "*its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised loses, so far as not previously written off in a reduction or reorganisation of capital duly made*";

45.3. the distribution must be justified by reference to "*relevant accounts*": s.836 of CA 2006.

46. In determining whether a distribution may be made with reference to relevant accounts without contravening the legislation:

46.1. this is determined by reference to the items set out at s.836(1) of the CA 2006, namely "*profits, losses, assets liabilities*";

46.2. the relevant accounts will be the company's last annual accounts or, where the distribution would be found to convene the legislation based on those accounts, interim accounts can be relied on: s.836(2)(a) of the CA 2006;

46.3. the relevant accounts, whether the company's last annual accounts or its interim accounts, must comply with the requirements of ss.837 and 838 respectively: s.836(3) of the CA 2006; and,

46.4. where any applicable requirement of ss.837 and/or 838 is not complied with, then the accounts may not be relied on, and any distribution nevertheless declared/made is treated as contravening the CA 2006: s.836(4).

47. Pursuant to s.847(2) of CA 2006 a shareholder who "*knows or has reasonable grounds for believing that*" a distribution (or part of one) contravenes the relevant legislation is liable to repay it (or that part of it, as the case may be) to the company.

48. In the circumstances of the present case, as explained below at paragraphs 53-57, there is no need to consider in detail the terms of these provisions.

The Company's Solvency

49. In my judgment, from at least 14 August 2017, when the first of the challenged Payments was made, the Company was insolvent. It follows, amongst other things:

(i) that for the purposes of s.238 and s.240 of the IA 86, the Respondents have not shown that the Company was not insolvent at a time when any of the Payments were made, and that therefore any Payment comprising a relevant transaction with the Respondents or either of them was a transaction which took place at a relevant time;

(ii) that in any event, for the purposes of s.238 and s.240 of the IA 86, any Payment comprising a transaction at an undervalue was a transaction at a relevant time; and,

(iii) that insofar as Mrs Manukyan was preferred by virtue of any of the Payments, she was given a preference at a relevant time for the purposes of s.239(2) of the IA 86.

50. As to the law, Mr Gupta cited Re Casa UK Limited [2014] BCC 269, in which Lewison LJ summarised some key principles emerging from BNY Corporate Trustee Services Ltd v Eurosail-UK 2007 3BL Plc [2013] 1 WLR 1408, at [27] as follows:

> "*In my judgment the following points emerge from the decision of the Supreme Court in Eurosail (and in particular the judgment of Lord Walker):*
>
> *(i) The tests of insolvency in s.123(1)(e) and 123(2) were not intended to make a significant change in the law as it existed before the Insolvency Act 1986: [37]*
>
> *(ii) The cash-flow test looks to the future as well as to the present: [25]. The future in question is the reasonably near future; and what is the reasonably near future will depend on all the circumstances, especially the nature of the company's business: [37]. The test is flexible and fact sensitive: [34].*
>
> *(iii) The cash-flow test and the balance-sheet test stand side-by-side: [35]. The balance-sheet test, especially when applied to contingent and prospective liabilities is not a mechanical test: [30]. The express reference to assets and liabilities is a practical recognition that once the court has to move beyond the*

reasonably near future any attempts to apply a cash flow test will become completely speculative and a comparison of present assets with present and future liabilities (discounted for contingencies and deferment) becomes the only sensible test: [37].

(iv) But it is very far from an exact test: [37]. Whether the balance-sheet test is satisfied depends on the available evidence as to the circumstances of the particular case: [38]. It requires the court to make a judgement whether it has been established that, looking at the company's assets and making proper allowance for its prospective and contingent liabilities, it cannot reasonably be expected to meet those liabilities. If so, it will be deemed insolvent even though it is currently able to pay its debts as they fall due: [42]."

51. In their Defence, the Respondents: (i) denied that the Company was insolvent in March 2017, although they admitted that it was reliant on credit provided by Mrs Manukyan; (ii) denied that it was insolvent as at 31 July 2017 according to the 2017 Accounts; (iii) neither admitted nor denied that it was insolvent in November 2017 when the relationship with NGH was terminated, but (iv) admitted that it was insolvent from the end of February 2018; it was admitted that Mr Manukyan ought to have known that the Company was insolvent in and after February 2018 (although denied that at that time, he had actual knowledge).

52. My conclusion regarding solvency rests on the following matters.

    52.1. The business was, according to Mr Manukyan, "*low-margin*", and "*regularly suffered from cashflow difficulties*". The 2016 Accounts showed overall net liabilities of £3,576, and the 2017 Accounts (which omitted any reference to the sum now said to have been owed to Mrs Manukyan as a result of the payment which she made to NGH of £40,000 in March 2017) showed net assets of only £1,365. Mr Manukyan's evidence was that the increased turnover after July 2016, "*put further strain*" on cashflow.

    52.2. In March 2017, the Company (which Mr Manukyan himself accepted was in no position to borrow the required sum, or anything like it, from a bank or other institutional lender) had to borrow £40,000 from Mrs Manukyan to pay part only of what was due to NGH, and avert an immediate crisis. The loan was, according to Mr Manukyan, to be "*repaid as soon as possible*", but according to the Respondents themselves, was never repaid. As at 31 March 2017, Mr Manukyan

himself was owed £38,059.23. In cross examination, he accepted that the Company's cashflow position did not improve at any time after March 2017.

52.3. The withdrawal by Ms Nolan (on Mr Manukyan's return to England in about March 2017) of what had in any event been an informal credit agreement, seriously exacerbated the Company's already stressed cashflow position. From May 2017, it began to use store credit cards held personally in the name of Mrs Manukyan in order to make business payments to NGH.

52.4. In about April or May 2017, Mr Manukyan was asked by NGH (an indication of creditor anxiety) to provide a personal guarantee of the Company's liabilities (which he refused, apparently because NGH itself refused to agree not to approach the Company's customers directly) and from about June or July 2017, he accepted that the relationship with NGH – which provided almost all of the accommodation used by the Company's customers - "*soured*". He was informally warned by Mr Watfa of an intention to end the relationship completely.

52.5. On the Respondents' case, and Mr Manukyan's evidence, in the course of 2017, the Company began to expend significant (cash) sums in Turkey – albeit largely unaccounted for. In the context described above, of a low-margin, low profit business, with no or negligible net assets, whose principal trading arrangements were terminally troubled, and which was having to use store credit cards and substantial informal family borrowing simply to survive, it is difficult to accept that the Company could have afforded the Turkish expenditure, or realistically could ever have survived the diversion of such significant sums to that end; the use of that money for purposes other than paying its creditors appears to have been commercially and financially unjustified.

52.6. Before the end of 2017, the relationship with NGH was terminated, and Mr Bailey began to work for NGH, having (according to Mr Manukyan) taken with him the Company's customer lists. Mr Manukyan described this event as NGH having "*won*" and as having succeeded in achieving the appropriation of his business, an aim which he said they had pursued for much of 2017. According

to his evidence, Ms Nolan began to tell other providers not to deal with the Company.

52.7. Finally, in any event, the Respondents have not provided the books, records and explanations required to properly understand the Company's financial affairs, and to account for the significant deficit as at the date of its liquidation, and the considerable and unprecedented trading loss incurred after 1 August 2017. By his own admission, Mr Manukyan "*lost some control of paperwork*" (a fact which he repeated in cross-examination) and was unable, even before the Company's liquidation, to say with certainty how much was due to NGH, its principal creditor and trading partner, although he said that he knew the amount "*more or less*". Those facts, in combination with the variety of conflicting explanations provided over time by Mr Manukyan and his advisors, and the size of the eventual unpaid debt to NGH, cause me to conclude that from at least August 2017, Mr Manukyan failed to maintain a real understanding of the Company's financial affairs, or to control them.

The Case against Mr Manukyan

[A] The June 2018 Dividend

53. The case against Mr Manukyan in respect of the dividend declared in June 2018 can be dealt with comparatively shortly. Essentially, liability was admitted.

54. By the Application as originally made, and by the Points of Claim, the Applicant sought relief in respect of three dividends, of £7,500 declared in October 2017, £5,000 declared in December 2017, and £10,000 declared in June 2018.

55. The Defence admitted the fact of each dividend, and expressly admitted that each was unlawful. It stated: "[Mr Manukyan] *considers that his liability to repay the Dividends* [which was a reference to each of them] *arises under s.847(2)(a) CA 2006 and not under the provisions relied on by the Respondents* (sic), *but he admits that the Respondents* (sic) *are entitled to the relief sought*."

56. Subsequently, by the order of Deputy ICCJ Agnello QC made on 2 September 2022, judgment was entered in respect of the October and December 2017 dividends, but not

in respect of the June 2018 dividend. The omission from that order of relief in respect of the June 2018 dividend was not, as I understood or was told, a reflection of any point of substance. The claim in respect of the June 2018 dividend was therefore admitted, and there is no reason now not to give judgment in respect of that sum, against Mr Manukyan.

57. In any event, I would add that the admission made formally in the Defence was plainly justified and properly made. Mr Manukyan caused the Company to declare and pay the June 2018 dividend although:

    57.1. the 2017 Accounts (to 31 July 2017) did not show sufficient distributable profits, and the Company did not in fact have sufficient profits, to allow for the declaration (certainly not if the dividends declared in October and December 2017, amounting to £12,500, were taken into account);

    57.2. NGH had presented a winding up petition on 13 April 2018 and the Company was by then significantly insolvent, as Mr Manukyan must have known, and admits he ought to have known; on any view, the payment was void by virtue of s.127 of the IA 86;

    57.3. Mr Manukyan accepted that he had not sought to justify payment of the dividend by reference to the Company's accounts or its financial position. Although he said in evidence that he used the money to pay solicitors to advise in respect of the petition, that fact, even if true, does not make the distribution lawful or provide a defence (and in any event, as I have said, that was not Mr Manukyan's case, and was not argued).

58. In the circumstances, I shall order repayment of a sum by Mr Manukyan in the amount of the June 2018 Dividend.

[B] <u>The Payments</u>

59. In respect of the Payments, the case was advanced according to the variety of payment in issue, by reference to their description in the Company's bank statements, as follows: (a) "*the Cash Payments*", (b) "*the Miscellaneous Payments*", (c) "*the Card Payments*", (d) "*the London Payments*", (e) "*the Property Payments*".

60. I shall deal separately with each category.

The Cash Payments

61. In aggregate, £7,100 was withdrawn from the Bank Account by Mr Manukyan in cash between 14 August 2017 and 13 April 2018, in various sums of between £100 and £500.

62. The Respondents' pleaded case (supported by Mr Manukyan's written statement) was that, with two specific exceptions, this cash was used by Mr Manukyan to pay the Company's staff and various business expenses such as stationery, food and fuel purchases. The exceptions were: (i) that £500 withdrawn on 24 August 2017 was paid to a landlord or agent in return for accommodation, and (ii) that £500 withdrawn on 8 February 2018 was used to repay Mrs Manukyan in respect of sums paid using one or other of her store cards. No written records, invoices or receipts were produced in respect of any of the payments said to have been made using the withdrawn cash. Although Mr Manukyan produced various miscellaneous receipts, none related specifically to the challenged Payments.

63. In cross examination, Mr Manukyan said that he could not recall what these sums of cash were used for – it was, he said, "*petty cash*". As to staff, he said that he paid Mr Bailey in cash, about £2,500 per annum, but without PAYE or NIC deductions because he was "*self-employed*", and also that he had "*another employee*" in Turkey (a reference to Cigdem Dur, presumably) for about a year, to whom he paid about £1,000 per month, plus also "*very little*" amounts to his wife and daughter if and when they provided occasional assistance.

64. Mr Manukyan could not recall which landlord or agent had been paid using the sum withdrawn on 24 August 2017, and there was no documentary record of the payment made or debt said to have been satisfied. Moreover, I do not accept that he had any real or genuine recollection of using the sum withdrawn on 8 February 2018 to pay Mrs Manukyan. His explanations otherwise were general and without detail.

65. In my judgment, in the context also of my assessment of his evidence and case set out above at paragraphs 25-33, Mr Manukyan failed to give an adequate explanation of the purpose of these admitted withdrawals, and failed to show that the cash withdrawn was used for proper company purposes; he failed, in the language of the Deputy Judge in Re

Idessa (UK) Ltd, as the Company's only director, "*to account for his dealings with the trust estate*". It follows that the Applicant is entitled to repayment of the amount withdrawn under s.212 of the IA 86. There is no need in the circumstances to consider any further the nature of the "transactions" (if indeed, that is what they were) and whether or not they were at an undervalue for the purposes of s.239, although it follows from my findings that Mr Manukyan has not shown the Company to have received any value in return for the sums withdrawn.

The Miscellaneous Payments

66. This category of payments (in the total sum £21,380.06) comprised five groups, as follows:

66.1. £1,200 paid on 12 March 2018, and £1,000 paid on 11 April 2018, with the reference "*FRM*";

66.2. £1,000 paid on 20 October 2017, £100 paid on 2 January 2018, £300 on 29 January 2018, £650 on 30 January 2018 and £500 on 12 March 2018, each with reference "*30945718563060*";

66.3. £456.90 paid on 18 August 2017, with reference "*HSBC Euros*";

66.4. £500 paid on 12 January 2018, with reference "*Newday*";

66.5. various payments, reference "*Multiple Payment*", amounting to £15,673.16.

67. As to these, the Respondents' pleaded case was that:

67.1. the payment of £100, reference "*30945718563060*", paid on 2 January 2018, was used by Mr Manukyan to pay the Company's staff and various business expenses such as stationery, food and fuel purchases; all other payments with reference "*30945718563060*", were to a landlord or agent in return for accommodation;

67.2. all payments with reference to "*FRM*" were to a landlord or agent in return for accommodation;

67.3. the payment with reference "*HSBC Euros*" (in respect of the sum of £456.90) was to repay Mrs Manukyan, as was the payment with reference "*Newday*", and as were all "*Multiple Payment*" sums other than £2,200 paid on 12 March 2018, which was used to pay a landlord or agent.

68. As to the FRM payments, Mr Manukyan's oral evidence was that they were in respect of Flat 12, one of the two flats which he said he decided to rent after the collapse of the Company's relationship with NGH. That answer (and the pleaded Defence) was different from the response to the order made by DJ Rich, which was that "*cash was withdrawn from the account and used to pay various expenses including the costs of running the office in Turkey"*. He was not able to help with the meaning of "*FRM*", and no explanatory documents, records or receipts were produced.

69. As to the Payments with reference "*30945718563060*", Mr Manukyan said that the reference "*means nothing to me*"; he gave no explanation of the distinction drawn between the payment on 2 January 2018, and all other payments with the same reference. Thus, he could not for example recall the purpose of the payment made on 20 October 2017 in the sum of £1,000 which he said (contrary to his pleaded case) might have been to his wife; if to a landlord or agent, he could not say to which one. In any event, no explanatory documents, records or receipts were produced.

70. In cross-examination, contrary to his pleaded case and his statement, Mr Manukyan said that the transaction with reference "*HSBC/St Julians*", for £456.90 on 18 August 2017, was to an agent in respect of accommodation. In any event, he produced no explanatory documents or records, and was unable to explain why the withdrawal had been made in Euros, or indeed, in France.

71. As to the payments with reference "*Newday*", in cross-examination, Mr Manukyan said that this was a payment to his wife's credit card at Debenhams (although no documents were produced) which was consistent with the Defence, but inconsistent with his response to the order of 30 April 2020 which was that, "*cash was withdrawn from the account and used to pay various expenses including the costs of running the office in Turkey*".

72. As to the "*Multiple Payment*" sums generally, Mr Manukyan said in cross-examination that that he could not recall their purpose or the meaning or significance of the reference "*Multiple Payment*", which contradicted (or at least, failed to support) his witness statement, in which he said that they were payments to his wife. In any event, he produced no explanatory documents, records or receipts.

73. As to the "*Multiple Payment*" in the sum of £2,200 paid on 12 March 2018, he said that this was to "*Successful Properties*" (which contradicted his response to the order of 30 April 2020, which was that "*cash was withdrawn from the account and used to pay various expenses including the costs of running the office in Turkey*"). Again, he produced no explanatory documents, records or receipts.

74. Again, in my judgment, in the context also of my assessment of his evidence and case set out above at paragraphs 25-33, Mr Manukyan failed to give an adequate explanation of the purpose of the Payments with reference "*FRM*", "*HSBC Euros*", "*Multiple Payment*" and "*30945718563060*", and failed in each case to show that these Payments were made for proper company purposes, or to "*account for his dealings with the trust estate*". It follows that the Applicant is entitled to repayment of the amounts paid and withdrawn under s.212 of the IA 86. Again, in my view it is preferable to determine liability by reference to the claim in misfeasance rather than to consider any further the nature of the "transactions" (if indeed, that is what, in each case, they were) and whether or not they were at an undervalue for the purposes of s.239, although once more it follows from my findings that Mr Manukyan has not shown the Company to have received any value in return for the sums paid and withdrawn.

75. I shall deal with the payment with reference "*Newday*", which I accept was probably to Mrs Manukyan's Debenhams store credit card, in connection with the claim against Mrs Manukyan.

The Card Payments

76. This category comprised an aggregate payment of £5,660.74, as follows:

    76.1. £480 with reference "*B'card bill payment*" on 3 April 2017;

76.2. £2,252.10, with reference "*John Lewis*" (£47 on 23/8/17, £834.39 on 16/11/17, £870.71 on 12/1/18, £500 on 9/2/18); and,

76.3. £2,928.64, with reference "*M&S Bank*" on 17 November 2017.

77. The Respondents' pleaded case was that all of these payments were to repay Mrs Manukyan, except for the payment of £480 made on 3 April 2017 (reference "*B'card bill payment*") which was to meet expenses incurred in the course of the Company's business, such as travel and accommodation. Orally, Mr Manukyan had no recollection of the purpose of this payment. No supporting or explanatory documents were produced; it was, in effect, unexplained, and I shall give judgment for its repayment by Mr Manukyan.

78. As to the other Card Payments, there was documentary evidence of the following payments to NGH using store cards:

78.1. using a House of Fraser card £1,680 on 18 June 2017 and £1,780 on 27 June 2017;

78.2. using a Debenhams card, £3,800 on 19 June 2017 and £4,720 on 31 July 2017;

78.3. using an M&S card, £2,640 on 1 August 2017, £2,700 on 29 September 2017, and £2,910 on 2 November 2017;

78.4. using a John Lewis card, £7,250 on 22 August 2017, and £9,190.57 on 15 January 2018.

79. Although the Card Payments do not match in amount the sums paid to NGH, I accept that they were made (as was Mr Manukyan's evidence) to the store cards in order to repay, in part at least, liabilities incurred by Mrs Manukyan in satisfying debts owed by the Company, as a result of which she became a creditor of the Company. It follows that they were in return for value (they discharged Company debts) and so were not at an undervalue, and are not unexplained. I am not therefore persuaded to grant relief in respect of these sums against Mr Manukyan. As to whether or not Mrs Manukyan was thereby given a preference, and if so, what are the consequences, I shall deal with that below, at paragraphs 97-105.

The London Payments

80. These payments comprised:

80.1. the aggregate sum of £19,200 paid with reference "*Chelsea*";

80.1. the aggregate sum of £18,188.01 paid with reference "*Paddington*";

80.1. the sum of £2,000 paid with reference "*Ealing*".

81. The Respondents' pleaded case was that:

81.1. all "*Chelsea*" payments were to Mrs Manukyan, save for £4,000 on 18 October 2017 (which they could not explain), £1,000 on 1 December 2017 and £500 on 3 January 2018 (both of which were to meet general expenses such as travel and accommodation);

81.2. all "*Paddington*" payments were to a landlord or agent, save for £1,000 on 11 April 2018, which was to meet general expenses such as travel and accommodation; and,

81.1. the "*Ealing*" payment was to Mrs Manukyan.

82. In cross-examination, in respect of the "*Chelsea*" payments, Mr Manukyan said (failing to support his own written statement) that he had no memory of their purpose, including the specific sums paid on 1 December 2017 and 3 January 2018, and pleaded as having been made to meet general expenses. He gave no explanation of the pleaded distinction between the payments on 1 December 2017 and 3 January 2018, and the other payments. Neither was he able to able to explain satisfactorily the reference to "*Chelsea*". He said he was unable to recall or explain why the response to the order of 30 April 2020 in respect of these payments was that they related to "*payment of a credit card*". No explanatory or relevant documents were produced.

83. Similarly, in respect of the "*Paddington*" payments, in cross-examination, in substance, Mr Manukyan was unable to recall their purpose. Again, he gave no explanation of the pleaded distinction between the transaction on 11 April 2018, and all the other transactions. He said, variously, that "*Paddington*" was a reference to the bank branch,

and that he had taken some £5,000 in cash to Turkey in February 2018 in order to "*close down*" the Turkish operation (although no documents were provided in that respect); he referred to the tenancy agreements in respect of Flat 4 and Flat 12 which are considered below, and said that the two "*Paddington*" transactions which were described on the bank statements as "*Debit Card*" transactions (on 2 January and 11 April 2018, in the total sum of £1,900) rather than "*Payment*" transactions, were probably cash withdrawals, although for a purpose which he could not recall. No supporting or explanatory documents were produced.

84. Curiously, although not referred to by Mr Manukyan, one of the "*Paddington*" Payments, in the sum of £2,815.66 paid on 25 October 2017, matches exactly a sum paid to the credit of Mrs Manukyan's M&S store card on 27 October 2017. The coincidence is such that I am prepared to treat that payment as having been to Mrs Manukyan in part repayment of a debt owed to her by virtue of payments made to NGH using her M&S store credit card.

85. Finally, Mr Manukyan said that he could not recall the purpose of the single "*Ealing*" payment, made (reference, "*Debit Card*") on 10 October 2017, again therefore failing to support his own written statement and pleaded case. No supporting or explanatory documents were produced.

86. Again, in my judgment, in the context of my assessment of his evidence and case set out above at paragraphs 25-33, Mr Manukyan failed to give an adequate explanation of the purpose of the London Payments and failed in each case to show that these Payments were made for proper company purposes, or to "*account for his dealings with the trust estate*". It follows that the Applicant is entitled under s.212 of the IA 86 to repayment of the amounts paid and withdrawn. That conclusion is subject to one exception, which is that I shall treat the payment of £2,815.66 on 25 October 2017 as having been to Mrs Manukyan in part repayment of a debt owed to her by virtue of payments made to NGH using her M&S store credit card, and I shall therefore consider liability in respect of that sum in connection with the case against Mrs Manukyan.

87. Again, in my view it is preferable to determine liability by reference to the claim in misfeasance rather than to consider any further the nature of the "transactions" (if that is what they were) and whether or not they were at an undervalue for the purposes of s.239,

although once more it follows from my findings that Mr Manukyan has not shown the Company to have received any value in return for the sums paid and withdrawn.

The Property Payments

88. This final category comprised various payments amounting to £19,474.92, as follows:

88.1. £9,200 paid (by three separate sums of £3,000 on 12 February, £2,000 on 14 February and £4,200 on 11 April 2018) with reference "*Flat 12*";

88.2. £5,200 paid (by two separate sums) with reference "*Flat 4 Rent*";

88.3. £2,474.92 paid on 11 April 2018 with reference "*10Manuyac52*"; and

88.4. £2,600 paid on 3 April 2018 with reference "*1 Hyde Park*".

89. The Respondents' pleaded case was that all of these payments were made to a landlord or agent in return for accommodation. Exhibited to Mr Manukyan's statement were two alleged tenancy agreements, one with "*Successful Property*" (as landlord) in respect of "*Flat 12, 1 Hyde Park Square W2 2J2*", commencing on 1 January 2018 for one year in return for rent in advance of £5,000 payable on the date of entry, and thereafter £550 per week, and the other with a Mr Michael Avedisian (as landlord), in respect of "*Flat 4, 1 Hyde Park Square W2 2J*", commencing on 5 March 2018 for 6 months in return for rent in advance of £2,600 on the date of entry, and thereafter at a rent of £2,600 per month. The first time these agreements were provided to the Company's liquidator was exhibited to the statement of Mr Manukyan.

90. As I have said, in respect of Flat 12, Mr Manukyan's oral evidence was that he had been the owner of the property "*years ago*" and had contacted the owner and agreed to rent the property when the Company's arrangements with NGH came to an end. He said that the owner was overseas, in Jersey, and that he had spoken by telephone to a manager whose full name he could no longer recall. Neither could he recall the name of the person alleged to have signed on behalf of Successful Property (the signature is illegible). Although Mr Manukyan said that the tenancy agreement was with the Company (and was signed on its behalf) the Company's name was not inserted at paragraph 2 under the heading "*Parties and Premises*", and neither was the address of Successful Property.

Moreover, for reasons that Mr Manukyan was unable to explain, the agreement was on a form stated to be appropriate to the creation of a "*Short Assured Tenancy within the meaning of section 32 of the Housing (Scotland) Act 1988*" which plainly, it was not.

91. Mr Manukyan said that he was unable to recall when the £5,000 first payment was made, but said that it would have come from the Bank Account. He said that although the relationship with NGH had ended at about the end of 2017, he had agreed alternative accommodation, including Flat 12, because he still had commitments to customers. Despite the Company's financial problems, he said that he had agreed new liabilities (the Flat 12 lease was for a year) because he "*had to continue*". I note that the Flat 12 payments referred to in the Bank Account bear a possible mathematical relationship to the liabilities created by the agreement (the first two amounting to £5,000, and the third, to 4 x £550).

92. As to Flat 4, Mr Manukyan said that he knew Mr Avedisian, having previously sold the flat to him. Needing to rent accommodation, he telephoned Mr Avedisian and agreed the tenancy. Although Mr Manukyan knew of no connection between Mr Avedisian and Successful Property, the tenancy agreement in respect of Flat 12 was also on a form inaptly stated to be appropriate to the creation of a "*Short Assured Tenancy within the meaning of section 32 of the Housing (Scotland) Act 1988*". He said that the payment with reference "*1 Hyde Park*" (in the sum of £2,600, equal to the initial payment under the agreement) was made in respect of Flat 4. His reasons for renting the property were, he said, the same as in respect of Flat 12.

93. In addition, Mr Manukyan said that the payment of £2,474.92 on 11 April 2018 with reference "*10Manuyac52*" was payment of the service charge in respect of Flat 4, which was payable every three months, but which was in the event paid only once. In that respect, he exhibited a "*Tenant Statement*" in respect of Flat 4 from Knight Frank dated 3 November 2017, with tenant reference "*10MANUYA-C52/005182*" showing an amount due of £2,474.92 comprising sums outstanding since 27 April 2017. The statement referred to "*Church Commissioners, Church House, 29 Great Smith Street, London SW1*" and to Michael Avedissian whose address was given as that of Flat 4. These charges pre-dated the tenancy agreement. Mr Manukyan said that the sum was demanded of Mr Avedissian but passed on to the Company, and paid on 11 April 2018, although in that respect, no surrounding documents were provided.

94. In cross examination, Mr Manukyan said that "*not a lot*" of customers had used Flat 4 or 12, which were in a different area from the NGH property, and not as popular. There were no documentary records of customers having used either. Customers would ordinarily stay for 2/3 nights at a cost of about £80-£100 per night. The bank statements for March 2018 show that a sum of £6,760 was deposited on 26 March 2018 which Mr Manukyan said was "*probably*" in respect of one of the flats – but which would have entailed payment into the Account of a sum generated by about 67 nights of accommodation.

95. The case advanced against Mr Manukyan in respect of the Property Payments was that he caused the Company to make the tenancy agreements in respect of Flats 4 and 12 (for substantial periods, of 6 and 12 months) in breach of duty to the Company, without considering the interests of its creditors and in any event not in their best interests, at a time when the Company was insolvent, when its client base had been removed and when its principal trading relationship had collapsed. According to Mr Manukyan's own evidence, the flats were in the wrong area, and their use for the purposes of the business was not legally permissible (for reasons he did not elaborate). It was submitted that no evidence of benefit to the Company had been provided by Mr Manukyan.

96. On balance, I reject the Applicant's case in respect of the Property Payments, for the following reasons.

    96.1. It was not specifically pleaded or particularised. That may be because the two tenancy agreements were not referred to until Mr Manukyan served his witness statement in December 2022, but no amendment of the Applicant's case was subsequently sought. Whereas, as I have described, the other claims (successfully) made under s.212 were made in respect of payments and transactions for purposes not adequately (or at all) explained, the claim in respect of the London Payments, as advanced at trial, was made in respect of sums paid for a particular purpose but in breach of duty; that allegation requires a greater degree of particularity.

    96.2. In part because of that, although the Company was undoubtedly at that time insolvent, it is not in my judgment possible to conclude, fairly, that the agreements were in breach of duty, or contrary to the interests of creditors. In

particular, there was no evidence as to the number of outstanding customers in 2018, or the extent of continuing or remaining business, or even of the extent to which it might reasonably have been anticipated. The circumstances surrounding the creation of the tenancies, and concerning the use of the properties, were neither pleaded nor adequately evidenced.

96.3. In any event, leaving aside issues of liability, it is equally impossible to reach a conclusion about the fact, amount or extent of any loss that might have been caused by the agreements: in return for the payments, the Company secured valuable proprietary rights, and to some extent seems to have benefitted from them by the use of the properties to provide accommodation to at least some customers. Whether or not the sums paid by those customers were properly accounted for is a quite different matter, equally outside the Applicant's pleaded case.

The Case against Mrs Manukyan

97. As against Mrs Manukyan, the Applicant's case was advanced under s.239 of the IA, based on her alleged preferential treatment as a creditor at a time when the Company was insolvent. It was submitted that the whole of the aggregate sum lent by her to the Company, by means of payments made on its behalf to NGH, had been repaid by means, to that extent, of the Payments.

98. The pleaded case was that between March 2017 and January 2018, Mrs Manukyan lent the Company £76,670.57. That allegation was admitted; these were said to be short term loans and measures, pending receipts from customers, designed to ease immediate cashflow pressure. The pleaded defence was that repayments equal to £35,810.80 had been made (as described above, in relation to each category of the Payments) but that otherwise the debt remained due. As to the sum repaid, it was denied that the Company was influenced by any desire to improve Mrs Manukyan's position in the event of the Company's insolvent liquidation.

99. The case against Mrs Manukyan raises the following issues:

99.1. to what extent, if at all, was Mrs Manukyan repaid her debt by means of the Payments;

99.2. to the extent that she was repaid, can she show, contrary to the presumption created by s.239(6) of the IA 86, that the Company was not influenced by a desire to improve her position in the event of insolvent liquidation;

99.3. to the extent that she was preferred, was the Company at that time insolvent, or did it become insolvent in consequence?

100. As I have said, as to the first of those issues, fundamental to the case under s.239, Mr Manukyan has adopted different positions at different times. It is however important that the Applicant's case is not merely that Mrs Manukyan has been repaid by one means or another, or by some person or persons other than the Company - it is specifically that she was repaid (her debt of £76,670.57) by means of the Payments or some of them (amounting in aggregate to £93,003.73).

101. Such as it is, I have considered the evidence about the Payments above, and on the basis that certain of them were unexplained and unjustified by Mr Manukyan as having been for the purposes of the Company, I have held that Mr Manukyan must restore those sums to the Company, acting by the Applicant. To the extent that I have found them to be unexplained, I cannot consistently find them to have been made to Mrs Manukyan in repayment of sums which she was owed.

102. Accordingly, and although I consider it reasonably probable that the whole of any sum lent by Mrs Manukyan has in fact, somehow, been repaid or restored to her (first, because she was not named as a creditor by Mr Manukyan in the PIQ; second, because that was the position unambiguously adopted by Mr Manukyan before this Application was made; third because she has not proved in the liquidation; and fourth, because her repayment is one possible explanation of the deficit in the liquidation) the case against her on this Application can only succeed: (i) in respect of the Card Payments in the sum of £5,660.74, minus the unexplained payment of £480 made to "*B'card bill payment*" on 3 April 2018, plus (ii) the "*Paddington*" Payment, in the sum of £2,815.66, paid on 25 October 2017, and the "*Newday*" Payment of £500, paid on 12 January 2018, being in aggregate £8,996.40, (iii) the whole of which sum was indubitably paid to her benefit, and certainly had "*the effect of putting* [her] *into a position which, in the event of the company going into insolvent liquidation,* [was] *better than the position* [she] *would have been in if* [those payments] *had not been made*", as required by s.239(4)(b).

103. As to the second issue, in my judgment, Mrs Manukyan - the burden having been cast on her by virtue of s.239(6) - has not shown that the Company was not influenced by a relevant desire in making those repayments, for the following reasons.

103.1. First, I remind myself that although the Defence was served on her behalf, Mrs Manukyan herself did not give or provide any evidence of her own, or appear at the trial, or provide written submissions. Although Mr Manukyan appeared in person for himself (and purported to speak for Mrs Manukyan) it follows that as against Mrs Manukyan, the case was, at trial, effectively unopposed.

103.2. Second, as explained above, the requisite desire does not have to be the only influencing factor, or amount to a dominant or decisive desire or reason for payment – merely, it must be present and must be found to have influenced the Company to act.

103.3. Third, in any event, having heard the evidence of Mr Manukyan, I do not consider that the Company (in effect, Mr Manukyan) was not influenced to any extent by the requisite desire to better Mrs Manukyan's position:

103.3.1. it is inherently likely that Mr Manukyan would have wished to protect his wife against the consequences of a liquidation of a company in which, on his own evidence, she had no involvement, and little or no knowledge and understanding;

103.3.2. that is particularly so, given that, again on Mr Manukyan's evidence, the payments made to NGH by means of the store cards, were made by Ms Nolan (or someone else on behalf of NGH) without Mrs Manukyan's consent to each specific payment, the cards having simply been given over to NGH;

103.3.3. moreover, a subjective desire to protect her position is consistent with my view that by some means, Mrs Manukyan has been repaid any sum which she lent;

103.3.4. leaving aside the first Card Payment (in the sum of £47, on 23 August 2017) the Card Payments otherwise began on 16 November

2017, and the last was made on 9 February 2018 (which was after the last payment to NGH using a card) during a period when Mr Manukyan should or would have known that the Company's prospects of survival were rapidly diminishing, and it was not meeting its obligations to pay NGH, which was going unpaid.

104. In respect of the Company's desire, it follows that I reject the pleaded defence, that the Card Payments were made in order to maintain credit, and to avoid interest. In addition to the reasons stated above, that explanation does not reflect the available evidence: had it been true, I would have expected to find payments to the credit of those card accounts in the period immediately after payments made on behalf of NGH, followed by their subsequent repeated use to pay NGH, whereas in fact, the Card Payments were not obviously or clearly related in time or amount to the sums paid to NGH - the Respondents' failure to provide proper and fuller evidence (or in Mrs Manukyan's case, any evidence at all) of the use and means of repayment to the account of the cards, makes impossible the discharge of the burden on Mrs Manukyan to show the absence of the material desire. In any event, whether or not there was some truth in the evidence that the Respondents wished to avoid high rates of interest charged on store cards, that is not inconsistent with a desire to protect or improve Mrs Manukyan's personal position.

105. As to the third issue, regarding solvency, relevant to the question whether or not the preferences were at a "*relevant time*", I have set out my conclusions above, at paragraphs 49-52. Moreover, as I have said, leaving aside the very first sum (in the sum of £47, on 23 August 2017) the Card Payments were made between 16 November 2017 and 9 February 2018, during a period in which the Company's position had undoubtedly deteriorated further since the first of the Payments, made on 14 August 2017 – even on the Respondents' case, the relationship with NGH was largely terminated in November 2017.

Summary

106. In short summary therefore, I will give relief:

106.1. against Mr Manukyan, under s.212 of the IA 86 and the CA 2006 in respect of:

106.1.1. the £10,000 June 2018 Dividend;

106.1.2. the Cash Payments in the sum of £7,100;

106.1.3. the Miscellaneous Payments in the sum of £20,880 (being the total, minus the "*Newday*" payment);

106.1.4. the Card Payments, in the sum of £480 (being the unexplained payment, reference "*B'card bill payment*" on 3 April 2017);

106.1.5. the London Payments, in the sum of £36,564.35 (being the total, minus the "*Paddington*" payment of £2,815.66 on 25 October 2017);

106.1.6. being in total, £75,024.35;

106.2. against Mrs Manukyan, under s.239 of the IA 86, in respect of the sum of £8,996.40, being the aggregate amount of the Card Payments in the sum of £5,660.74, minus the 3 April 2017 "*B'card bill payment*" in the sum of £480, plus the "*Newday*" payment of £500, plus the "*Paddington*" payment of £2,815.66 made on 25 October 2017);

106.3. and I will, accordingly, order payment of sums equal to those amounts by each of the Respondents, to the Applicant, for the purposes of the Company's liquidation.

107. I will hear further submissions on the precise form of order, and interest and costs, if not agreed.

Dated 16 April 2024