Judgment Approved by the court for handing down

Neutral Citation Number: [2020] EWHC 1597 (QB)

Case No: Claim No: D23YJ711
Appeal ref: BM80084A

IN THE HIGH COURT OF JUSTICE
HIGH COURT APPEAL CENTRE BIRMINGHAM
ON APPEAL FROM THE COUNTY COURT COVENTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/06/2020

Before :

MR JUSTICE MARTIN SPENCER

- -

Between :

Mercia Enterprises Ltd	**Respondent/ Claimant**
- and –	
(1) Pratibha Mistry **(2) UPAL**	**Appellant/ Defendant**

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Miss Imogen Halstead (instructed by **Wallace Robinson & Morgan**) for the **Respondent**
Mr Nicholas Cobill (instructed by **DIRECT ACCESS** for the **Appellant**

Hearing date: 11 June 2020

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APPROVED JUDGMENT

Mr Justice Martin Spencer

Covid-19 Protocol: this judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be at 10.30am on 19 June 2020.

MR JUSTICE MARTIN SPENCER :

1. Pursuant to permission granted by Andrews J on 3 March 2020, the Appellant, Miss Pratibha Mistry, has appealed against the judgment of His Honour Judge Gregory on 9 May 2018 in the Coventry County Court whereby he gave judgment against her in the sum of £12,735.44.

The background facts

2. The Claimant, Mercia Enterprises Limited, is the owner of several properties in the Coventry area which are let out in multiple occupation to students, for example those studying at Warwick University. The director and owner of the Claimant company is Mr Christopher Nurse.

3. Until about 2015, the Claimant used a managing agent for some of its properties called Fast Approach Lettings Limited which was a company wholly owned by the Appellant's partner, with the Appellant working as an employee. However, the relationship between the Appellant and her partner broke down, he moved away and the Appellant wished to carry on with the function of letting agent on her own. She set up a company, Universal Property Agents Limited ("UPAL") which was incorporated on 4 December 2014. The Appellant was the sole director and shareholder. The business of managing agent was then transferred from Fast Approach Lettings Limited to the Appellant and UPAL. In this action, the Appellant was the first Defendant and UPAL was the second Defendant and I shall refer to them collectively as "the Defendants".

4. In the course of its business, the Defendants would receive rent from the tenants of the various properties which they were then obliged to account for to the Claimant. In about the autumn of 2016, Mr Nurse became dissatisfied with the service he was getting from the Defendants and the contract was cancelled. On 24 November 2016, solicitors instructed on behalf of the Claimant wrote a letter to the Appellant requiring her to account for sums received in respect of three properties in Coventry in particular, located at 63 Lower Ford Street, 65-67 Lower Ford Street and 23 Allesley Old Road. This letter included the following:

> "3. Rent
>
> It is a fundamental point that our client is entitled to receive rental income and have a full account of the same. Both our client and his accountant have previously written to you and you have failed to address the request adequately. This failure is actionable in any event and we reserve our client's position regarding claims."

The arrears were calculated to amount to the sum of £15,927.50. The letter went on to state:

> "… the only conclusion is that you have wilfully acted in this matter to avoid liability and as such we would seek personal

> liability against you for our client's losses. We would expect disclosure of bank statements to demonstrate that sums paid in cash, or indeed by transfer, are being fully accounted for within the company and not the personal accounts should you try to avoid personal liability. Similarly, we would refer to your personal admissions of liability within text messages and emails when apologising to our client to demonstrate the nature of the relationship. In any event we note you are the sole shareholder and director of Universal Properties Agents Limited."

Satisfaction not being provided, proceedings were issued.

The trial before HHJ Gregory

5. Proceedings were issued on 27 January 2017 and in the Particulars of Claim the following was pleaded at para. 4:

> "No written agreement was completed and the Claimant understood that it was contracting with the first Defendant. Throughout the contract the Defendant has received monies from the first Defendant's personal bank account. However, judgment is sought against the second Defendant in the alternative."

The claim was thus principally brought against the Appellant personally as a claim for breach of contract, it being pleaded that the Appellant was obliged to account promptly to the Claimant for all rental income received from the properties and had failed to do so. At para. 12 of the Particulars of Claim, the Claimant reserved the "opportunity to plead further should the Defendants account to the Claimant and/or provide appropriate disclosure." In the prayer, the Claimant claimed damages, interest and "further relief" together with costs.

6. There were, thus, a number of issues for resolution at the trial, which took place as a fast-track trial on 9 May 2018. A central issue was whether the contract between the parties was with the Appellant personally or with UPAL. However, at trial the Claimant ran an alternative case reflected in para. 19 of the judgment below as follows:

> "It is the claimant's case that, if [UPAL] was the managing agent, it [the Claimant] is nevertheless entitled to recover the sums of money against Pratibha Mistry, because it was she who received the money, and thereafter failed to account for it, so that it ended up where it should have gone, that is to say, in the possession of the Claimant.
>
> 20. This is an argument which counsel suggests engages a doctrine of concealment, that is to say that the existence of the company has been used by Miss Mistry to cloud the issue with regard to the destination of the rental monies paid in advance. It is argued that the court needs to make a finding of fact with

> regard to which legal entity, Miss Mistry or the company, receive this money. What was paid is not in dispute so far as the majority is concerned. The destination of it upon payment is in issue.
>
> 21. The Claimant's case is that it was received by Miss Mistry and must have been retained by her because there is no evidence before the court to show that it went anywhere else."

7. So far as the issue as to the true contracting party is concerned, the learned judge decided this in favour of the Defendants. In his evidence, Mr Nurse had denied awareness of the existence of the limited company but he was forced to concede that this was not correct by reference to an email which he had sent to a tenant called "Ollie" in which he stated as follows, referring to the Appellant as "Raki" and her former partner as "Amik":

> "Ollie, OK, Fast Approach Lettings was run by Amik and Raki. Amik is moving to London and handing the business over to Raki. Raki has her own letting agency company in her own right, called UPAL. All monies that are being paid to FAL will be transferred to a UPAL account, and all future rents will be collected and sent to UPAL account, of which you will be furnished with this information. All tenancies will remain between the individual and FAL until they come to the end of the term."

The learned judge said that it was quite plain that Mr Nurse knew that the Appellant had a letting agency company called UPAL and the papers contained a statement of the rental account, sent by UPAL to the Claimant in February 2015 which was about the time that that company began to take over. He said:

> "In the light of this evidence I'm satisfied that the initial contract was between the Claimant and the second Defendant."

8. One of the consequences of this finding was that a claim for damages for breach of contract relating to the condition of the premises in the sum of £3,590, being the cost of cleaning/repairs, was awarded as judgment against the second Defendant on the basis that the breaches of contract alleged and found proved were breaches of contract on the part of the limited company. At para. 41 of the judgment the learned judge said:

> "What is plain is that, on any objective assessment of the position, it was the intention of the first Defendant from incorporating this company to trade through that company. The Claimant was well aware of that intention and quite plainly accepted that this was how he would do business with her."

9. However, that was not the end of the matter so far as the claim for rent had and received by the Defendants for the benefit of the Claimant was concerned. These sums amounted to £12,735.44, on the judge's findings. At paras. 20 and onwards, the learned judge dealt with this aspect as follows:

"22. There is no doubt that monies received as payments of advanced rent were paid into a Santander bank account. So far as the receipt of monies by the Claimant is concerned, its case is that, whenever transfers were made into the account of Mercia Enterprises Limited, the crediting party was identified as Pratibha Mistry. So much is apparent by example, from the entry on page 361.

23. So far as the origin of such payments is concerned I am satisfied on the balance of probabilities that they were bank transfers from a Santander Bank online banking account. This is an account which, in one way or another, was maintained by Miss Mistry for several years. It must have been used for the receipt of substantial sums of money, yet no disclosure at all of the bank statements generated by this account has been made by her.

24. The only disclosure which has been made is three transactions, each one being a payment either in, or payment out. The payment in is at page 276 and it shows a receipt of £7,800 from Dreams Coming True Limited. The two payments out are at page 277 are payments to the Claimant although they are identified as payments to Mr Nurse.

25. Just to explain, the £7,800 payment represents advanced rent paid, not to the managing agents, but to a Chinese gentleman acting on behalf of the managing agents, who then retained £190 of the monies received by him, and forwarded on the balance to this bank account.

26. The case that I have heard for the Defendants is that this bank account was the bank account of the company, and it was therefore the company that received the various sums of money …, not Miss Mistry.

27. I'm asked to reject that assertion because it would have been so easy and straightforward for the defence to produce the appropriate documentation to show that this bank account was indeed the bank account of the company, and operated as the company's bank account. Since there has been a wholesale failure to make adequate disclosure in relation to this issue, I'm asked to conclude, on the balance of probabilities, that this was not the company's bank account, but some bank account over which Miss Mistry plainly had total control. Therefore, it is argued that she has used the identity of the company to conceal what was actually going on, and the reality is that this was money, a substantial amount of which was paid, admittedly in cash, which she has simply retained and not accounted to the Claimant for.

28. I'm bound to say I find that an attractive argument."

10. At para. 30 of the judgment, the learned judge stated that he did not consider this to be a case in which the Appellant, in whatever capacity, had sought to cheat or steal from the Claimant.

11. The ultimate finding by the learned judge, in respect of which this appeal is brought, is contained at paras. 71-72 of the judgment as follows:

> "71. … I have come to the conclusion that the controlling mind in relation to what was happening in relation to this money was plainly Miss Mistry; there was none other. I have come to the conclusion that she was dealing in cash, that she has produced no evidence from the Deposit Protection Scheme or from Santander Bank to establish that these large sums of cash which came into her possession and under her control ever went into the control of her company.
>
> 72. She had it in her power when she received this money to ensure that it was properly accounted for directly to the Claimant. That was simply not done. This was in effect money had and received to the benefit of the Claimant in respect of which the Claimant has never seen it. That was entirely the responsibility of Miss Mistry. It is not open to her to say that she received this money on behalf of a company. I consider that the company is being used in this regard as a smokescreen to hide the fact that she had control of all this cash. She knew what its proper destination was but she kept it and it was never accounted for to the Claimant. Therefore, those sums are recoverable by the claimant against her personally and there will be judgment for whatever they add up to."

Thus, there was judgment against the Appellant in her personal capacity in the sum of £12,735.44 and it is against that judgment that the Appellant has appealed. The appeal has been brought solely by her, not by the second Defendant which did not appear on the appeal.

The history of this appeal

12. This appeal has had something of a chequered history. Although the application for permission to appeal was brought in time, there was considerable delay on the part of the Appellant in putting the papers together, including the transcript of the judgment, for consideration on the papers of the application for permission to appeal. Eventually, the matter was considered by Mr Justice Jeremy Baker on 4 November 2019 when he refused permission, giving the following reasons:

> "i) On the evidence before the lower court the judge was entitled to find that the first appellant had received monies for rents on behalf of the respondent which [she] had not accounted for and was therefore liable to repay to the respondent; the second appellant had failed to provide cleaning and repair

> services for the respondent's properties under the terms of a letting agreement between them.
>
> ii) The grounds of appeal amount to a rehearsal of issues raised by the appellants at trial and appropriately determined by the judge.
>
> iii) In the circumstances there are no real prospects that these issues would succeed on appeal nor is there any other compelling reason for the appeal to be heard."

13. The Appellant renewed her application for permission to appeal and this came before Mrs Justice Andrews DBE on 3 March 2020 when the Appellant was represented by Mr Nicholas Cobill of counsel. Andrews J granted permission in the following terms:

> "Permission is granted on the sole ground that:
>
> (a) The judge erred in law in finding that the first defendant was personally liable to the claimant for money had and received.
>
> (b) In making that finding the judge failed to take into account and/or attach any weight to all relevant evidence pertaining to that issue."

14. An important issue, which the Appellant considered to be largely determinative of the dispute, was whether the Santander account into which the rental monies had been paid was an account of UPAL or was a personal account of Miss Mistry. At the hearing before Andrews J, the Appellant indicated that she would wish to make an application to adduce fresh evidence on that issue. Andrews J therefore made the following additional order:

> "By 4pm on 9 March 2020 the appellant must file and serve any application to adduce fresh evidence in the appeal hearing if they seek to rely on evidence which was not before the trial judge at the hearing on 9 May 2018."

She reserved the issue of the application to adduce fresh evidence to herself, to be dealt with on the papers.

15. On 6 March 2020 the Appellant accordingly filed a witness statement containing a number of exhibits including, for example at "PM3" bank statements showing payments made into the business account of UPAL from tenants. She acknowledged that this was evidence which could have been produced at the trial stating:

> "Please kindly note I was under severe stress and depression and my mood was very low due to financial stress caused by claimant and this is one of the reasons why evidence on my part for my case has possibly not all been submitted previously and missed out. This includes bank statements which I would like to request be included as new evidence for my appeal."

The Appellant produced at PM4 an email from Santander Bank to "info@universalpropertyagents.co.uk" attaching "the requested letter" which read as follows:

> "23 April 2018
>
> Dear Miss Mistry,
>
> Following your conversation with one of our advisers today I can confirm that there is a known issue with Faster Payments being sent from Santander business accounts showing the account holder's personal name. This is something we are working hard to resolve and I would like to apologise for any inconvenience this may have caused."

16. At PM5, the Appellant sought to adduce a further letter from Santander Bank dated 12 June 2018 (and therefore after the trial before HHJ Gregory) in the following terms:

> "Dear Miss Mistry,
>
> Following your conversation with myself today I can confirm there is a known issue with payments from Santander business accounts reaching beneficiary accounts in the account holder's personal name. I can confirm your business account with the below details has been affected by this error.
>
> Business name – UPAL
>
> Sort code: 09 01 28
>
> Account number: 7#######
>
> Account type: Current account
>
> Signatory: Miss Pratibha Mistry
>
> Business Name – UPAL
>
> Sort code: 09 01 28
>
> Account number: 8#######
>
> Account type – Client account
>
> Signatory – Miss Pratibha Mistry"

17. On the appeal, it was conceded on behalf of the Respondent that the letter of 23 April 2018, PM4, had in fact been placed before Judge Gregory but, as pointed out by Mr Cobill, it was not referred to by the judge at any point in the course of the judgment.

18. The application to adduce fresh evidence on the appeal was considered by Mrs Justice Andrews on 20 March 2020 and she gave permission to the Appellant to adduce the documents at PM4 and PM5 but she refused the application to adduce any other further evidence. She gave her reasons as follows:

> "1. I gave permission to appeal on a narrow ground relating to the finding of Miss Mistry's personal liability for the rentals that the judge decided were not accounted for to Mr Nurse on 21 September 2016. I am satisfied that it is in the interests of justice that the evidence from Santander relating to the company accounts should be put before the Appeal Court as it directly relates to that issue and that accordingly there are special grounds for admitting it. I bear in mind the fact that Miss Mistry was and is not legally represented. Although litigants in person must abide by the rules of civil procedure in the same way as everybody else, the absence of legal representation is a relevant factor to be weighed in the exercise of the court's discretion.
>
> 2. … it does appear that the first Santander letter at PM4 was before the judge. I'm satisfied on Miss Mistry's evidence that she did take reasonable steps to lodge it with the court before the trial. In any event the respondent has had ample time in which to consider and deal with it. This order covers that document for the avoidance of any doubt as to its evidential status.
>
> 3. The further letter from Santander, PM5 is potentially of great significance. Like PM4 it is credible on its face. It is not the appellant's fault that Santander was slow in responding to her request for confirmation that the payment from the business account was misattributed to her. If that evidence had been available at the trial it could have made a real difference to the outcome of the issue on appeal. It is plainly in the interests of justice to admit it.
>
> 4. However as the trial judge pointed out, the bank statements relating to the business accounts were something that could and should easily have been obtained for the trial. The same is true of documents illustrating what students were told to do regarding rental and deposit payments. Although the appellant was suffering from depression, an appeal is not to be treated as a second chance to put in all the evidence that the losing party had a fair opportunity to adduce before the trial. The absence of that evidence was something the judge was entitled to comment upon and on appeal his decision cannot be undermined on the basis of the late production of that evidence."

19. Also in March 2020, the Appellant produced amended grounds of appeal with the preliminary recital of "This amended grounds of appeal is provided in accordance

with the order of the Honourable Mrs Justice Andrews DBE dated 3 March 2020". The single ground of appeal is then stated as follows:

> "The judge in the lower court failed to take into account that the Santander bank account belonged to the second appellant and not the first appellant when attributing liability for money had and received to the first appellant. This ground raises an error of fact and/or an error in the exercise of the court's discretion."

The Appellant's arguments on this appeal

20. Mr Cobill appeared on the appeal on behalf of the Appellant. The sole ground of appeal is that the learned judge erred in law in finding that the Appellant was personally liable to the Claimant for money had and received. He argues that, in making that finding, the learned judge failed to take into account evidence that the Santander bank account belonged to the second Defendant and not the first Defendant when attributing liability for money had and received to the first Defendant. He argues that the learned judge conflated two alternative grounds argued by the Claimant: 1) money had and received; 2) if the first Defendant received money on behalf of the second Defendant, to pierce the corporate veil, there would have to be a finding of bad faith. In relation to the latter, he points to paragraph 30 of the judgment (see 10 above) where the learned judge specifically rejected any finding of dishonesty or bad faith on the part of the Appellant.

21. Mr Cobill relies heavily on the letter at PM4 which, he says, supports the first Defendant's assertion that the Santander bank account into which the money was paid belonged to the second Defendant and was not a personal account of the first Defendant. He criticises the failure of the learned judge to refer to that letter at all. Instead the learned judge referred to the fact that the first Defendant had produced no evidence "from Santander Bank to establish that these large sums of cash which came into her possession and under her control ever went into the control of her company." He argues that this is particularly relevant and important in the context of the reasoning of the learned judge set out at paras. 27 and 28 of the judgment (see para. 9 of this judgment above).

22. So far as PM5 is concerned, Mr Cobill submits that this proves beyond peradventure that the Santander accounts were business accounts of the second Defendant and that this court, on appeal, should take this into account in considering whether the judgment below should be upheld.

23. In his oral submissions, Mr Cobill reiterated the fact that the learned judge did not refer to the email and letter from Santander dated 23 April 2018 as he should have done. He submitted that this document should have alerted the judge to the fact that there was a business account notwithstanding that the payments were shown as coming from Miss Mistry personally. He was critical of the judge to have stated, at the start of paragraph 28 of the judgment, that he found attractive the argument set out at paragraph 27 that, as there had been a wholesale failure to make adequate disclosure and as it would have been easy and straightforward for the Defendant to produce appropriate documentation showing that the bank account was the account of the company and not Miss Mistry's account personally, this was an account over

which Miss Mistry had total control. Mr Cobill submitted that the judge was wrong to distinguish between the concepts of a company bank account and a bank account "over which Miss Mistry had total control". As the sole director and officer of the company, she would have total control over the account whether it was a company account or a personal account and he submitted that this should not, therefore, have been an operative factor on the judge's mind. What should have been an operative factor was, among other things, the email sent by Mr Nurse to "Ollie" referred to at paragraph 7 in this judgment where Mr Nurse had said: "All monies that are being paid to FAL will be transferred to a UPA Limited account and all future rents will be collected and sent to UPA Limited account …" This was evidence which, Mr Cobill argued, should have led the judge not only to find that the contract was with UPA Limited but also that the account being operated and through which the rental payments were processed was a UPA Limited account. The only evidence relied upon by the Claimant to counter this was the fact that the Claimant was receiving Santander bank receipts for payments which were in the personal name of Miss Mistry and that evidence was neutralised by the letter from Santander Bank of 23 April 2018 which the learned judge wrongly ignored or failed to take into account. Mr Cobill argued that had the learned judge found, as he should have done, that the payments were processed through the company account, that would have made all the difference and he would have found that it was the company that was liable to the Claimant for the rental payments and not Miss Mistry personally. On that basis, he argued that the judgment against Miss Mistry should be set aside.

The arguments for the Respondent

24. For the Respondent, Miss Halstead argued that the issue as to whether the Santander bank account was a personal bank account or a company account was a "red herring" and the judge's finding that the Appellant was personally liable for the rental payments was not exclusively based upon a finding of fact that it was a personal account and not a company account. Firstly, she pointed out that, in relation to a significant part of the judgment sum, there was no evidence that such monies had been paid into any bank account at all but had been received by Miss Mistry as cash. However, even in relation to the sum of £7,800 which was paid from "Dreams Coming True Limited" into the Santander account, she argued that the issue was who had control of the money (the Appellant) and whether, in exerting such control, she was acting personally or as a director of the company.

25. Miss Halstead referred to para. 27 of the judgment which reflected the arguments she had made at the trial below and explained that her arguments were on two alternative bases: first this was not a bank account of the company at all; secondly, even if it was a company bank account, it was not in fact being operated by the Appellant as a company bank account and the fact that it was in the name of the company was, as the learned judge put it, no more than a "smoke screen". Thus, Miss Halstead submitted that in circumstances where the second Defendant was saying that it was holding the sums in question to the account of the Claimant and the first Defendant was saying that she had sole and total control over the account, in the absence of any evidence that the money was still in the account the judge was entitled to find that the money had been paid out to the Appellant's benefit and that she was therefore obliged to account for it personally as money had and received. Miss Halstead referred to para. 72 of the judgment where the judge said:

> "I consider the companies being used in this regard as a smokescreen to hide the fact that she had control of all this cash. She knew what its proper destination was but she kept it and it was never accounted for to the claimant." (*emphasis added*)

She submitted that the court's finding that the Appellant kept the money was a finding that the money had gone to her personally. The Appellant had failed to give any satisfactory evidence as to what had become of the money and in the absence of such evidence, the judge was wholly entitled to find that she had kept the money for herself.

26. Miss Halstead referred to the amended grounds of appeal where the sole ground of appeal is that "the judge in the lower court failed to take into account that the Santander bank account belonged to the second Appellant and not the first Appellant when attributing liability for money had and received to the first Appellant" and she reiterated that although this was the basis upon which the appeal has been brought, it was not in fact the basis (or the sole basis) for the judgment. Thus she argued that the new evidence at PM5, the further letter from Santander Bank, did not in fact assist the Appellant. As she put it

> "The new evidence confirming the Santander account is in fact owned by D2 does nothing to plug the yawning evidential gap as to what happened to the rent. It therefore does nothing to disturb the findings of the judge which he was entitled to make on the evidence before him."

Discussion and decision

27. In my judgment, the basis for the learned judge having given judgment against the Appellant personally was, as Miss Halstead submitted, that he considered that the sums of money - the rental payments which were the Claimant's by right - had come into her possession and could therefore be equitably traced to her personally as money had and received. If the money was paid into the Santander account and was being held to the account of the Claimant, as the second Defendant had asserted at trial, then it would have been appropriate for the second Defendant to have accounted for that money, to have explained where it was, whether it was still being held by them and if not, what had happened to it. They failed to do so. When the claim was made by solicitors for the Respondent for the payment of these monies (see paragraph 4 above), a claim which was being made against both Defendants, not just the Appellant, one would have expected the claim to have been met either with the response from the second Defendant: "Yes, we have your money, we have been holding it to your account and here it is" or with an explanation of what had happened to the money. However that did not happen. Instead, the Appellant has hidden behind her position as a director of the second Defendant and she has failed to make proper disclosure to the Claimant despite being obliged to do so. Both at the trial and beforehand, she failed to engage with the critical question: what has happened to the money. In those circumstances, in my judgment, the learned judge was entitled to conclude as a fact that, as the sole Director of the second Defendant with absolute control of the account, she had caused the monies to be paid out to herself or for her

own use - monies which, even if held by the second Defendant in a company account, were monies held on trust for the Claimant. In the absence of those monies being paid over to the Claimant and in the absence of proper disclosure or a satisfactory explanation as to what had happened to the money, it was almost inevitable that the learned judge would find that the monies had been appropriated by the Appellant to her own use and she was therefore obliged to account to the Claimant for them personally.

28. Thus, in my judgment, and as Miss Halstead submitted, there were three factors which entitled the judge to make the findings that he did:

i) The second Defendant's admission that it had held the money to the Claimant's account but had not offered it to the Respondent or accounted for it;

ii) The fact that the money had not been paid out by the second Defendant to the Claimant in the ordinary course of business;

iii) The fact that the first Defendant was in sole control of the second Defendant and the bank account.

In those circumstances, in my judgment, whether the bank account was the Defendant's personal account or the second Defendant's business account was not decisive of the outcome in this case. It was not a total "red herring", as Miss Halstead submitted, because a finding that the account was the Appellant's personal account and not an account of the Company would indeed have been decisive of the issue in the Respondent's favour. However, the converse was not the case. Certainly, I accept that had the judge found that the Santander account was the second Defendant's business account, this would have been a factor to weigh in the balance in deciding whether the Appellant was personally liable to account for the monies or not but, for the reasons expressed, I take the view that it would not, in the end, have made any difference because of the other factors to which I have referred, which were decisive in the mind of the judge, and rightly so.

29. In the circumstances, this appeal is dismissed.