THE HIGH COURT

COMMERCIAL

[2017 No. 6277 P.]

BETWEEN

HKR MIDDLE EAST ARCHITECTS ENGINEERING LC,

JEREMIAH RYAN AND PATRICK STAFFORD

PLAINTIFFS

AND

BARRY ENGLISH

DEFENDANT

JUDGMENT of Mr. Justice Denis McDonald delivered on 10 May, 2019

Introduction

1. In these proceedings, the plaintiffs seek the return of $8,094,873 from the defendant together with damages and other relief (as described below). There are a number of different bases on which the plaintiffs advance their claim but the principal ground is that the money in question is held by the defendant on trust for the benefit of the first named plaintiff ("*HKRME*") (to the extent necessary to meet its obligations) with the balance (i.e. after discharge of the obligations of HKRME) held on behalf of a trust which the plaintiff says he established for the benefit of his children.

2. It will be necessary, in due course, to consider, in more detail, the precise basis on which this trust claim is said to arise. In summary, on the basis of the evidence given at the trial, the case made by the plaintiffs was that, in 2011, at a time when the second named plaintiff (Mr. Ryan) was imminently facing bankruptcy, he transferred his shares (which he says were, by that time, held on trust for his children) in HKRME to the defendant (Mr. English) on terms that the shares would be held by Mr. English as "*caretaker*" pending a resolution of Mr. Ryan's financial difficulties (i.e. until after he emerged either from bankruptcy or from an arrangement with his creditors). In his evidence at the trial, Mr. Ryan contended that it was part of the agreement that, once he emerged from either bankruptcy or an arrangement with creditors, Mr. English was to return the shares in HKRME to Mr. Ryan. For completeness, it should be noted that, as explained in more detail in paras. 50 – 51 below, this case is somewhat different to the case pleaded in the statement of claim and it may be necessary, at an appropriate point in this judgment, to consider the manner in which the claim is pleaded.

3. Mr Ryan was subsequently adjudicated a bankrupt on his own application to the courts of England & Wales (where the duration of a bankruptcy is limited to one year). Following his discharge from bankruptcy, the shares in HKRME were ultimately returned to Mr. Ryan on foot of a transaction which took the form of a sale of shares with Mr. English as vendor. However, in the meantime (i.e. while the shares in HKRME were still in the legal ownership of Mr. English), sums equating to $8,094,873 were transferred from the bank account of HKRME to a bank account in Guernsey held by Sunvit International Ltd ("*Sunvit*"), a company incorporated in the British Virgin Islands ("*BVI*"). It is important to note that the transfers in question took place with the active encouragement of Mr. Ryan who (as noted above) contended in para. 28 of the statement of claim that the shares were to be held, in the first instance, on trust for the obligations of HKRME, with the balance being held on trust for the benefit of the trust for his children. In his defence, Mr. English claims that the transferred monies were validly and properly paid by HKRME to Sunvit and that Sunvit was controlled by a Guernsey trust which was established for the benefit of Mr English himself and his family.

4. Mr. English also says that there was never any caretaker arrangement in relation to the shares in HKRME. His case is that, as the terms of the relevant share purchase and sale agreements respectively provide, there was a straightforward purchase of the shares by him in 2011 from Mr. Ryan and subsequently a straightforward sale by him of the shares back to Mr. Ryan after the latter came out of bankruptcy. Mr. English says that not only is this reflected in the terms of the share purchase and sale agreements themselves but it is also entirely consistent with the terms of the correspondence that passed between him and Mr. Ryan over a lengthy period of time from 2011 onwards. Mr. English also says that, for as long as he remained as owner of the shares in HKRME, he was entitled to all of the benefits of ownership of those shares and was accordingly entitled to direct the transfer of monies from HKRME to Sunvit. Mr. English also contends that he had, in any event, earned that money through the services he provided to HKRME while it was in his ownership.

5. The position taken by Mr. English is strenuously contested by Mr. Ryan. While Mr. Ryan accepts that the formal legal documents and the correspondence are consistent with the case made by Mr. English, Mr. Ryan contends that both the legal documents and the correspondence in question were (and were always intended to be) "*shams*". Furthermore, Mr. Ryan contends that the consideration ostensibly paid by Mr. English for the shares in HKRME was, in fact, made available to him by HKRME itself (albeit by a deliberately circuitous route) and was known by both parties to be an under value (having been arrived at on the basis of accounts that had been deliberately manipulated so as to falsely maximise the level of debt of HKRME and falsely minimise the extent and value of its profits and assets). According to the evidence given by Mr. Ryan at the trial, the documents and correspondence were deliberately put in place to create the impression of a straightforward sale at market value. Mr. Ryan admits that this was done in order to deceive his creditors and any trustee in bankruptcy who might be appointed.

6. In the course of his evidence at the trial, Mr. Ryan freely acknowledged that this was the intention. For example, on Day 7 at p. 41 he said that the purpose of creating these documents was to throw creditors "*off the scent*". In the course of his evidence, Mr. Ryan repeatedly insisted that the documents were created for the purposes of "*look back*" by creditors or a bankruptcy trustee. This is clear, for example, from his examination in chief on Day 4 of the hearing at p.p. 100-101. In the course of his cross examination, his explanation for most of the documents that were inconsistent with his case was also that they were generated for "*look back*". For example, in the course of his cross examination on Day 8, there were as many as 37 references by Mr. Ryan to "*look back*". Mr. Ryan acknowledged that the purpose of creating sham documents in this way was to give the impression to his creditors and any bankruptcy trustee that the sale was genuine. For example, on Day 8 at p. 65, it was put to Mr. Ryan, on cross examination, that the purpose of *"this papering would be to deceive a trustee in bankruptcy…if they sought to have a lookback into thinking that it was a genuine transaction …isn't that what you are saying?".* Mr. Ryan agreed, saying: "*That's exactly what I have said earlier this*

morning, exactly…"

7. On Day 8, at p.p. 27 – 28, Mr. Ryan provided further evidence as to the rationale for creating documents for the purposes of "*look back*". The relevant exchange with counsel for Mr. English was as follows:-

> *"Q. How do you think this e-mail…to use your own phrase, would be vulnerable to a lookback in the event of something going wrong?*
>
> *A. Well, let us consider if there were ever an action taken by a creditor bank or anybody. Clearly under discovery, as has now happened, all these e-mails would be discovered."*

8. As para. 100 of the plaintiffs' closing submissions acknowledges, what Mr. Ryan had in mind was that if, for example, there had been an action by his trustee in bankruptcy questioning the legitimacy of the sale of the shares in HKRME to Mr English such e-mails "*would almost certainly have been relevant and been discoverable*". In other words, the "*sham*" documents would have been disclosed in the course of discovery in any such proceedings and reliance placed on them to give the false impression that Mr. Ryan no longer had any interest in HKRME.

9. Subsequently, in his re-examination on Day 10, Mr. Ryan said at p. 26:-

> *"Well, as I've said from the outset, Judge, there was a sham transaction which was concealed from my trustee in bankruptcy, that is an absolute fact…."*

10. I draw attention to these aspects of Mr. Ryan's evidence at this point because, if, ultimately, I come to the conclusion that Mr. Ryan is correct in what he says, it may be necessary to consider whether the creation of sham documents in this way (including the creation of sham documents for the purposes of any future discovery process) has implications for the relief sought by the plaintiffs in these proceedings. The creation of sham documents to hide assets and to mislead creditors and a trustee in bankruptcy is, in my opinion, an extremely serious matter. So, too, is the creation of sham documents for the purposes of discovery since that has obvious potential to subvert the integrity of the legal process and to deceive the courts. Thus, in the event that I conclude that the documents in question were (contrary to the case made by Mr. English) shams, it may be necessary to address the public policy issues that potentially arise (including issues as to illegality).

11. In the first place, however, it will be necessary to make appropriate findings of fact. Before attempting to make those findings, it may be helpful, at this point, to say something more about the parties to the proceedings and the background to this dispute.

The parties and the relevant background

12. Mr. Ryan is a well-known architect. Prior to the events, the subject matter of these proceedings, Mr. Ryan was the principal in Horan Keogan Ryan Ltd, the architects of several major projects in Ireland including the west side of Smithfield, the Microsoft headquarters and the Burlington Plaza in Dublin 4 occupied by Amazon. I will refer to Horan Keogan Ryan Ltd as "*HKR Dublin".*

13. Prior to the Financial Crash in the late 2000s, the HKR group had businesses in several European countries including the United Kingdom where it had a London subsidiary HKR Architectural Services Limited ("*HKRAS*").

14. Mr. Stafford, the third named plaintiff, is a long standing friend of Mr. Ryan. He was joined to these proceedings in his capacity as settlor and trustee of the Ryan Childrens' Trust ("*RCT*") which Mr. Ryan says was established in November 2009 for the benefit of his children. The establishment of the RCT is described in more detail in paras. 21-29 below.

15. HKRME is a company organised and existing under the law of the United Arab Emirates ("*UAE*"). It was established at the end of 2009 and it was granted a commercial licence to operate in the UAE in March 2010. On its establishment, Mr. Ryan was registered as a 49% shareholder of the company with the balance of the shares held by a UAE citizen (namely Mr. Rashid Khalaf Ahmed Al Habtoor), it being a requirement of UAE law that a UAE citizen own the majority of the shares of a company incorporated in that jurisdiction. As Mr. Ryan explains in para. 25 of his witness statement, he was in full control of HKRME and its business and a memorandum of understanding was entered into with Mr. Al Habtoor which confirmed this. HKRME was established (at a time when the fortunes of HKR Dublin and the other companies in the HKR group were declining) initially in the hope of winning a very substantial design contract in relation to a project in Astana, Kazakhstan which was being developed by Aldar Properties ("*Aldar*") a large Abu Dhabi development company. The project involved the construction of the Abu Dhabi Plaza in Astana. The initial contract fee was AED 126.4 million (which Mr. Ryan says equates to approximately €34 million).

16. HKRME won the contract in relation to the design of the Astana development and was appointed lead design consultant with Mr. Ryan as project director. In para. 31 of his witness statement, Mr. Ryan says that the project for the design of the development was subject to a very tight two year time frame. He suggested that an equivalent scale of project in Dublin would typically take ten years to design. He said that the project was particularly difficult as it was mixed use, involving the construction of five towers (which included a 78 storey building which was to be the tallest building in central Asia once completed). The development also included a retail podium roughly twice the size of Dundrum Shopping Centre in Dublin.

17. Mr. English is the group managing director and founder of Winthrop Engineering Group ("*Winthrop*") which was established in 1995 and is involved in the provision of mechanical and electrical engineering services and the delivery of turnkey data centres. Winthrop has offices in Dublin, Cork and Waterford and employs over 700 staff and has annual revenues of €150 million. According to Mr. English, he has worked in the building services industry for 30 years and in that time he has worked on and managed projects in Ireland and abroad including large projects in London, Spain and Singapore.

18. Mr. Ryan and Mr. English were not entirely *ad idem* in relation to the genesis of their acquaintance. According to para. 38 of his witness statement, Mr. Ryan says that Mr. English had been a friend of his for approximately 20 years prior to the events in issue in these proceedings. However, according to Mr. English (in para. 22 of his witness statement) he first became familiar with Mr. Ryan in 2003/2004. He says that the relationship was initially based on commerce but "*as usually happens with regard to long-standing commercial relationships a personal relationship also developed in tandem with the business relationship".*

19. Whatever the origin of the relationship between Mr. Ryan and Mr. English, it is clear that, by the time Mr. Ryan was facing significant financial difficulties (described further below), the relationship had become reasonably close. In particular, Mr. English had become a confidant of Mr. Ryan and Mr. Ryan has said in his evidence that he relied on Mr. English for advice and support.

20. The Financial Crisis in the late 2000s had a huge impact on Mr. Ryan and on the HKR Group. The first redundancies in HKR Dublin

occurred in late 2008. From then on, things became increasingly difficult. In addition to the impact on the HKR group, the Financial Crisis had very significant repercussions for Mr. Ryan personally. Mr. Ryan had made investments in property both in Ireland and elsewhere. As the value of those investments fell, Mr. Ryan found himself with a significant personal liability to lenders. As all of this was happening, Mr. Ryan separated from his wife, the late Mrs. Veronica Ryan. He was now in a new relationship with Ms. Elizabeth Walsh (who, as discussed in more detail below, gave evidence at the trial). The dispute with Mr. Ryan's wife was ultimately resolved in March 2009 which involved a financial settlement to the value of €1.582 million. Part of that settlement involved the establishment of a trust which was subsequently put in place pursuant to a Deed dated 7th December, 2009 which created what became known as the ENA Trust. Mr. Stafford and a brother-in-law of Veronica Ryan were named as trustees of that trust. A sum of €860,000 was transferred to the trust for the benefit of the beneficiaries who were named as Mrs. Veronica Ryan and the three daughters of Mr. and Mrs. Ryan. The relevant trust deed was drafted by Mr. John O'Donovan of Orpen Franks Solicitors. This trust is not to be confused with the RCT (described below).

The purported establishment of the Ryan Children's Trust

21. In contrast to the ENA trust, the Deed establishing the RCT was drafted by Mr. Ryan himself. Mr. Ryan's explanation for not approaching Mr. O'Donovan for this purpose was that "*this is something that I wanted to do under the radar and John O'Donovan did have communications with Peter Buckley who was our financial director of the business …*". (Day 2 at p. 58). Mr. Buckley was the financial director of HKR Dublin and Mr. Ryan says that he did not want him to know about the existence of the RCT. Under cross examination, Mr. Ryan acknowledged that, at the time the RCT was established, it was "*under the radar*" as far as all of his advisors were concerned. (Day 6 at p. 21). In this context, it should be noted that during the period 2009-2011, Mr. Ryan had a plethora of advisors providing assistance to him in relation to his financial difficulties and in relation to what Mr. Ryan has described as "*estate planning*".

22. A copy of the Deed establishing the RCT dated 15th November, 2009 was made available at the trial. The original was not produced. As noted in para. 14 above, it describes Mr. Stafford as both settlor and trustee. The Deed is signed in both capacities by Mr. Stafford and in both cases his signature is witnessed by Mr. Ryan. Mr. Ryan's three daughters are named as beneficiaries. The trust fund is stated to comprise £10 (the "*Initial Fund*") together with any additions to the Initial Fund that might be made in the future. Under Clause 4.1, the trustee is given a power to delegate any of the functions of the trustee.

23. Subsequently, Mr. Ryan says that he also drafted a form of delegation which Mr. Stafford executed on 1st December, 2009 which referred to an intention to make the shares in the UAE company to be established (i.e. HKRME) an asset of the trust and which then stated:-

> *"I confirm that I delegate my trustee's authority to you to enter such documents and agreements, and pay such local fees, as might be required in the UAE to establish the company and to assist in its future management on the understanding that the trust will at all times be the beneficiary of the shares, and any value created, even though your name might be recorded on local registers or the like, you will be my nominee for such purposes".*

24. It should also be noted that subsequently, on 16th March, 2010 Mr. Ryan executed a declaration of trust (which was witnessed by Mr. Stafford) acknowledging that he holds the shares in HKRME upon trust for the RCT.

25. There is a significant issue as to whether there is any reality to the RCT at all. In their closing submissions, counsel on behalf of Mr. English have argued that, on the evidence before the court, the RCT is itself a sham and they draw attention to some of the evidence given by Mr. Ryan in relation to the RCT and also to the subsequent conduct of Mr. Ryan and Mr. Stafford which they suggest is entirely inconsistent with the existence of a trust in favour of Mr. Ryan's children over the shares in HKRME. The case made on behalf of Mr. English is that, notwithstanding the purported creation of the RCT, Mr. Ryan continued to treat the shares in HKRME as his own personal property. While subsequent conduct is inadmissible as evidence of contractual intention, it is now established, on the basis of the English case law discussed in more detail below, that subsequent conduct by parties to a trust deed is admissible as evidence that the trust is a sham.

26. There are also inconsistencies in the evidence given by Mr. Ryan in relation to the RCT. For example, in para. 22 of his witness statement Mr. Ryan said that the intention was that the RCT "*could be used for future earnings of the Middle East venture*" – not that it was intended to own the shares in HKRME. Similar evidence was given to the same effect by Mr. Ryan on Day 6 at p.23.

27. It is particularly noteworthy that when Mr. Ryan was asked by his own counsel to explain the purpose of the trust he explained that the purpose of the trust was "*to look at my future and what that might entail*" (Day 2 at p. 55). He explained that he was concerned to secure a future and he saw the Middle East as the opportunity to do that. He continued: -

> "*So this was in my head and I thought well contemporaneously with the establishment of the ENA Trust I considered, discussed, both with Pat [Stafford], and indeed there was some discussions with John O'Donovan, about the idea of setting up* a trust for my future". (Day 6 at p. 56 Emphasis Added).

28. At that point, Mr. Ryan had to be reminded by his own counsel that the beneficiaries of the trust were his daughters. His counsel asked: -

> *"So how does this relate to a trust in favour of your daughters?"*

To which he answered: -

> *"Because when I speak about myself I speak about my family; my children are a part of me. We get up every day and we work for our family".*

29. It will be necessary in due course to consider, in some detail, the conduct of Mr. Ryan and Mr. Stafford in relation to the RCT. However, I believe that it would be helpful to consider that conduct in the light of events as they unfolded. Insofar as possible, I will therefore address the events in chronological order. Where appropriate, I will make findings of fact as I address those events. I will leave to a later point in this judgment my findings in relation to the RCT and in relation to the true nature of the arrangement between Mr. Ryan and Mr. English.

Mr Ryan's concerns about the impact of bankruptcy

30. Contemporaneously with the establishment of the ENA trust and the RCT, Mr. Ryan was taking advice from a number of advisors in relation to how he would deal with his indebtedness. It is clear from the evidence before the court that Mr. Ryan was very concerned about the consequences for him that would flow from a possible bankruptcy and was seeking advice from a range of advisors as to

how he could plan to avoid some of the effects of bankruptcy. As Mr. O'Donovan explained, Mr. Ryan was trying to protect his income so that it would not fall into the hands of his bankruptcy trustee. (Day 14 at p. 100).

31. Among the advisors providing advice to Mr. Ryan in 2009 was the late Owen O'Connell of William Fry. In a draft letter of advice circulated by Mr. O'Connell on 7th December, 2009, Mr. O'Connell advised that it would be worth seeking to avoid any bankruptcy for a period of 2-5 years. If this could be achieved, it would make it more difficult for any transaction in the form of a gift to be challenged by Mr. Ryan's creditors. Mr. O'Connell suggested that there might also be grounds for believing that it would be possible to make a valid declaration of a solvency in respect of Mr. Ryan on the basis of the value of his assets and the fact that many of his guarantees "*are merely contingent liabilities…*". Subsequently, in July 2010, one of his other legal advisors, Mr. O'Donovan of Open Franks wrote to Mr. Ryan in a letter headed "*asset protection*" in which Mr. O'Donovan said: -

> *"…it is absolutely vital that you are not declared bankrupt within two years of the date of any gifts made and that at the date of making those gifts you can support solvency by way of a comprehensive statement of affairs prepared by your accountants".*

32. Mr. Ryan clearly acted on this advice in that he approached Mazars for the purposes of preparing a statement of affairs. Mazars produced a document dealing with Mr. Ryan's financial position as of March 2010. In his witness statement, Mr. Ryan sought to suggest that the statement of affairs had actually been prepared in March 2010. He also sought to suggest that the statement prepared by Mazars certified his solvency at that time. On Day 5 at p. 84 he suggested (under cross examination) that Mazars must have been instructed contemporaneously in March 2010 to prepare the March statement of affairs. However, when he was confronted with the letter of engagement to Mazars dated 3rd September, 2010 he accepted that Mazars must have been instructed in the second half of 2010. This would coincide with the advice from Mr. O'Donovan of July, 2010 (mentioned above). On Day 5 at p. 108 he was asked if he was standing over his statement that Mazars went so far as to certify his solvency. Initially he contended that Mazars had done so. However, when it was put to him (at p. 109) that the report is in fact heavily qualified and that it says nothing about solvency, he acknowledged (having read the report again in the witness box) that there is no reference to solvency.

33. Under cross examination Mr. Ryan was pursued as to the purpose of obtaining, in the second half of 2010, a statement of affairs as of March 2010. At p. 110 on Day 5 he sought to suggest that: -

> *"I was taking a snapshot in time in terms of my value. And you'll see later on that I continued to do that in 2011. So, I just wanted to have record of where I stood at any particular point in time. I was doing – I mean, I was effectively sitting down and figuring out what my net worth was and where I stood in the world."*

34. Earlier in Day 5 he had said that he was concerned that there might be a "*look back by a bank"* and he was asked what he meant by that. Mr. Ryan answered: -

> *"Well, what I mean by that is if the situation had continued to get worse – that circumstances might arise where I might need to justify my actions".*

35. He was then asked to identify what actions he had in mind which led to the following exchange between him and counsel for Mr. English on the same day: -

> *"Q. Well, what actions?*
>
> *…A. I wasn't at that stage, planning any particular action. But clearly I had entered an agreement with my estranged wife in 2009 and I would always err on the side of caution…so, I thought it prudent …*
>
> *Q. But prudent why? The only reason…let's be blunt …a bank would only look back …to see whether or not there had been an attempt to transfer assets …*
>
> *A. I don't accept that. I don't accept that."*

36. In my view, the evidence given by Mr. Ryan on this issue is wholly unconvincing. There is an obvious reason why Mr. Ryan would wish to justify his solvency as of March 2010. As noted above, that was the month in which he executed the declaration of trust in favour of the RCT over the shares in HKRME. All of the evidence of Mr. Ryan shows that he regarded HKRME as his future. The declaration of trust was therefore over an asset which Mr. Ryan considered to be the most valuable asset that he had (in terms of its potential to create a future income stream and a continuing source of work). Although he had told none of his advisers at this stage of the creation of the RCT, it is clear, on all of the evidence before the court, that Mr. Ryan was acutely concerned about the prospect that all of his assets would ultimately vest in his creditors (either in a bankruptcy or under an arrangement with his creditors) and he was obviously very keen to put in place some mechanism that might preserve this asset from the wreckage of bankruptcy. In my view, Mr. Ryan, in approaching Mazars and obtaining a statement of affairs, was clearly attempting to protect himself against any challenge to the declaration of trust in the event that the declaration ever had to be relied upon in the future.

37. As noted above, on 3rd October, 2010 HKRME was appointed by Aldar for the Astana project. This appointment is of crucial importance to Mr. Ryan since it secured for HKRME (of which he was the legal owner of the shares) a contract which had huge potential value for HKRME (and indirectly for him). It is striking that this appointment is made not long after the letter of engagement to Mazars is issued on 3rd September, 2010.

38. Curiously, very soon after the appointment of HKRME by Aldar, Mr. Ryan obtained advice from PriceWaterhouseCoopers ("*PWC*") in relation to the setting up of a new structure in relation to the business being undertaken by Mr. Ryan in the UAE. On 2nd November, 2010, a draft memorandum of advice from PWC was circulated to a number of parties including Mr. Ryan, a financial advisor called Aidan Rothwell, the late Owen O'Connell and Peter Buckley (the financial director of HKR Dublin). The memorandum referred to the setting up of a new company in the UAE (albeit that HKRME was already established at this time). In addition, the structure proposed that a new company would be incorporated in BVI which would be resident in Malta. In turn this BVI company would be owned 100% by a Maltese holding company (also incorporated in BVI) which would, in turn, be owned 100% by a Maltese (or possibly Jersey) trust, the beneficiaries of which would be Veronica Ryan and her three daughters. Mr. Ryan would not be a beneficiary of the trust but would be an employee of the Maltese company and would receive a salary in return for the work he undertook in the Middle East.

39. In a subsequent memorandum from Mr. Rothwell to Mr. Ryan of 2nd November, 2010, Mr. Rothwell highlighted advice given by Mr. O'Connell of William Fry that it was key that HKR Dublin is not seen to be disadvantaged or that work was diverted away from it. Mr. Rothwell said that the core objective was to set up a safe vehicle to enable earnings from the UAE to be remitted abroad. The

memorandum also recorded the advice given to Mr. Ryan in relation to a potential UK bankruptcy (which was seen as a better alternative to Mr. Ryan being made a bankrupt in Ireland at the suit of one of his creditors). For reasons which will become apparent at a later point in this judgment, the memorandum records some very important advice given to Mr. Ryan at this stage in the following terms: -

> *"A UK Bankruptcy will place* all you're (sic) a worldwide assets *in the hands of your UK Trustee who will sell these to discharge your debts. You would have to make a full declaration of all of your interests, and you would have no control as to whom they are sold to".* (emphasis in original)

40. In my view, it is clear from the respective memoranda of 2nd November, 2010 that Mr. Ryan, at this stage, had not yet finally decided on the mechanism to put in place to try to safeguard the HKRME asset from creditors. In addition, it is very difficult to reconcile the mechanisms discussed in the PWC memorandum with the operation of the RCT. There is a very obvious inconsistency between the terms of the RCT and the terms of the proposed trust described in the memorandum of advice. Veronica Ryan was to be a beneficiary of the latter trust. She was not a beneficiary of the RCT. It is impossible to see how, if the shares in HKRME (i.e. the company carrying on the relevant business in the Middle East) were already held on trust for Mr. Ryan's children, any new company could be put in place to run that business for the benefit of a different trust which did not have identical beneficiaries.

41. It is also impossible to reconcile the operation of the RTC (at least insofar as it purportedly includes the shares in HKRME) with a statement made by Mr. Ryan in the course of a board meeting of HKR Dublin on 18th March, 2011. That board meeting was attended by (among others) Mr. Ryan, Mr. Peter Buckley, and also Mr. Brendan Waters of Mazars. At that meeting, the Abu Dhabi Plaza project was discussed. The minutes record that, in the course of that meeting, Mr. Ryan was asked if the company in Abu Dhabi (i.e. HKRME) was held in trust for HKR Dublin by Mr. Ryan. The minutes record that Mr. Ryan confirmed that it was. On Day 6 at p. 19, Mr. Ryan, under cross examination, stated that he may have said this to allay the concerns of personnel in the Dublin office that he was "*doing all this on behalf of everybody but the reality was quite different. My intention was to retain that [HKRME] as an independent new company …".*

42. Mr. Ryan accepted (at p. 74 on Day 6) that he was not "*being straight with people at that time*" and he said that what he told the meeting was a lie. Notwithstanding this characterisation of what he said in March 2011 as a "*lie*", I do not believe I can wholly exclude what was said at the meeting on 18th March from my consideration as to whether the RCT had any reality or not. On the face of it, there is a contemporaneous statement by Mr. Ryan which is inconsistent with the operation of the RCT. That is a factor which must form part of my overall consideration of the issue relating to the RCT.

Mr. Ryan's approaches to Mr. Stone and Mr. Stafford

43. March, 2011 is an important month in terms of the overall chronology. In his oral evidence, Mr. Ryan said that it was in March, 2011 that he first raised the subject of a caretaker arrangement with Mr. English. It will therefore be necessary to consider the evidence given by Mr. Ryan and Mr. English in relation to what transpired between them at this time. Before doing so, it should be noted that, prior to approaching Mr. English, Mr. Ryan says that he had approached Mr. Stafford and a further acquaintance of his, Mr. Michael Stone, in relation to a similar arrangement. While no one was in a position to put a precise date on when these conversations took place between Mr. Ryan and Mr. Stafford and between Mr. Ryan and Mr. Stone (respectively) it was suggested in evidence that they occurred in early 2011. In para. 15 of his witness statement, Mr. Stafford says that in late 2010 Mr. Ryan was unwell. He says that, subsequently, in 2011, Mr. Ryan discussed with him: "*the possibility of becoming involved in the running of the Middle East business. Jerry needed someone to help out. He had a lot going on in his personal life, he was under a lot of pressure, working very hard and travelling a lot and he wanted to pass some of the pressure to someone he could trust*".

44. The proposed arrangement (as described by Mr. Stafford in para. 15 of his witness statement) is remarkably vague and unspecific. However, Mr. Stafford expanded on this in his oral evidence. On day 14 pp. 142-143, Mr. Stafford said:-

> *"Jerry was going – effectively in serious financial difficulty at the time. And we needed, we had discussed the theory of a babysitter, caretaker type approach to look after this trust. We had talked about it and Jerry asked me would I do it and I said I would if I could but I couldn't because I don't do paperwork e-mails or anything like that. So we contemplated putting my brother John Stafford who was an accountant at the time. And we kicked the ball around with that and we pulled that out eventually and said no. Then we thought about it for a while. He came back to me a few days later and he says I'm contemplating asking Barry English and I said 'well if that's the choice, that's the choice' that's it."*

45. Michael Stone also gave evidence. He was an impressive and honest witness. In para. 5 of his witness statement he says that he was approached by Mr. Ryan with a suggestion of a warehousing deal under which he would hold the company as caretaker. He was not prepared to do so. On day 16 at p. 14 he explained why this was so. He said:-

> *"I wasn't comfortable for a number of reasons. Firstly … I was running a business in Ireland … and the bit of work there was around was public sector work …. So I didn't want to get involved or be seen to get involved in anything that would be untoward."*

46. Significantly, under cross-examination on the same day, Mr. Stone said, at p. 27:-

> *"I would be buying something for a nominal value and wasn't paying full value for it … and I wasn't comfortable with that …. The reason why I was asked … I understood was that it was to keep the business in the Middle East away from the bankrupt (sic) process."*

47. Significantly, there was nothing in Mr. Stone's evidence to suggest that Mr. Ryan ever informed him at this time that the Middle East business was held on trust for his children. Mr. Stone explained in his evidence on day 16 (pp. 11-12) that the business of HKR Dublin had been practically "*wiped out*" by this stage. Mr. Stone also said that he knew that Mr. Ryan and HKR Dublin were in "*a bad way*" because there was hardly anyone left in the Dublin office. He said that Mr. Ryan had specifically asked to meet him in the Shelbourne Hotel for help in relation to his business in the Middle East. Mr. Stone was asked by counsel for the plaintiffs (on Day 16 at p. 13) to set out the detail of Mr. Ryan's proposal to him. The relevant exchange between counsel and Mr. Stone is in the following terms:-

> *"Q. Could you just go through the detail of what the proposal was?*
>
> *A. Well, essentially he wanted me to, I suppose, take over his business, facilitate the taking over of his business in the Middle East, whereby he outlined to me, I didn't go into the major detail, but the essence of it was that he would provide*

funds to me via a third party, I would then pay those funds to him to buy his company and when he came out of his bankruptcy … I would give it back to him.

Q. And who would be the beneficial owner of the company during the period when you had bought the company?

A. It was his business; he would carry on running it."

48. Mr. Stone went on to explain that Mr. Ryan basically told him that he was "*bunched*" from a financial point of view and that he was in "*dire straits*". At a later point in his evidence, Mr. Stone said that his understanding was that the business in the Middle East "*was a lot more valuable than what I was, that I was being asked to pay for it".*

49. In my view, the evidence of Mr. Stone is illuminating. It clearly suggests that Mr. Ryan was seeking to put in place a mechanism that would protect the Middle East business in the event of his bankruptcy. In addition, the proposal outlined to Mr. Stone is broadly in line (save for the absence of any reference to a trust owning the beneficial interest in the HKRME shares) with the proposal which Mr. Ryan says he made to Mr. English in March 2011 (as described further below).

The proposal to Mr. English

50. In para. 14 of the amended statement of claim it is pleaded that, in or around March or April, 2011, Mr. Ryan met with Mr. English at the Red Cow Hotel where Mr. Ryan explained to Mr. English that the work he was carrying out in the Middle East and the value being created in HKRME was being done on behalf of the RCT as the ultimate beneficial owner of shares. It is pleaded in the statement of claim that Mr. English agreed to assist and to work on behalf of the RCT and agreed to provide support and assistance with the administration of the business so as to allow Mr. Ryan to spend more time focusing on the operational side of the business as well as on his personal issues. It is also pleaded that Mr. Ryan agreed with Mr. English that if "*the worst were to happen to Mr. Ryan, that Mr. English could be trusted to maintain the business sufficiently to protect the value of the shares in HKRME for the benefit of the [RCT] and Mr. Ryan's children*".

51. What is said by Mr. Ryan in para. 43 of his witness statement is not entirely consistent with the case pleaded in the amended statement of claim. In para. 43 of his witness statement he says that Mr. English agreed to provide support and assistance "*by monitoring the business*" so as to allow Mr. Ryan to spend more time focussing on his "*personal and other issues*". In the closing submissions delivered on behalf of Mr. English, it is suggested that, in his witness statement, Mr. Ryan amended the term "*administrative assistance*" to "*monitoring*" with a view to resolving the internal contradiction in the statement of claim between the terms of the agreement alleged (which provided for Mr. English to provide an administrative assistance) and the plea made elsewhere (in para. 22) that the defendant was not involved in running the business of HKRME.

52. In his oral evidence on Day 3 of the hearing Mr. Ryan said that the meeting with Mr. English took place on 26th March, 2011 and he referred to a handwritten memorandum in his own handwriting of that date which was disclosed by him in a supplemental affidavit of discovery sworn on 12th November, 2018 (the second day of the trial). By way of background, Mr. Ryan explained at p. 22 that Mr. English was:-

"a very good friend and a confidant. He was – had been in communication with me all of 2010, the latter end of 2010, and into 2011 given advices etc. So we met and we discussed the upcoming or the preparation of the IVA [Individual Voluntary Arrangement]. We discussed issues around my solvency. We discussed, you know, my livelihood and how to provide going forward with the business, how to provide for the business. We discussed the concept of selling the UAE UK business. We then discussed the concept of him becoming a caretaker, a third party caretaker, for the business as an option."

53. There are two entries on the same page of the handwritten note. The first relates to a conversation which Mr. Ryan had with Mr. Ian Searle (an English lawyer) on 23rd March, 2011 which Mr. Ryan said related to a proposed Individual Voluntary Arrangement (IVA) which is the UK equivalent of a Personal Insolvency Arrangement under Irish law. The second note is headed "*with Barry English 26/3/11*". This is followed by four numbered paragraphs. The second para. is the most relevant for present purposes. It states: -

"Story

Can't cope with UAE/London business, sold to 3rd party and on understanding they would pay my salary for three years. Dublin can't afford my salary.

Back … have to restructure Dublin and leave Schoolhouse Lane. Doing my best. Give 1 million of 4 million."

54. There is no reference in the note to the role of "*caretaker*". Nor is there any reference to the RCT or indeed to any trust. However, on Day 3 at p. 22, Mr. Ryan said that, at this meeting, they discussed the concept of Mr. English becoming a caretaker "*as an option …".* On Day 3 at p. 25, Mr. Ryan said that the arrangement they discussed was simple *"that I would transfer the ownership of Abu Dhabi and London business to him as a caretaker. He was keen that that would happen for as little as possible, and he was not minded to use any of his own money and that at the end of a period of difficulty, both financial and personal, he would transfer both companies back to me at a nominal value".* In his evidence of the same day (at p. 26) Mr. Ryan also said that he told Mr. English about the RCT. He said: *"I told him there was a trust for my children and I told him I was acting on their behalf, on behalf of the trust*".

55. On Day 3 at p. 26 Mr. Ryan also explained what he meant by "*an option*". He said:-

"I saw it as one option, as a back stop, but I continued to explore other options in particular with Martin Griffin …"

Martin Griffin was another advisor to Mr. Ryan at this time.

56. In his evidence on Day 16 (at pp. 59-61) Mr. English says that he does not recall this meeting but he does not go so far as to say that no meeting took place on 26th March, 2011. Mr. English says in his witness statement that a number of discussions took place, some of which were face to face meetings in Dublin and some of which took place over the telephone. He was adamant that, given Mr. Ryan's financial circumstances (of which he had detailed knowledge) and his likely entry into bankruptcy or into an IVA, any transaction would have to be a bona fide purchase of the shares. He was also adamant that the word "*caretaker*" was never used. He also strongly rejected the suggestion that any reference was ever made to any trust at this time. He says that the first reference made to a trust occurred several years later when it was first mentioned by Mr. Stafford in a conversation described in more detail below.

57. Mr. Ryan was also asked to explain the reference to one million and four million in the handwritten notes of 26th March, 2011. On Day 3, at p. 23, he said that he was not entirely clear as to what this meant but that: *"my best estimate is that one million will be provided to Mr. English at that point in time out of the four million that was available in the Middle East to facilitate his acquisition of the business. That would be my best estimate of what that meant".*

58. On the same day as he made his handwritten notes of the conversation with Mr. English on 26th March, 2011, Mr. Ryan emailed Mr. Griffin in the following terms:-

> *"From now on I'm not going to refer to a trust! It's a third party. I'm suggesting as well that the third party purchaser may want to regularise the preferential share dealing with Dublin before they purchase London."*

59. The emphatic way in which Mr. Ryan says that he is no longer going to refer to a trust is, in my view, highly significant. It is clear from the evidence given by Mr. Ryan in the course of the trial that he had a real concern that any trustee in bankruptcy (or indeed a bank proposing to take proceedings against him) would be instinctively suspicious about the creation of a trust but would be less likely to be suspicious about a transaction that had the appearance of a straightforward sale. Thus, Mr. Ryan began to consider the possibility of an arranged "*sale*" as an alternative to the complex trust structure then under consideration in conjunction with Mr. Rothwell, Mr. O'Donovan, Mr. Griffin and PWC. It is also clear that what Mr. Ryan had in mind at this time was a transaction that would have the appearance of a sale but that this was simply a "*story*" (to quote from his handwritten note of 26th March, 2011) to convey to the world (and in particular any trustee in bankruptcy that might be appointed) that a sale had taken place. Lurking behind this "*story*" of a sale was to be a transaction that would allow him, in some way, to continue to retain some form of ownership or right over the only business then capable of generating any significant income or return for him – namely the business in the Middle East carried on by HKRME.

60. There was some degree of urgency around this time because Mr. Ryan was under threat of legal action by Bank of Ireland. This is confirmed by the email sent by Mr. Ryan to Mr. Griffin on 1st April, 2011. It should be noted that there was never any suggestion in the course of these proceedings that this email or the preceding email of 26th March, 2011 were shams. In the email of 1st April, 2011, Mr. Ryan said:-

> *"…I am happy that I have found a consultant who has brought value to the debate about the company's and my personal future.*
>
> *The execution of the plan is now of critical importance for many reasons including and in particular the moves that Bank of Ireland are making on Nenagh. I think it would be useful if you could set out on one email the following which will serve both as an aide memoire to us under record of where we are at.*
>
> *THE PLAN*
>
> *The plan is for a third party to buy UK and UAE business and transfer onward to a trust. Concurrently I establish a COMI in the UK and prepare and (sic) IVA and have it ready to lodge. The agreed timelines for this are:*
>
> *Establish COMI…end march*
>
> *Prepare IVA…end APRIL*
>
> *Sale of company …no later than 22 April. Thereafter onward partial sale to investor.*
>
> *Then I personally engage with NAMA on MAY 1…"* (spelling as per original).

Again, this email is inconsistent with the existence of the RCT. It envisages a sale of the UAE business to a third party and its onward transfer to a trust. This makes little sense if, in truth, the shares in HKRME are already held on trust for the RCT. For completeness, I also should explain that the reference to "*COMI*" in the email is an acronym for a centre of main interests. If Mr Ryan was to take advantage of then significantly shorter bankruptcy period under English law, he would have to establish for the purposes of the EU Insolvency Regulation (discussed briefly below) that his COMI was in England.

61. According to Mr. Ryan, he had a further face to face meeting with Mr. English on 15th April, 2011. Mr. English does not recall any such meeting but he said on Day 17 that he was not in a position to dispute Mr. Ryan's evidence that a meeting took place on that day. At this point, to judge by an email of 16th April, 2011, the urgency appears to have dissipated somewhat. On that day, Mr. Ryan sent an email to a number of his advisors and also to Mr. English in which he said:-

> *"The plan needs to be simple and is simple... The advice latterly of Peter Martin and Brendan is not to do any transactions for fear of upsetting the bank. OK. I am less concerned about not selling the businesses in advance of stamping IVA because, as a service company, it will have no value to a third party and a trustee in bankruptcy will see little value in a sale. I'm prepared to take my chances here".*

62. Three days later, Mr. Ryan had a meeting with Ronan Hannigan of Noel Smyth & Partners Solicitors (who now act for Mr. English in these proceedings). There is a handwritten note of that meeting (in Mr. Ryan's handwriting). This note was also part of the additional discovery made by Mr. Ryan on the second day of the hearing. The note records the following:-

> *"Sell middle east company to trustworthy third party".*

Mr. Ryan gave evidence that this was the advice of Mr. Hannigan. With regard to the "*options*" Mr. Griffin was then exploring (on Mr. Ryan's behalf) Mr. Ryan said that Mr. Hannigan had a strong view that Mr. Ryan "*should just deal with a trustworthy third party, a friendly party, i.e. caretaker".* (Day 3 p. 13 and p. 33). When he was asked about the reference to a "*trustworthy third party*", Mr. Ryan said on Day 3 at p. 46, that this was so that any such third party would honour the agreement to take the company as a caretaker and, when called upon, return it to him.

63. In the same note there is a reference to "*Barry's move?".* On Day 3 at p. 48 Mr. Ryan said that this was:-

> *"Pointing in the direction of Barry making a move, i.e. the trustworthy third party stepping in".*

Mr. Ryan was not cross examined about this meeting with Mr. Hannigan. Nor did Mr. Hannigan give evidence.

64. Thereafter, there is a lull in the dealings between Mr. Ryan and Mr. English. In 2011, Easter Sunday fell on 24th April. Three days later a meeting took place attended by Mr. Ryan, Mr. O'Donovan, Mr. Rothwell and Mr. Declan Lernihan (another advisor to Mr. Ryan). The note refers to a "*sale of his business in [UAE. This business is currently not worth a huge amount of money and you might be able to obtain approximately €100,000 for it*." On Day 2 at p. 123, Mr. Ryan confirmed, in direct examination:-

> "*Yes, this is a deliberate understatement of value".*

64. On Day 14 at p. 112, Mr. O'Donovan explained that he did not know this at the time and that if he had, he would have advised about the danger of selling at an undervalue. His evidence was that he subsequently understood that the company only had a value of that amount at that time but that it had huge potential value.

65. At this time Mr. O'Donovan was involved, in conjunction with some of Mr. Ryan's other advisors, in providing advice in relation to a proposal to establish a new holding company in Malta. A meeting took place on 27th April, 2011, attended by Mr. Ryan, Mr. O'Donovan, Mr. Rothwell and Mr. Lernihan. There is an attendance by Mr. O'Donovan of that meeting in which he states:-

> "*Consideration was given to a new corporate structure being set up which would involve a holding company possibly located in Malta. This company would hold the shares in the London company. An investor might be brought in who would hold possibly 30% of the A shares in the company with Jerry Ryan holding 70% B shares which effectively have no value until certain targets were met. It was agreed that this idea would need to be fleshed out further".*

66. There was a further meeting on 27th May, 2011, which was attended by Mr. Ryan and the three advisors who had attended the previous meeting on 27th April. There is a note of that meeting by Mr. O'Donovan which records that:-

> "*New investors to be brought in either actual or friendly who would subscribe for shares in the holding company …".*

67. The note concluded by recording that advice would need to be taken in relation to how a trustee in bankruptcy might treat the B shares in such a structure which it was stated:-

> "*would have no value but which potentially in the future could have a significant value".*

68. In his evidence on day 14 of the trial, Mr. O'Donovan explained that Mr. Ryan was, at this time, trying to protect his income so that it would not *"fall into the hands of his bankruptcy trustee"* (Day 14, at p. 100). Mr. O'Donovan was asked, in the course of cross-examination, whether he was concerned that putting the shares into a structure of the kind described in the notes would have implications in terms of his bankruptcy, if Mr. Ryan were to go bankrupt a short time thereafter. Mr. O'Donovan confirmed that this was a concern. Significantly, Mr. O'Donovan also confirmed on Day 14, at p. 105 that he was unaware, through the summer months of 2011, of the existence of the RCT. To my mind, it is extraordinary that if the RCT was, in truth, the beneficial owner of the shares in HKRME, this was not mentioned to Mr. O'Donovan at this time (when it is clear that Mr. Ryan was seeking to take steps to insulate the business in the Middle East from the effects of his bankruptcy). The corporate structure that was under discussion with Mr. O'Donovan, Mr. Rothwell and Mr. Lernihan was inconsistent with the existence of a trust in which the shares in HKRME were already beneficially owned by the RCT. A similar issue therefore arises as previously noted in the context of the mechanisms discussed in the PWC memorandum of November 2010 (discussed above). In the course of his evidence, Mr. Ryan sought to explain away this difficulty by contending that any arrangement of this kind (or indeed any arrangement with a "*caretaker*") was "*what I would describe as a sub-trust beneath the main trust deed"* (Day 7, pp. 17-18). However, I find it difficult to see how, if the shares in HKRME were beneficially owned by the daughters of Mr. Ryan, a sub-trust could be created by Mr. Ryan himself who was no more than a delegate of the trustee of the RCT. As I understand the law, a sub-trust could only be created by the beneficiaries of a trust. It has not been explained to me how a sub-trust could be created by a delegate of a trustee of a trust or indeed by a trustee. The basic obligation of a trustee is to hold the assets of the trust for the benefit of the beneficiaries.

69. Leaving aside, for the moment, the questions which arise in relation to the RCT, it is clear that at this time Mr. Ryan was still considering a number of different options. In the course of his cross examination, Mr. Ryan described this process as "*optioneering*". On Day 6 at p. 32-33 Mr. Ryan said:-

> "*What I would say to you is that, while a lot of things, and I would repeat this, Judge, while a lot of things were discussed and sometimes in a state of panic, should I do this, should I do that, what do you think I should do, ultimately the only transactions that happened beyond this point were the transactions with Mr. English and a High Court divorce order…. So what in a sense you will see through all these letters are thought processes, ruminations, discussions, optioneering. Optioneering is a big architectural word, let's look at our options, let's think about different ways of approaching things which is very much the way my mind operates. You look at everything and then you zone in and eventually you make a decision and that's what was going on in this process".*

70. The process described by Mr. Ryan on Day 6 accurately reflects what was going on in 2010 and 2011. On the basis of the oral evidence and written materials before the court, Mr. Ryan was considering, with several groups of advisors, a bewildering range of possible paths to follow. However, it is plain that, in all of this, Mr. Ryan's primary focus was to ensure that his business in the Middle East would not fall into the hands of his creditors or his bankruptcy trustee. The contemporaneous documents which exist demonstrate this very clearly. This is also supported by the evidence given at the trial, including the evidence of Mr. O'Donovan and Mr. Stone, both of whom were entirely credible witnesses. This was also frankly acknowledged by Mr Ryan's partner, Ms. Elizabeth Walsh, on Day 12 of the hearing at pp. 167-168. It was also apparent from Mr. Ryan's own evidence (although his credibility as a witness is very much in issue and is addressed further below).

71. There were ongoing communications between Mr. O'Donovan, Mr. Lernihan and Mr. Rothwell during the course of July 2011 but ultimately on 3rd August, 2011, Mr. O'Donovan, at the request of Mr. Ryan, passed his file to Eleanor Maxwell of Marriott Harrison, solicitors, of London. Mr. Ryan said in his evidence that it was around this time that he decided to proceed with the "*caretaker*" option. In an email sent to Mr. O'Donovan on 8th July, 2011, Mr. Ryan suggests that he was ready to close a deal in July. In the email, Mr. Ryan referred to the existence of a definite investor based in the Middle East. In the email, Mr. Ryan also said that valuations were required for the companies. He said that:-

> "*They need to be reasonable but on the low side".*

In the same email, Mr. Ryan also referred to the need to complete the sale in the following few weeks because of impending actions by Bank of Ireland. He also said:-

"Additionally and more importantly we need the sale done and dusted before we can trigger IVA or bankruptcy!"

72. In the meantime, on 5th July, 2011, Mr. English emailed Mr. Ryan in the following terms:-

"I wouldn't mind catching up at some stage as have [sic] spoken since before Easter when there was a lot of activity".

This email is significant because it shows that, notwithstanding the dating of the documents described in more detail below, the agreement in relation to the acquisition by Mr. English of the shares in HKRME could not have been put in place at this stage. It is quite clear from this email that nothing significant had transpired as between Mr. English and Mr. Ryan since April 2011.

73. There is also an email from Mr. English to Mr. Ronan Hannigan of Noel Smyth & Co. on 11th July, 2011, which, on its face, might suggest that Mr. English was contemplating taking action adverse to Mr. Ryan's interests at this time. However, as subsequent events show, this email appears to have been written in the context of a pre-arranged course of action agreed between Mr. English and Mr. Ryan (which I deal with below). In the email, Mr. English said:-

"I have been chasing Jerry Ryan of HKR for some months now to resolve outstanding fees due to Winthrop for work that I helped HKR to win… Given the serious deterioration of the… architectural sector I would appreciate if we could issue proceedings as early as possible. Also as Gerry doesn't appear to be contesting the debt but just fobbing me off on payment I suggest we go for winding up proceedings".

74. That email was patently incorrect. There is no evidence that Mr. English was chasing Mr. Ryan for payment of any outstanding fees. As noted above, there had in fact been no communication between Mr. Ryan and Mr. English since April 2011. On Day 17 at p. 170 it was put to Mr. English, in cross-examination, that this statement was not true to which he answered:-

"It was probably - it was probably a slight - exaggeration, yes".

75. It will be necessary, in due course, to consider what transpired following this email from Mr. English to Mr. Hannigan. At this point, it is sufficient to note that, up this time, no invoice had ever been issued by Winthrop to HKR Dublin. Nor was there any agreement in place between HKR Dublin and Winthrop to make any payment to Winthrop. In his evidence, Mr. English was asked by his own counsel to explain the genesis of the "*debt*" described in the email to Mr Hannigan. On Day 16 at p. 90 Mr. English explained it in this way:-

"Probably didn't start out as a debt. So in 2003/2004 when I got the Clancy Barracks job for HKR and when I get them Moran's Hotel…job for HKR, I didn't look for money but I expected something in return. And something in return would be that you'd get work in Winthrop."

Mr. English went on to explain that Winthrop did not subsequently get "*a whole lot in return*". As described in more detail below, it was only after this email of 11th July, 2011, that any agreement was purportedly reached with HKR Dublin under which it was agreed (at least on paper) that HKR Dublin would make a payment to Winthrop. This was done at a time when HKR Dublin was in financial difficulty and at a time when a liquidation of HKR Dublin was a real possibility. This is an issue that I explore in more detail below. Before doing so, it is necessary to outline what came to be agreed, on paper, in relation to the shares in HKRME.

The acquisition by Mr. English of the shares in HKRME

76. As noted above, Mr. Ryan said in his evidence that it was about 3rd August, 2011, that he ultimately decided to proceed with the "*caretaker*" option. It will be necessary, in due course, to reach a conclusion as to whether the arrangement entered into between Mr. Ryan and Mr. English was of a caretaker nature. Whatever the nature of the arrangement, it is clear that as of 3rd August, 2011, some arrangement had been reached between Mr. Ryan and Mr. English under which the latter was to take the shares in HKRME. This is borne out by the fact that on the same day Mr. English was asked by Mr. Joe Haddad (who was assisting Mr. Ryan in Abu Dhabi) for a copy of his degree. This was necessary in order to satisfy local UAE law if Mr. English was to acquire any shares in HKRME. This is reinforced by a subsequent email dated 10th August, 2011, from Mr. English to Mr. Ryan in which Mr. English said:-

"I confirm that I have today received the degree certificate as required…Please note that while we have a verbal agreement for me to purchase the shares at market value, these shares still have to be valued. I would be happy if Michael Gallucci is used to provide this valuation."

77. In my view, this email of 10th August, 2011, illustrates that, as of that date, there was an oral agreement in place between Mr. English and Mr. Ryan in relation to the shares. While there is a fundamental disagreement between the parties as to whether Mr. English was acquiring the shares as a caretaker and whether Mr. English was to hold the shares on trust for the RCT, there is no doubt that there was an agreement under which Mr. English was to acquire the shares in his name.

78. When it came to evidencing the agreement in writing, the relevant document (comprising a letter setting out the basic terms of the acquisition) was backdated to 31st May, 2011. To my mind, the reason for the backdating of the documents is obvious. It is clear from Mr. Ryan's email to Mr. O'Donovan of 8th July, 2011 (discussed above), that Mr. Ryan wished to ensure that the sale was done and dusted before any IVA or bankruptcy was triggered. It is equally clear from the evidence of Mr. O'Donovan that there was a concern to ensure that any transfer of property was "*done in sufficient time not to be caught under the bankruptcy legislation, that he remained out of bankruptcy for a sufficient time to protect those*." (Day 14, at pp. 100-101). Thus, the relevant letter confirming the agreement of Mr. English to acquire the shares in HKRME is dated 31st May, 2011. In other respects, that letter is consistent with the case made by Mr. English that the arrangement put in place with Mr. Ryan was in the nature of an absolute sale. Under the terms of the letter dated 31st May, 2011, Mr. English confirmed his purchase of the shares in HKRME for a total consideration of €100,000 adjustable up or down depending on the outcome of an independent market valuation. It will be recalled that this figure of €100,000 had previously been mentioned at the meeting of April 2011 (described in para. 64 above) when Mr Ryan told Mr O'Donovan that the business was not worth a huge amount of money but that he "*might be able to obtain approximately €100,000 for it".* The letter stated that Mr. English would require Mr. Ryan to sign a twelve-month service agreement with HKRME and that details of HKRME accounts and a valuation would have to be provided including a list of current contracts and potential contracts plus any sponsor agreement. At this time, it should be noted that the only contract which HKRME had in place was the very substantial contract with Aldar. In the course of the opening of the trial, counsel for Mr. Ryan contended that this letter was a "*completely fabricated document*". That is an issue which I address later. At this point, it is sufficient to note (a) that the date is certainly untrue and (b) that the reference to a list of current contracts is not consistent with the nature of the business then carried on by HKRME.

79. There is also a declaration of trust dated 31st May, 2011, stating that Mr. Ryan holds the shares in HKRME on trust for Mr. English. This document was also backdated. It was drafted by Mark Hughes of Browne Jacobson in London (who I assume knew nothing of the backdating) and furnished to Mr. Gallucci on 30th August, 2011 who subsequently sent it to Mr. Ryan on 31st August,

2011. Mr. Gallucci explained to Mr. Ryan that a separate share sale agreement would need to be drafted under UAE law in order to pass the legal interest in the shares. In the meantime, the declaration of trust would serve to acknowledge that the beneficial interest in the shares had passed to Mr. English.

80. There can be no doubt that these documents were backdated. In the first place, it is noteworthy that, in his email of 10th August, 2011, Mr. English referred solely to a "*verbal agreement*". This would make no sense if there was already, in place, a written agreement executed on 31st May, 2011. Secondly, there is an email dated 15th August, 2011, from Mr. Gallucci to Mr. English (which is copied to Mr. Ryan) which, again, is inconsistent with the existence of a prior written agreement. I should explain, at this point, that Mr. Gallucci was known to both Mr. English and Mr. Ryan. He is a quantity surveyor based in London. He did not give evidence at the trial. He had been assisting Mr. Ryan in relation to the wind down of HKR Dublin. He was also assisting Mr. Ryan in relation to the business in the Middle East. In his email of 15th August, 2011, Mr. Gallucci said:-

> *"I understand that* you would like to purchase *Mr. Jerry Ryan's shares in the Middle East Business. I am acting for Mr. Ryan on this matter and we need to agree heads of terms and a share purchase agreement…"* (emphasis added)

81. Furthermore, on 14th August, 2011, Mr. Gallucci emailed Mr. Ryan with "board minutes" which purported to show what transpired at a meeting of directors of HKRME on 28th July, 2011. The meeting is stated to have started at 9.30 a.m. and concluded at 10.00 a.m. The minutes (in language that reflects the "*story*" described in the handwritten note of the meeting with Mr English on 26 March, 2011 quoted in para. 53 above) stated:-

> *"Following a period of review… Mr. Ryan has come to the difficult decision to sell his shares in the business in the Middle East. He has found life extremely difficult living in the region and the profitability of the business has not reached expectation. Mr. Ryan has decided to sell 48%... retaining 1% until a suitable Architect can be found to replace on the business license…"*

82. Subsequently, on 20th August, 2011, Mr. Gallucci sent a further email to Mr. Ryan with a new version of the same minutes. However, now, the minutes purport to be of a meeting which took place on 27th May, 2011. Remarkably, although the meeting is stated to have been held at the offices of HKRAS in London at 10.30 a.m., the meeting is nonetheless stated to have been closed at 10.00 a.m. This is obviously a very poor "*cut and paste*" exercise. But it exposes the backdating exercise underway in August 2011.

83. On 22nd August, 2011, Mr. Gallucci emailed Mr. English with a copy of the letter dated 31st May, 2011, to be executed by him. The email stated:-

> *"Dear Barry,*
>
> *Please can you sign and fax back the attached…, we have misplace [sic] our original, thanks Michael."*

The relevant letter dated 31st May, 2011 (described above), was attached to this email and was subsequently signed by Mr. English. There was clearly no substance to Mr. Gallucci's suggestion that anything had been misplaced. The reality is that the letter was deliberately backdated to 31st May, 2011. Mr. English did not have any difficulty in signing the letter notwithstanding that it was backdated in this way. Reading paras. 49-52 of his witness statement, one might form the impression that Mr. English in fact executed this document on 31st May, 2011. However, on Day 16 at pp.71-72 he conceded that: *"I can't argue that it mightn't have been signed on 31st May…"* At p. 77 he added:-

> *"I think that was a backdated letter. I didn't sign a backdated letter nor would I sign my name with an earlier date than the day I sign it, but that letter may not be prepared at the time. My belief is that that letter of 31st May was something backdated to try and get a clock ticking as regards the sale of the asset from any attack from the bank."*

84. When Mr. English resumed his seat in the witness box at the start of Day 17 he indicated that, having read the transcript of Day 16, he wanted to clarify his evidence in relation to the backdated document. At pp. 15-16 he then said:-

> *"And I don't know if I explained myself properly. I had no issue with signing a letter that had a date on top of 31st, but I would've had an issue if I'd to sign and date it 31st. So I would put the date of the date I'm signing it, which is quite different."*

In response, I indicated to Mr. English that I did not understand what he said and I asked him to take me through it again to which he answered:-

> *"So, if someone says 'sign a letter', I'm given the letter, I was told he'd misplaced it, it said 31st May, but I am signing it in August...*
>
> *…. So, I'd no problem signing that and I wouldn't in any -- however, if I was asked 'can you please sign and date it'…I would date it the date I re-signed it… As a standard policy".*

85. I was unimpressed by this evidence from Mr. English. Mr. English seems to suggest that there is a distinction to be made between signing a document bearing an incorrect date where that date is inserted by another person and a situation where the signatory places the incorrect date on the document himself or herself. I can see no basis for such a distinction. Moreover, there is no basis here to suggest that any letter had been misplaced. That was simply a very obvious ruse to mask the backdating. I am left with the impression that Mr. English is uncomfortable about the fact that, here, he clearly had signed a document which misrepresented the date of the agreement for the acquisition of the shares in HKRME. He was obviously concerned that the court might form the view that he was therefore prepared to involve himself in a sham (albeit that this issue related solely to the date of the document). His tortuous explanation for his acquiescence in the misdating of the document does him little credit and it is a factor that I must bear in mind when I come, at a later point in this judgment, to consider credibility. I will also defer to a later point in this judgment, my consideration as to what were the true terms of the agreement reached between Mr. Ryan and Mr. English. Before expressing any view on that issue, it will be necessary to consider, in more detail, some of the subsequent dealings between Mr. Ryan and Mr. English. As noted previously, where it is alleged that a transaction is a sham, a court is entitled to consider subsequent conduct. This is clear from the judgment of Arden LJ in *Hitch v. Stone (Inspector of Taxes)* [2001] EWCA Civ 63 at para. 65.

86. Before addressing the subsequent dealings between the parties, it is necessary to consider the evidence that exists in relation to the valuation arrived at for Mr. Ryan's shares in HKRME and the manner in which the consideration for the transfer of shares was paid by Mr. English.

The valuation of HRKME and the manipulation of its accounts

87. BTG Corporate Finance ("*BTG*") were retained by Mr. Gallucci to carry out a valuation of HKRME. BTG subsequently supplied a draft valuation (as at 31st July, 2011) on 18th August, 2011. This placed a value on Mr. Ryan's shareholding in HKRME of €77,000. The plaintiffs contend that this was a deliberate undervalue which was only arrived at after the accounts made available to BTG had been manipulated at the direction of Mr. Ryan. I should make clear that there is no suggestion that BTG were aware of any such manipulation. Furthermore, although Mr. Ryan, in the course of his evidence, confidently expressed the belief that Mr. English was aware of the manipulation of the accounts, there is in fact no direct evidence that he was so aware. In those circumstances, I do not propose to address the detail of the evidence in relation to manipulation of accounts. Nonetheless, I have come to the conclusion that there was a very blatant attempt by Mr. Ryan to depress the value of his shareholding in HKRME with a view to ensuring that the purchase price to be "*paid*" by Mr. English (in the manner outlined below) would be low. I have also come to the conclusion (for the reasons set out in paras. 102 – 107 below) that Mr. English was aware that the purchase price was likely to have been an undervalue.

88. There are a number of features of the evidence which lead me to believe that there was a manipulation of the accounts. In the first place, a "*sale*" of an asset at a relatively low price was less likely to attract the attention of a bankruptcy trustee or of Mr. Ryan's creditors generally. Secondly, it is clear that, even before the summer of 2011, Mr. Ryan was seeking to suggest that the business in the Middle East was not valuable. He made this point at the meeting attended by Mr. O'Donovan, Mr. Rothwell and Mr. Lernihan on 27th April, 2011 (discussed above). At that meeting he suggested that it might be possible to obtain approximately €100,000 for the business. It should also be recalled, in this context, that, in Mr. Ryan's email of 8th July, 2011, he had told Mr. O'Donovan (whose involvement had come to an end by the time of the BTG valuation) that the valuation needed to be "*reasonable but on the low side*". It is noteworthy that, in the same month, there was a sum of AED15.157m standing to the credit of HKRME in its account at HSBC Abu Dhabi. While no definite evidence was given to the court as to the bank balance as at April 2011, Mr. Ryan estimated (on Day 3, at p. 27) that the bank balance at April 2011 was "*rising in the direction of 13 – 15 million*".

89. Thirdly and most importantly, the version of the management accounts for the period ended 31st July, 2011 furnished to BTG was created following the inclusion of a number of expense items which, on the evidence, I find to be fabricated. In this context, Mr. Amjad Abu Diab was tasked with preparation of the management accounts. On 11th August, 2011, Mr. Gallucci emailed to Mr. Ryan a copy of the accounts as prepared by Mr. Diab at that date. It showed current assets of AED 22,098,486.67 (of which AED 14,670,681.00 was held in a HSBC bank account in the UAE) with liabilities of AED 3,412,185.13. The profit and loss account showed a gross profit for the months of June and July 2011 of AED 4,131,569.38 and a gross profit for the year to date AED 9,185,445.82. After deduction of expenses, the net income shown on this account was AED 3,641,229.38 in respect of the months of June and July 2011 and AED 7,893,447.30 for the year to date. For comparison purposes, it should be noted that, in the course of the hearing, the parties were agreed that one could use an approximate conversion rate of AED 4 to €1 for the purposes of converting these figures to euro.

90. The email from Mr. Gallucci provoked a very strong response from Mr. Ryan who emailed Mr. Diab directly on the same day saying:-

> "*Amjad*
>
> *This report makes absolutely no sense to me.*
>
> *For starters we have to accrue for fees due to sub consultants beyond moneys paid. All sub consultants on Abu Dhabi Plaza equate to approximately 50% of the total fee. Therefore, if we have billed 19 million. We accrue for 9.5 million. You have the breakdown of these sub consultant's fees!!*
>
> *You have not accrued for fees due to GREEN CUBE which from memory is circa 700k per month starting in Oct 10???*
>
> *I gave you the invoices?*
>
> *Because of the defective nature of dublins work the directors have agreed to write off the moneys they claimed from Abu Dhabi bar some nominal amount for expenses.*
>
> *On my analysis this will show a small loss for the year…*
>
> *I need this report amended by close of business Sunday and in michaels inbox even if you have to work on it over weekend".*

91. Significantly, this email of 11th August, 2011, is headed: "*Valuation btg*". There was a further email from Mr. Gallucci to Mr. Diab on 14th August, 2011, in which he again emphasised that Mr. Diab would need to include the Green Cube costs (described in Mr. Ryan's email) and which concluded by stating:-

> "*We are expecting a balance sheet figure of circa 1m AED."*

92. The accounts for July 2011 were subsequently amended by Mr. Diab. There are a number of striking changes. In particular, there is now a significant figure of AED 6,468,020 stated to be due to Green Cube under the heading of "*Cost of Sales*". This has the effect of eliminating any gross profit for the period June-July 2011 and reducing the profit for the year to date from AED 9,185,445.82 to AED 2,035,202.93. In addition, there are a significant number of new expense items shown in the profit and loss account (including figures supposed to be due in relation to office rent and office furniture even though, on the evidence, no such office or furniture had been acquired at this stage). The overall effect was to convert a net income figure in respect of the period June – July 2011 to a loss and to convert a net income figure for the year to date of AED 7,893,447.30 (shown in the previous version of the accounts) to a substantially more modest figure of AED 381,009.96.

93. Insofar as the Green Cube costs are concerned, these were dealt with in the evidence given by Mr. Nazar Mohammed on Day 11 of the trial. Mr. Mohammed is a quantity surveyor and a project manager. He is currently a director of Kingston International which is based in Dubai. The managing director of Kingston International is Mr. Richard Kingston. Prior to the events of August 2011, Mr. Kingston and Mr. Mohammed had worked for a company known as Cyril Sweett which had a branch in Dubai. In that capacity, they had both worked previously with Mr. Ryan and knew him since at least 2009.

94. According to Mr. Mohammed, in March 2011, Mr. Ryan met with both Mr. Kingston and himself in Abu Dhabi when Mr. Ryan told them that a friend of his, Mr. English, would be coming in to act "*like a caretaker*" so that Mr. Ryan's name would not itself appear "*on*

the papers". Mr. Mohammed said that Mr. Ryan told him at this meeting that Mr. English was not prepared to put his own money into the transaction and Mr. Ryan proposed that he would give the money to Mr. Kingston and Mr. Mohammed who would then pass it through the accounts of Mr. English thereby allowing Mr. English to pay it back to Mr. Ryan. Mr. Mohammed also said that Mr. Ryan also raised with him at this stage the need to reduce the value of HKRME. Mr. Mohammed said that neither he nor Mr. Kingston could assist at that time since they were then both employed by Cyril Sweett. Subsequently, Mr. Kingston was fired by Cyril Sweett in May 2011 and Mr. Mohammed also resigned at this time and both became involved in a new partnership called Kingston International. A second meeting took place with Mr. Ryan in July 2011 (again attended by Mr. Kingston, Mr. Mohammed and Mr. Ryan) at which they agreed to Mr. Ryan's proposal to route HKRME moneys through Kingston International with a view to providing Mr. English with the funds to acquire Mr. Ryan's shares in HKRME. Mr. Mohammed said that they also agreed that they would put in place a contract between an engineering practice in Sharja (in the UAE) called Green Cube and HKRME which would be backdated to October 2010. Green Cube would issue invoices to HKRME totalling AED 6.5 million payable by a number of instalments. Mr. Mohammed said that these invoices were fabricated for the purposes of helping Mr. Ryan. Mr. Mohammed said that of this sum, only AED 240,000 represented "*real work*". He explained that later, in July 2012, all of the invoices were written off save for invoice No.9 which was in the amount of AED 740,000 which was in respect of some subsequent work done on the Abu Dhabi Plaza together with some works in relation to a proposed development in Kabul. Thus, of the total sum of AED 6.5 million, Mr. Mohammed said that AED 1.5 million was "*true*" and AED 5 million was "*fabricated*".

95. According to Mr. Mohammed, the Green Cube contract was novated to Kingston International. The permission of Green Cube was necessary for this purpose. My understanding of the evidence of Mr. Mohammed is that the novation took place in August 2011. Thereafter, the Green Cube invoices were issued in the name of Kingston International.

96. Under cross examination, the credibility of Mr. Mohammed was attacked. It was suggested to him that it was not credible that he and Mr. Kingston should have so readily agreed to fabricate invoices after Mr. Ryan first requested them to do so at the meeting in July 2011. It was also suggested to him, in the course of cross examination, that there were serious questions about the probity of Mr. Kingston who had been the subject of an investigation by the Serious Fraud Office in the United Kingdom. Since Mr. Kingston was not a witness at the trial, I can form no view in relation to his probity. I have, however, been in a position to form a view to the credibility of Mr. Mohammed. While I must obviously exercise considerable caution when considering the evidence of a witness who has admitted to fabricating documents, I have come to the conclusion that, on the issue of the Green Cube invoices, Mr. Mohammed's evidence is credible. I regret to say that, in the course of the trial of these proceedings, it became clear that a significant number of documents were created to suit the purposes of Mr. Ryan from time to time. As will appear from findings made below, there were a number of people who were prepared to assist Mr. Ryan in this deeply unimpressive enterprise. It appears likely that, at least, part of the money paid to Kingston International was a "*backhander*" for their assistance in fabricating the Green Cube invoices. In the world in which Mr. Ryan moved, payments of that kind were not uncommon. Thus, for example, Mr. Ryan caused HKRME to make a payment of STG£25,000 to a company called Regius Consulting Limited. This was in return for an introduction made by Mark Richards of MACE Consulting for an introduction to the MACE country director for Belarus, Mr. Scott, which ultimately assisted HKRME in being appointed as architect for a project which became known as the Magnet Minsk project. At the time of the payment Mr. Richards was an employee of MACE. The company Regius Consulting Limited was, at that time, owned by his wife. There is no suggestion that Mr. Richards was ever party to the fabrication of documents. However, the payment to Regius Consulting Limited is striking in circumstances where Mr. Richards was then an employee of MACE. The payment was clearly made by Mr Ryan with a view to assisting in securing a contract for HKRME.

97. In all of the circumstances, I have come to the conclusion that the Green Cube invoices were, in truth, a fabrication which were put in place in order to facilitate Mr. Ryan's desire to artificially minimise the value of HKRME so as to make it less likely that any sale of his shares in HKRME would be investigated subsequently by a trustee in bankruptcy and also for the purposes of ensuring that the money to be made available to Mr. English to purchase the shares in HKRME would be relatively modest.

98. In the course of hearing, it was not accepted by Mr. Michael Neary (the expert called on behalf of Mr. English) that the BTG valuation was, in fact, an undervalue of the true worth of HKRME in July/August 2011. According to Mr. Neary, there was a fundamental uncertainty regarding the financial performance of HKRME as of July 2011, such that an independent valuer would not have been in a positon to assess the prospects and future performance of HKRME or to form an opinion in respect of its fair value at the valuation date. In his evidence, Mr. Neary highlighted a number of factors which he said made it difficult to value HKRME. These included the following:-

> (a) under the Professional Services Agreement ("*PSA*") with Aldar, the latter had the right under para. 29.1 to terminate the agreement on 14 days' notice;
>
> (b) HKRME was still at a very initial stage, as a lead design consultant, on the Aldar project and had a limited trading history in the UAE;
>
> (c) there were various sets of management accounts in existence as of 31st July, 2011 such that the financial position of HKRME as of that date was fundamentally uncertain;
>
> (d) Mr. Ryan held a key licence required for HKRME to operate in the UAE and this could potentially restrict the type of bidders for the company;
>
> (e) Mr. Ryan was key to the winning and fulfilment of Aldar project and there was a high dependency on him to deliver the project.

99. Mr. Neary also severely criticised the evidence given by George Kennington, the expert called on behalf of Mr. Ryan. Mr. Neary suggested that Mr. Kennignton did not have the necessary experience to express a view on valuation issues. The same approach was taken when it came to the cross examination of Mr. Kennington. However, in my view, Mr. Neary was mistaken as to the nature of the exercise carried out by Mr. Kennington. It is quite clear from the report and oral evidence of Mr. Kennington that the central question which he examined was whether or not US$77,000 represented an undervalue for HKRME. Mr. Kennington did not seek to precisely quantify what the true value of HKRME might have been save to suggest that it was greater than US$77,000. What he did was to apply the three different methodologies that were used by BTG and to undertake calculations using those methodologies taking into consideration the impact the manipulation of the accounts to June-July 2011 would likely have had on the valuation.

100. I have to say that, in my view, Mr. Kennington was an entirely credible and straightforward witness. He answered all questions directly and without prevarication. Given the nature of the exercise which he carried out, I do not believe that his evidence can be ignored. In contrast, Mr. Neary was more inclined to be argumentative in his answers to questions which I found surprising given that he was called as an independent expert. In particular, he was very slow to answer a simple question – namely whether, if BTG were

provided with the correct information (not the manipulated version of the accounts) for the purposes of the valuation, would their valuation have been different. Ultimately, following an intervention from me, Mr. Neary, at p. 140 on Day 21, confirmed that it may have been. It is true that Mr. Neary also suggested that if BTG were presented with accounts which showed more significant profits, they are likely to have conducted a more extensive valuation exercise. While that may be so, I do not believe that one can escape the conclusion that if any valuer was presented with the true set of accounts as opposed to the manipulated accounts, the probability is that the value would be higher than the value actually arrived at by BTG who were furnished with the manipulated accounts (which had been designed precisely for the purposes of minimising the value of HKRME). I fully appreciate that, of course, there would still be a significant number of uncertainties facing any valuer but ultimately it seems to me to be probable that the valuation prepared by BTG was, in truth, an undervalue (although this was not to be known to BTG at the time). Furthermore, there can be no doubt that, unknown to BTG, the result of the valuation was deliberately manipulated by Mr Ryan by presenting the doctored accounts in the manner described above. Mr Ryan was fully aware of the underlying value of the Aldar contract and of the potential for substantial ongoing earnings from it.

101. I am reinforced in this view by the evidence given by Mr. Stone. In his evidence on Day 16, he stated clearly (at p. 13 and p. 27) that he was asked to consider taking over Mr. Ryan's business in the Middle East on the basis of an arrangement under which Mr. Ryan would provide funds to him via a third party and he would then pay those funds to Mr. Ryan to buy the company which Mr. Stone would give back to him after Mr. Ryan came out of bankruptcy. Mr. Stone explained that his understanding of the proposal was that he would buy something for "*a nominal value and wasn't paying the full value for it*".

Was Mr. English aware of the undervalue?

102. Having found that the BTG valuation of €77,000 was an undervalue (as a consequence of the deliberate manipulation of the accounts at the direction of Mr. Ryan), I must now consider whether Mr. English was aware that the consideration "*paid*" by him (in the manner outlined below) was less than the true value or the likely value of HKRME.

103. In this context, Mr. English stressed in para. 48 of his witness statement that, given Mr. Ryan's financial circumstances and his likely entry into either bankruptcy or an IVA, the transaction would have to be carried out properly and the purchase would have to be a bona fide transaction. In para. 69 of his witness statement, Mr. English says that, notwithstanding the BTG valuation, he was still "*slightly wary of purchasing the shares in HKRME and he was uneasy about spending a* large sum *of his* personal funds *on something that he did not know a great deal about*" (emphasis added). He says that in normal circumstances he would have conducted a much more thorough due diligence exercise on any asset that he intended to purchase and that he was "*also reluctant to pay a significant sum"* to Mr. Ryan.

104. It is useful to contrast this evidence with the oral evidence given by Mr. English (as part of his direct examination) on Day 16 of the trial. His oral evidence was to the opposite effect. At p. 66 on Day 16, Mr. English characterised the consideration payable as "*an insignificant sum*" and he also said that there was "*no substantial money here*". On this basis, Mr. English explained at p. 66 – 67 that it was not necessary to carry out financial due diligence. It is impossible to reconcile this evidence with what was said by Mr. English in para. 69 of his witness statement. There is a direct contradiction between the two pieces of evidence. It appears likely that Mr. English, in his oral testimony to the court, was concerned to give evidence that would be consistent with the evidence to be given by his expert Mr. Neary. In itself, that does not prove that Mr. English knew that €77,000 represented an undervalue for the shares in HKRME. However, there are a number of other aspects of Mr. English's evidence in relation to this issue which are puzzling and which, taken together, lead me to conclude that Mr English has not given reliable evidence on this issue. In this context, it should be noted that on 18th August, 2011, Mr. Gallucci emailed Mr. English attaching the BTG draft valuation which had been received on the same day saying that Mr. English would be pleased to note that the market value had come in lower than the original €100,000 agreed (subject to valuation) and that the cost would now be €77,000. On the same day, Mr. English reverted to Mr. Gallucci requesting a current profit and loss account, a balance sheet, a list of staff, projected and committed workload, local partner details and he also asked Mr. Gallucci to explain how the valuation was arrived at. In addition, he asked what the agreed minimum commitment for Mr. Ryan would be for a two year period as well as his expected remuneration. On the face of it, that is consistent with the evidence given by Mr. English in para. 58 of his witness statement where he said that he was:-

> *"extremely conscious that the transaction had to be conducted for fair value as it may in the future be reviewed by Mr. Ryan's creditors or bankruptcy trustee. However, I was also very concerned that the transaction represented value for the price that I was being asked to pay. Given my knowledge of Mr. Ryan's business practices and poor financial circumstances, I did not want to purchase a basket case of a company which would end up damaging my finance and reputations…"*

105. However, this evidence is manifestly not consistent with the evidence (discussed above) given by Mr. English, as part of his direct examination on Day 16. In addition, it is also inconsistent with what happened next in the exchanges between Mr. English and Mr. Gallucci. Thus, on 19th August, 2011, Mr. Gallucci emailed Mr. English with a Share-file link which contained unaudited financial information. According to para. 56 of his witness statement, Mr. English says that he did not have time to examine this unaudited management information in any great detail. This is not consistent with the evidence that Mr. English subsequently gave at the trial. On Day 16 of the trial, Mr. English said that he did not believe that he opened the sharefile or Dropbox in 2011. He gave that evidence not on the basis that he did not have time to examine the material at the time but instead on the basis that he could not open the same Dropbox when it was subsequently emailed to him (at his request) by Mr. Gallucci in the summer of 2018 when it was requested by his expert, Mr. Neary. In the afternoon on the same day, he qualified that slightly to say that he was not in a position to say whether he could have opened it in 2011 or not. Subsequently, while under cross examination on Day 18, Mr. English said at p. 62:-

> *"I don't have any recollection whether I opened it or not. I don't believe I did because I've no download of the documents. But I don't want to say here in court that I could or couldn't open it. I know this summer I definitely couldn't open it but I can't say whether I could or couldn't back then."*

106. As will be seen, this is directly contrary to the previous witness statement given by Mr. English where he said that he did not have time to consider the information and therefore, relied on Mr. Gallucci instead. While this inconsistency, in itself, might not seem, at first sight, to be of great importance, it must be considered in conjunction with the earlier inconsistencies described above. It is also important to have regard to the further exchange of emails which took place between Mr. Gallucci and Mr. English on 19th August, 2011. On that day, Mr. English sent an email to Mr. Gallucci asking whether he was "*happy with the valuation provided of €77,000 that it is a fair value…?"*. Mr. Gallucci responded by email on the same day saying simply: "*Yes, in my opinion it is a fair value*". Mr. English did not pursue the matter further. Mr. English confirmed in para. 60 of his witness statement that, following this confirmation from Mr. Gallucci, he was satisfied with the valuation and made arrangements to travel to Abu Dhabi to execute the formalities in relation to the deals. However, this is entirely inconsistent with the suggestion made in para. 58 of his witness statement where Mr. English had said that he was "*extremely conscious that the transaction had to be conducted for fair value*". Having regard to that expressed concern, it is bizarre to think that Mr. English would simply drop one of his inquiries as set out in his

email of August 2011, merely on the say-so of Mr. Gallucci that the valuation was a fair one. This is especially so in circumstances where Mr. Gallucci was ostensibly acting on behalf of Mr. Ryan in the transaction.

107. I find the evidence of Mr. English on the value of HKRME to be wholly unconvincing. As outlined in paras. 103-106 above, it is beset with inconsistencies and contradictions. I have come to the conclusion that Mr. English must have been aware that €77,000 represented an undervalue for the HKRME shares. In the first place, his shifting, inconsistent and evasive evidence on the issue of value is very relevant. Next, as Mr. English acknowledged at para. 59 of his witness statement (and this acknowledgment was repeated in the course of his oral evidence at the trial) he was aware of the very substantial contract that had been put in place between HKRME and Aldar in relation to the Abu Dhabi Plaza in Astana. While he says at para. 59 of his witness statement that, on the basis of his previous experience, a contract of this kind with a foreign entity in the Middle East was far from secure, it is inconceivable that he was not aware, through his extensive contacts with Mr. Ryan at this time that Mr. Ryan regarded the business in the Middle East as his most valuable asset and as his future. It is also inconceivable that he was not aware that Mr. Ryan was going to quite extraordinary lengths (involving a large number of advisors) to insulate the HKRME business from the effects of any bankruptcy. It would make no sense to do so if the total value of Mr. Ryan's interest in that business was measured at €77,000. In this context, it is highly significant that Mr. English, in para. 48 of his witness statement, has confirmed that he had a detailed knowledge of Mr. Ryan's financial circumstances. It is not credible that he was not aware that the HKRME asset had very strong earning potential and that HKRME already had a very healthy bank balance at a level that is quite remarkable for a relatively new business. It is also noteworthy that Mr. Stone (whose evidence I accept) has confirmed that the proposal that was put to him by Mr. Ryan was that he would buy the asset for a nominal value and that he would not pay full value for it. Given Mr. English's more extensive relationship with Mr. Ryan at this time, it is inconceivable that Mr. English was not aware that the price to be paid for HKRME was at an undervalue.

The payment of the consideration for the shares in HKRME

108. According to para. 69 of his witness statement, Mr. English was reluctant to pay: "*a significant sum to Mr. Ryan when Mr. Ryan or associated companies already owed me significant amounts of money in relation to our longstanding business relationship*". In para. 70 of his witness statement, he explained that the most significant "*debt*" was the sum of €580,261.11 plus VAT which Mr. English said was:-

> "*related to introductions made by me that had resulted in Mr. Ryan or his associated companies being awarded projects and work. If Mr. Ryan had given me reciprocal work I would not have sought payment for these introductions but as HKRME was in rapid decline and not in a position to provide work, Mr. Ryan agreed to pay me a commission for such work but I had to chase it aggressively, so it would not be seen as a preference payment."*

109. This is the explanation given by Mr. English for the highly unusual arrangement that was put in place between him and Mr. Ryan (with the assistance of Kingston International) under which the monies used for the acquisition of the shares were in fact made available by HKRME itself. This byzantine arrangement (as described in more detail below) was designed to hide the fact that the source of the consideration came from HKRME itself.

110. In para. 72 of his witness statement, Mr. English emphasises that the funding by HKRME of his acquisition of Mr. Ryan's shares in HKRME "*arose within the context of an outstanding invoice due to me*". The impression which Mr. English seeks to convey is that there was an outstanding debt due to him which funded the acquisition by him of the shares and that an invoice had already issued in respect of this "*debt*". In other words, his case is that he was entitled to set-off the cost of acquisition of the shares against an outstanding debt due to him. In my view, this is a gross misrepresentation of the true position. There was never any debt owed to Mr. English by HKRME. The "*debt*" to which Mr. English refers is a purported liability of HKR Dublin to him arising out of "*introductions*" claimed to have been made by him several years previously. There was never any contemporaneous agreement by HKR Dublin to make any payment to Mr. English for such introductions. Instead, what happened was that, several years after these introductions are alleged to have been made, Mr. English and Mr. Ryan together concocted an "*agreement*" as an afterthought at a time when both knew that HKR Dublin was in difficult financial circumstances. At the time this arrangement was put in place (as described below) both Mr. Ryan and Mr. English had significant experience as company directors. Having regard to their experience as directors of companies in Ireland, they must have known and fully appreciated that a gratuitous arrangement of this kind on the part of a company in difficult financial circumstances was patently inappropriate and unlawful. They both would have been aware that, in the circumstances in which HKR Dublin found itself, there was an obligation to preserve the assets of HKR Dublin for the benefit of its true creditors. This was made clear by the Supreme Court in Re Frederick Inns Limited [1994] 1 ILRM 387. I would not expect that company directors would necessarily be aware of that decision. However, one would not need to be aware of that decision in order to appreciate that, where a company is in financial difficulty, it is entirely inappropriate to make gifts of company assets to a person who is not, in truth, a creditor of the company. That is essentially what happened here. Mr. English was plainly aware of the imminence of a liquidation of HKR Dublin. This is clear from what he said in para. 70 of his witness statement and from his oral evidence at the hearing where he emphasised that he wished to be seen to "*chase the debt*" aggressively so that it would not be open to challenge by a liquidator as a preference payment. Furthermore, as will be explained below, contrary to the evidence given by Mr. English in his witness statement, the payment in question was made before the relevant invoice was issued by Winthrop to HKR Dublin.

111. The contemporaneous documents relevant to this issue begin with the email from Mr. English to Mr. Ronan Hannigan of Noel Smyth & Co. of 11th July, 2011 (described in para. 73 above). As discussed above, this email falsely suggests that, for some months previously, Mr. English had been chasing Mr. Ryan in respect of a payment due from HKR Dublin. I am satisfied on the evidence that, in fact, there had been no attempts prior to this date to pursue payment of any allegedly outstanding fees. Moreover, as noted above, no invoice had previously been issued in respect of this alleged debt. In the circumstances, it is farcical to suggest that winding up proceedings against HKR Dublin would have been appropriate which is what Mr. English suggested in the final sentence of the email.

112. In circumstances where Mr. Hannigan had earlier provided advice to Mr. Ryan, he did not think it was appropriate that he should act on behalf of Mr. English. In those circumstances, Mr. English sent an email to Paul Foskin of Heffernan Foskin Solicitors on 12th July, 2011, which is in virtually identical terms to the email to Mr. Hannigan of 11th July. It has one additional sentence at the end "*can you issue a s. 214 letter?".* A "*s. 214 letter"* is the letter that was previously written under the Companies Act 1963 (since repealed), demanding payment of a debt from a company prior to presenting a petition for the winding up of that company. Mr. Foskin replied on 12th July, asking whether there was any documentary evidence of the arrangement. Mr. English responded on 15th July, 2011, in which he said "*I have no other documentation but my agreement was with the managing partner and I do not believe that he will deny what has been agreed*".

113. As the language of the email of 15th July, 2011, suggests, Mr. English was confident that Mr. Ryan would not deny the existence of the "*agreement*". This was for the simple reason that Mr. Ryan had already agreed (as part of the overall arrangement under which Mr. English was to acquire the shares in HKRME) that these steps could be taken. This is confirmed by what was said by Mr. Ryan in

para. 68 of his witness statement where he says that the approach by Mr. English to Mr. Hannigan and subsequently to Mr. Foskin was done "*by agreement [with] me*". I do not, however, accept the contention made by Mr. Ryan in his witness statement that the arrangement between him and Mr. English in relation to the Winthrop "*debt*" was wholly unconnected with the acquisition of shares. While I accept fully that there was, in truth, no debt, the explanation given by Mr. Ryan in para. 64 of his witness statement for the arrangement is wholly incredible. In that paragraph, he suggested that in advance of the liquidation of HKR Dublin, he had agreed with Mr. Gallucci (who was then managing the wind-down of the HKR Dublin business) that "*invoices would be raised by friendly contractors such as…Winthrop…in order that they would be listed as creditors for the creditors' meeting and would therefore be in a position to attend the creditors' meeting and receive information from the liquidator*". It makes no sense that this arrangement was put in place in order to receive information from the liquidator at the creditors' meeting. At the time of a creditors' meeting to confirm the appointment of a liquidator (in a creditors' voluntary winding up), the liquidator would not have any information available to him in relation to the company. The relevant creditors' meeting occurs at the very commencement of a voluntary liquidation and therefore, the liquidator would have no opportunity to be in any position to share information with creditors. However, experience regrettably shows that where there is a concern that the nominee of the company for appointment as liquidator might not be acceptable to creditors, those in control of a company will sometimes seek to ensure that there are a sufficient number of "*friendly*" creditors at the creditors' meeting to support the company's nominee and defeat any counter nomination by an aggrieved creditor. Given everything that I have seen of Mr Ryan's conduct, that seems to me to be a more likely explanation.

114. On 20th July, 2011, Heffernan Foskin Solicitors on behalf of Winthrop wrote to HKR Dublin demanding payment of €580,261.11 plus VAT. No response was sent to that letter until 2nd September, 2011 (following an email from Mr. Ryan to Mr. Gallucci) falsely suggesting that Winthrop had issued a "*winding up*" order on HKR Dublin. The truth is that, as of that date, no steps of that kind had been taken by Winthrop. Mr. Ryan's reference to a "*winding up order*" is nonetheless significant. It is consistent with the language used by Mr. English in his letter of instructions to Mr. Foskin. It reinforces the view that Mr. English and Mr. Ryan were working in concert.

115. In the meantime, there were a number of significant communications involving Mr. English, Mr. Ryan and Mr. Kingston. As discussed above, Mr. Ryan had agreed with Mr. Kingston and Mr. Mohammed of Kingston International that invoices would be issued by them in order to allow Mr. Ryan to make a payment to them with a view to the onward transmission of part of that money to Mr. English to fund the acquisition of the shares. On 23rd August, 2011, HKRME deposited AED 501,200 to the bank account of Kingston International. Two days later, on 25th August, 2011, Mr. Ryan sent an email to Mr. Kingston. This email was headed "*introduction fee*". In the email, Mr. Ryan stated:-

> *"I have no wish to get in the middle of this. I understand Richard the invoice for 100k euros is outstanding for some time. It's causing embarrassment. I note your undertaking to pay it by Saturday. Barry please provide your account details and swiftcode to Richard."*

116. The reference in this email to an invoice having been outstanding for some time is completely untrue. There was no invoice in place at this point. Nor was there any outstanding debt. On the same day, Mr. English emailed his assistant, Audrey, asking her to send bank details to Mr. Kingston explaining that "*this is payment into Penman*". In his evidence at the trial, Mr. English explained that Penman is a company controlled by him.

117. On 27th August, 2011, Mr. Kingston emailed Mr. Ryan to confirm that he was now in a position to "*settle the payment to Barry…".* On the same day, Mr. English emailed Mr. Kingston directly: "*Richard. Can you let me know when funds should hit my account*". Mr. Kingston responded on the same day to say that the money would leave his account on the following day but stating "*I will need an invoice for my records*…".

118. On 29th August, 2011, Mr. English emailed his assistant, Audrey, asking her to send an invoice to Kingston from Penman as follows: "*to invoice for the provision of consultancy work as agreed €100,000 (no VAT I believe as they are [not] an Irish company*)". On the same day, the relevant funds were transferred from the account of Kingston International to Penman.

119. This exchange of emails shows very clearly that there was, by this time, a level of familiarity between Richard Kingston on the one hand and Mr. English on the other. It also shows the manner in which the monies were routed from HKRME to Penman to fund the acquisition of the shares. Mr. English says that he had provided substantial director's loans to Penman and that an appropriate adjustment was made in the accounts of Penman reducing the level of such loans by an equivalent amount. However, that does not overcome the fact that the payment of the consideration originated from HKRME. At no time was any money owed by HKRME to Mr. English. Nor were any consultancy services provided at any time by Penman or Mr. English to Mr. Kingston or to HKRME or, for that matter, HKR Dublin.

120. On Day 17, Mr. English was cross examined about the above exchange of emails. At p. 135, he was asked what consultancy work was carried out by him for Kingston to which he answered "*none*". He was then asked what consultancy work was carried out by him for anyone that could conceivably be said to be relevant. His answer was "*the work on Clancy Quay and Moran's Hotel*". This is a reference to the "*introductions*" alleged to have been made several years previously. When it was put to him that this was not consultancy work, he answered "*and is that not consultancy?".* When it was put to him that there is an obvious difference, he said "*and what is the difference…because I don't know the difference*". I was deeply unimpressed by this evidence. In my view, it is quite clear that a fictitious invoice was generated by Mr. English for non-existent consultancy services in order to create a paper trail which would suggest that there was a reason why Kingston International was making a payment to Penman, a company controlled by Mr. English himself.

121. On Day 17, Mr. English attempted to suggest for the first time that there had been a novation of a debt. At p. 132, he said that debts get "*novated all the time and there is nothing fraudulent or illegal about novating debts. So if Jerry Ryan decided to pay it from the man in the moon he sends his invoice, it's up to me to make sure I send a bona fide invoice".*

122. There is no substance to this belated suggestion on the part of Mr. English that there had been a novation of any debt. In the first place, there was no debt owed by HKR Dublin (still less by HKRME) to Mr. English or to any entity controlled by him. Secondly, even if there had been a debt (which there was not) the "*debtor*" would not have the right, in law, to novate it. In my view, this retrospective attempt by Mr. English to justify the arrangement that was put in place is without foundation.

The creation of a VAT invoice in favour of Winthrop as against HKR Dublin

123. In the meantime, the correspondence in relation to the "*debt*" due by HKR Dublin to Winthrop continued. As noted above, on 1st September, 2011, Mr. Ryan emailed Mr. Gallucci suggesting that Winthrop had issued a winding up order in respect of HKR Dublin and he said: "*I think we have to deal with it. We should try to settle at some level to get rid of the risk…*". On the following day (2nd September) Mr. Gallucci emailed Heffernan Foskin Solicitors asking them to forward a copy of the invoice and the contracts relating to

the demand. Of course, as of that date, there was no invoice in existence in relation to any sum due by HKR Dublin to Winthrop. Thus, on 7th September, 2011, Heffernan Foskin asked Mr. English for instructions in relation to the invoice. On 8th September, 2011, Mr. English prepared a draft invoice in his own handwriting for "fee to date" on each of Clancy Barracks, Davitt Road and Moran's Hotel totalling €580,261 plus VAT at 21% (which at that rate amounted to €121,854.83). For reasons which Mr. English was unable to explain, he dated the draft invoice 8th September, 2010. His assistant, Audrey, subsequently prepared a typed version of the invoice to which she assigned an invoice number 4060A. However, she applied the usual VAT rate applied by Winthrop namely 13.5% rather than 21%. This brought the VAT figure down to €78,335.25. On the same date, Heffernan first sent the invoice to Mr. Gallucci. Curiously, on 6th October, 2011, Mr. English emailed Mr. Gallucci directly in relation to the invoice asking him to follow up as necessary "*as I would like to get this concluded*". If Mr. English had, in truth, engaged solicitors to take winding up proceedings against HKR Dublin, it would be quite extraordinary that there would be direct communications of this kind between Mr. English and Mr. Gallucci (who was representing HKR Dublin).

124. On 8th October, 2011, Mr. Gallucci emailed Heffernan Foskin (and copied his email to Mr. English) asking for the signed contracts for the projects in question. In response, Mr. English again emailed Mr. Gallucci directly on 10th October, 2011, confirming that there were no signed contracts. In his email (which is written in quite friendly and familiar terms), he stated that:-

> *"The agreement I had with Jerry…was 10% of the sales generated from the order I helped HKR to generate. I have no doubt that Jerry…will confirm this agreement."*

125. On the same day (10th October, 2011), Mr. Gallucci emailed Mr. Ryan asking Mr. Ryan to confirm the arrangement so that he could calculate the sums due. Remarkably, this email (in which Mr. Gallucci sought instructions from Mr. Ryan) was copied to both Mr. English and Heffernan Foskin. If the parties were not acting in concert it would make no sense for Mr. Gallucci to copy Mr. English and his solicitors in this way. After all, they were the opposing party purporting (according to Mr English) to threaten winding up proceedings against HKR Dublin. To my mind, this puts the threat of winding up proceedings in perspective. It appears to me to be quite clear that there was never any substance to that threat. It was simply done to create the false impression that Mr. English was aggressively pursuing payment of a debt. Of course, there never was any debt due. The introductions in question had taken place many years previously. At the time those introductions were made, Mr. English simply expected some form of quid pro quo from Mr. Ryan but there was no agreement that any specific sum should be paid. This was merely an expectation on Mr. English's part. Such an expectation did not give rise to any enforceable agreement. Notwithstanding the emails to Mr. Hannigan and Mr. Foskin of July 2011, there had never been any attempt by Mr. English to "*chase*" payment. That was also a fiction. In that context, it seems highly likely that the reason for the backdating of the invoice to 8th September, 2010, was to give the false impression that this was a longstanding debt.

126. Subsequently, on 10th November, 2011, Mr. Gallucci emailed Mr. English directly and copied the email to Mr. Ryan suggesting that Winthrop was entitled to payment of 10% of fees paid to HKR Dublin in respect of projects to the value of €3,978,006. Mr. English responded on the following day that the proposal was acceptable but that the original agreement was based on sales generated rather than sales received. Very significantly, notwithstanding the payment of €77,000, which had been made in August 2011, no credit was given by Mr. English for that payment. Again, this appears to me to underline the lack of reality to the arrangements in relation to this "*debt*". If both sides were dealing with a genuine debt, credit would undoubtedly have been sought for any payment previously made.

127. Thereafter, following letters from Mr. Gallucci dated 18th November, 2011 and 19th December, 2011, there was an agreement to pay €328,760.80 by eighteen monthly instalments. No evidence was given at the trial that this agreement was ever performed. Nor was any evidence given at the trial to suggest that any further attempts were made by Mr. English to secure payment of any of these instalments. I am left with the impression that the exchanges that took place in relation to this "*debt*" were written for effect. Very soon after the completion of these exchanges, the VAT invoice issued by Winthrop was used in part settlement of a revenue debt owed by HKR Dublin which was the subject of a winding up petition brought by the Collector General. This is clear from an exchange of correspondence which took place in January 2012. In particular, it is clear from a letter sent by Cooney Carey (acting on behalf of HKR Dublin) to the office of the Collector General on 20th January, 2012, in which Cooney Carey stated that they had been instructed by HKR Dublin to amend the VAT return for the period September/October 2010 on the basis that the VAT input credit with regard to the Winthrop invoice was now claimed. On that basis, HKR Dublin claimed that it was entitled to a refund of VAT previously paid in the sum of €78,335.25 (which was the VAT claimed at 13.5%) on the Winthrop VAT invoice dated 8th September, 2010 which (as described above) was generated for the first time in September 2011 and furnished to HKR Dublin at that time. On behalf of HKR Dublin, Cooney Carey claimed an offset in the sum of €78,335.25 against the outstanding PAYE/ PRSI/VAT liability of the company to the Revenue Commissioners. There is a subsequent email from Mr. Rothwell to Cooney Carey and Mr. O'Donovan of Orpen Franks (which is copied to both Mr. Gallucci and Mr. Ryan) informing them of the fact that Mr. O'Donovan had spoken to the Revenue Solicitor who had indicated that the winding up petition against HKR Dublin would be withdrawn if satisfied that the VAT reclaim had been made and an additional payment of €28,000 was made (to cover the balance due in respect of VAT/PRSI/PAYE plus €3,500 for costs). In their subsequent email of the same date, Cooney Carey confirmed that the revised return had been acknowledged by Revenue. It is, therefore, clear that the invoice issued by Winthrop (for a debt which could not properly be said to be due to Winthrop) was instrumental in reducing to a very significant extent the outstanding liabilities of HKR Dublin to the Revenue and in securing the withdrawal of the winding up petition which had been brought by Revenue and which, had it proceeded, would have resulted in the appointment of a liquidator nominated not by the company but by the Revenue Commissioners. I should make clear that there is nothing to suggest that either Cooney Carey or Mr. O'Donovan knew anything about the background to this invoice (as explained above).

128. In the course of his evidence, Mr. Ryan attempted to suggest that he was unaware of the use of the Winthrop VAT invoice in this way. I do not accept that evidence. In my view, it is highly improbable that Mr. Ryan was not aware not only of the fact that the invoice was going to be used in this way but that it was likely to be instrumental in neutralising the winding up petition presented by the Revenue Commissioners against HKR Dublin. In this regard, Mr. Ryan was, as noted above, copied with both of the emails of 24th January, 2012 and was, therefore, aware of the settlement of the winding up proceedings. Mr. Ryan says that he was too busy dealing with the events in the Middle East at this time to pay attention to such emails. I reject that evidence. In the first place, it is inconceivable that Mr. Ryan was not concerned about the Revenue winding up petition against HKR Dublin. Although he was not formally a director of HKR Dublin at that time, he was still actively involved in decision making in relation to HKR Dublin. Moreover, HKR Dublin was the firm in which Mr. Ryan had made his name as an architect. It was synonymous with his professional life up to that point. It is not credible that he would not have been concerned about a winding up petition against HKR Dublin. In addition, it is clear to me from a consideration of various references to HKR Dublin in emails sent by Mr. Ryan to a number of parties over the course of the period 2010 – 2012, that Mr. Ryan was concerned to ensure that HKR Dublin would be wound down in a manner that would minimise the scope for problems to arise following the appointment of a liquidator to that company. Mr. Ryan was clearly apprehensive that a liquidation of HKR Dublin could have repercussions for him as a former director and controller of that company. I have no doubt that Mr. Ryan would have had concerns about the appointment of a liquidator nominated by the Revenue Commissioners. Mr. Ryan's

concerns in relation to a liquidator are illustrated, for example, by the subsequent emails sent by Mr. Ryan to Mr. Gallucci and Mr. English in November, 2012, following the appointment of a liquidator (as part of a creditors voluntary liquidation of HKR Dublin) in October, 2012. In those emails Mr. Ryan expressed concern about the course the liquidation might take and the investigations that were, at that time, requested by (among others) the Revenue Commissioners, ex HKR Dublin staff and the banks. In a revealing email of 13th November, 2012 from Mr. Ryan to Mr. English, Mr. Ryan asked the question (with reference to the role of Mr. Gallucci in winding down the affairs of HKR Dublin):-

> *"the question is was Michael the right man to do it all … will he get us through this?" to which Mr. English responded:-*
>
> *"I think for MG there just needs to be a bit of hand holding to get the last bit out".*

129. In all of these circumstances, I have come to the conclusion that Mr. Ryan well knew that the Winthrop invoice was to be used in the manner described above and I reject his evidence to the contrary. In my view, this is evidence of reprehensible conduct on the part of Mr. Ryan. It should be recalled in this context that Mr. Ryan in para. 67 of his witness statement, quite clearly accepted that HKR Dublin had no liability to Winthrop and that the "*debt*" discussed above was a fiction. Mr. Ryan was, therefore, knowingly a party to an arrangement under which the Revenue Commissioners were misled into thinking that the Winthrop invoice was a genuine VAT invoice as a result of which the Revenue wrongly gave credit to HKR Dublin in respect of the sum of €78,335.25 to which HKR Dublin was plainly not entitled. In addition, the Revenue agreed to withdraw the winding up petition on the basis of a false representation. This is an issue that I must bear in mind when it comes to consider the credibility of Mr. Ryan's evidence. If necessary, I must also consider in due course whether this incident could have any implications for the relief sought in these proceedings.

130. Although his counsel on Day 7 cross examined Mr Ryan on the basis that VAT was reclaimed on foot of the Winthrop invoice, Mr. English has also disowned any knowledge of the use of the VAT invoice for the purposes of claiming a VAT credit. However, it must be remembered that he was the person who personally directed the issue of this invoice. In fact, if the invoice had been issued in the terms directed by him, VAT would have been claimed at 21% which would have meant that the VAT on the invoice would have been sufficient to offset the entire Revenue debt of HKR Dublin (which was subsequently the subject of the winding up. Irrespective of the rate of VAT invoiced, Mr. English, as an experienced businessman, was undoubtedly aware that any VAT invoice issued to a company such as HKR Dublin was likely to be used for the purposes of claiming a VAT credit. That is how the VAT system works. In short, had he not directed the issue of the invoice, a VAT credit could never have been claimed. I, therefore, do not accept that Mr. English can close his eyes to the inevitable result of issuing a bogus VAT invoice in this way. This is an issue that I will have to consider further when I come to address the credibility of Mr. English as a witness. I may also have to consider, in due course, whether it has any wider implications.

131. In the circumstances, I find as a fact that, at minimum, Mr. English was aware that the Winthrop invoice was likely to be used for the purposes of reducing any VAT liability which HKR Dublin might have to the Revenue Commissioners. It also appears to me to be likely (although I do not believe it is necessary to make any definite finding to this effect) that Mr. English was aware of the intention to use the invoice for the purposes of assisting in the resolution of the winding up petition presented by the Revenue Commissioners.

The completion of the acquisition of shares by Mr. English and its immediate aftermath

132. On 21st September, 2011 Mr. Ryan, Mr. English, Mr. Al Habtoor, and a further UAE national who, by that time, was the holder of the remaining shares in HKRME, executed the formal agreement for the transfer of 72 of Mr. Ryan's 73 shares in HKRME to Mr. English. Mr. Ryan had to retain one share because, under UAE law, it was required that an architect should remain involved in the company. In addition to dealing with the transfer of the shares, Article 6 of the agreement provided that the capital of HKRME was AED150,000 of which Mr. Ryan was the owner of one share, Mr. English was now the holder of the remaining shares previously held by Mr. Ryan with the balance of the shares held in the name of Mr. Al Mheiri (the UAE national). Under Article 13.1, there was a requirement that HKRME should allocate a minimum of 10% of its net profit each year to create a statutory reserve. This was subject to the right of the shareholders to resolve at a general assembly to allocate additional reserves as they saw fit. Article 13.1 also provided that the shareholders could resolve that the allocation of net profits to the statutory reserve be discontinued once the reserve reached half of the capital of the company. Article 13.2 provided that the net profits should be distributed between the shareholders in the proportions of 1% to Mr. Ryan, 79% to Mr. English, and 20% to Mr. Al Mheiri.

133. For completeness, it should be noted that Mr. English (through a company called Healeyford Limited) also acquired the shares in HKRAS for a consideration of £1. For the purposes of this judgment, I do not intend to examine, in any detail, what transpired with regard to HKRAS. That element of the story appears to me to have only peripheral relevance to the issues in these proceedings.

134. On the same day, Mr. English emailed Mr. Ryan expressing satisfaction that the agreement had now been finalised. The email then continued as follows:-

> *"As agreed I would appreciate if a simple report could be issued monthly advising the status of orders in hand, potential orders and management accounts. Please advise the bank details for the payment of the agreed consideration …".*

135. This is one of the contemporaneous communications on which Mr. English relies to demonstrate that, as the terms of this email would clearly suggest, he was now the owner of the relevant shares in HKRME and, in that capacity, was entitled to call upon Mr. Ryan to provide him with this level of information. However, Mr. Ryan contends that the email (in common with many others) was written purely for effect. On Day 8 at p. 20, it was put to Mr. Ryan by counsel for Mr. English that this email was solely between the two principals (i.e. it was not designed to be read by a third party) and therefore could hardly be said to have been written for effect. However, in response, Mr. Ryan maintained that "*this is purely for look back*". In other words, it was written (according to Mr Ryan) to create a misleading paper trail in the event that the disposal of his shares in HKRME were investigated by a creditor or by a bankruptcy trustee.

136. At p. 23 of the transcript of the same day Mr. Ryan says that the email is a "*fabrication*". All of this is strongly denied by Mr. English. However, on Day 16 at p. 123, Mr. English acknowledged that he did not subsequently receive any of the reports or other information called for in this email. His explanation was that, when he wrote this email, he was simply unfamiliar with the work of HKRME. At a later point in this judgment it will be necessary to form a view as to the respective credibility of Mr Ryan and Mr English. At this point, I will confine myself to saying that the reference to "*orders*" in the email is not something that I would readily associate with an architectural practice. I should have thought that "*instructions*" or "*contracts*" would more readily fit with the nature of such a practice. There can be no doubt that Mr English well knew that HKRME was engaged in the provision of architectural services and, in those circumstances, the terms of the email appear, at minimum, to be somewhat contrived.

137. On 6th October, 2011 Mr. Gallucci emailed Mr. English with a proposal for due diligence reports on HKRME for a fee £3,800. Mr. English sent a copy of that email to Mr. Ryan on the same day and said: -

> *"Further to the finalisation of the acquisition of your shares in last month I intend to put some monitoring controls in place as per MBG proposal below. In addition, I would request MBG review and monitor all current and future contracts to ensure that they are fully enforceable and that we are working for and billing the correct entity …".*

138. Mr. Ryan was also cross-examined in relation to this email. On Day 8 at pp. 26-27, Mr. Ryan said that this is a further example of what he described as "*papering*". He said that Mr. Gallucci did not produce any management accounts. Mr. Ryan said that he did not even "*grace it with a reply as far as I can recall*" because it was false.

The draft memorandum of understanding

139. According to Mr. Ryan, in his evidence on Day 3 at pp. 105-106, in October, 2011, he drafted a document headed "*memorandum of understanding*" between himself and Mr. English. Paragraph 1 of the draft document contained a covenant that Mr. English held the shares in HKRME for Mr. Ryan and "*inter alia his estate*". Paragraph 1 also provided that Mr. Ryan could call upon Mr. English to sell back the shares to him at any time in the future for a price no greater than US$10,000. The draft document also envisaged that Mr. English would acknowledge that he had no rights with regard to the management of the financial affairs of HKRME and that in the event of his untimely death the shares in HKRME would automatically be returned to Mr. Ryan for a consideration of US$10,000. The document also provided that, in the event of the death of Mr. Ryan, all of his rights would be exercisable by his estate. The document also envisaged that Mr. Stafford would, in the event of Mr. Ryan's death, be given power of attorney to run and manage the business on behalf of the estate.

140. Mr. Ryan says that he created this document in mid-October, 2011 around the time he received payment of the consideration of €77,000 from Mr. English (which was received on 14th October, 2011). In his evidence on Day 3 at p. 106 Mr. Ryan said that the purpose of the document was: "*that while I had entered into a very clear caretaking agreement with Mr. English, which he was absolutely insistent that there would no side agreement in relation to what we'd agreed, namely that he would act as a caretaker for the family trust and return the company when called upon …*".

141. Mr. Ryan explained that Ms. Walsh had said to him on a number of occasions that he needed to have something in writing notwithstanding the refusal of Mr. English to sign any side agreement. In this regard, Mr. Ryan explained at p. 106 of Day 3: -

> *"well, … he did not want to sign any memorandum of understanding saying that he was holding it as a caretaker. Because he wanted, in his words, to be able to tell the truth – 'no matter what happens, I want to be able to tell the truth that there's no side agreement', in case there was a look-back …".*

142. At p. 107 on Day 3 Mr. Ryan said that, following the views expressed by Ms. Walsh, he: -

> *"set upon drafting this document with a view to presenting it to Mr. English on his next visit to Abu Dhabi and discussing it with him. In the end, I didn't because we had a close relationship, but I didn't want to challenge his promise of trust, I didn't want to be the one to say 'I know you said you're going to do all this, but would you now mind please applying a signature to this?' because as far I was concerned and he was concerned, it was a matter of trust between two close friends".*

143. Mr. Ryan confirmed that Mr. English never saw the document and that in fact he had forgotten all about it until it emerged in the course of discovery. His evidence was that he thought it must have been typed by his secretary at the time and retained on the server. As described further below, Ms Sockett, his secretary, subsequently confirmed that she had typed it. In my view, this draft memorandum of understanding is inconsistent with the operation of the RCT. As noted in para. 139 above, para. 1 of the draft document contained a covenant that Mr. English held the shares in HKRME for Mr. Ryan and his estate. That is plainly inconsistent with the shares being held on trust for the benefit of the RCT.

The evidence of Ms. Sockett and Mr. Koirala

144. According to Mr. Ryan, Mr. English had no real role relating to the HKRME business during the balance of 2011 or the first six months of 2012. Mr. Ryan accepted that there were emails and other documents in which he referred to Mr. English as the owner. His evidence was that these were "*engineered*" and that he would: -

> *"… consciously write coded messages like 'but of course you are the owner'. And this messaging that was done was deliberate and it was both for internal and external optics. Because a lot of people within the company really never believed anything other than that this was a caretaking arrangement and I was doing my damnedest to impress upon people that it was transfer*." (Day 3 at pp. 108-109).

145. This version of events was supported by the evidence of a number of other witnesses. These included the office manager of HKRME in Abu Dhabi namely Ms. Dolores (otherwise Dolly) Sockett. Ms. Sockett was an impressive witness who was obviously intensely loyal to Mr. Ryan. According to her evidence, she was told by Mr. Ryan at the time of the transfer of shares, that this was just a "*paper transaction*" and that he told her not to worry; that Mr. English was a good friend and they were like "*blood brothers*". She was quite definite in her evidence that following the share transfer nothing changed in the way in which the office in Abu Dhabi was run. She confirmed that it was she who typed the "*memorandum of understanding*" (discussed above). Her evidence was that Mr. Ryan told her that nothing would change in the way in which the business was to be run and that he was only transferring his shares to protect his family.

146. Similar evidence was given by Mr. Suman Koirala who is an accountant and who commenced employment as the finance manager of HKRAS in London in July, 2013. However, he was also involved as the management accountant for HKRME. His evidence was that after he commenced working, it was clear to him that Mr. Ryan was "*the main man in charge and I formed the impression very quickly that he was the true owner*".

147. Under cross-examination, Mr. Koirala was asked to explain how he formed the view that Mr. Ryan was the true owner. On Day 12 at p. 63 he said:

> *"I as a professionally qualified accountant and I have dealt with bankruptcy trusts before, not on this high scale but on the smaller scale, so I do understand the arrangement of the mechanism and at people who file bankruptcy, the length they go to, you know, they arrange this sort of arrangement. And because on a day-to-day practcse he was – I always Mr. Ryan involved, hiring/firing people, signing deposit contract, sending people overseas … that clearly give me an impression that there cannot be another beneficial owner apart from this person, because this person make decision without anybody's consent just like that."*

(language as in transcript).

148. On Day 12 at p. 64, Mr. Koirala was asked what did he mean when he spoke about "*bankruptcy arrangements*". In response, he said:-

> *"In past I, when I worked for the audit firm, I have deal with few clients who file for bankruptcy. I know that before they file a bankruptcy they do try to transfer the asset ownership from one person to another person, they try to, you know, they register the asset, increase the liability, bring…another partner for some point of time to deal with it and all that sort of things. I was technically aware of, you know, what could go here…"*
>
> (language as in transcript).

The evidence of Ms. Walsh

149. Ms. Walsh also gave supporting evidence. She explained that Mr. Ryan had spoken to her of his intention to transfer HKRME to Mr. English as a caretaker. She advised Mr. Ryan against proceeding with an arrangement with Mr. English. She said that she did not trust Mr. English especially in circumstances where he was not prepared to sign a caretaker agreement and he says that she was very apprehensive about his intentions. In para. 6 of her witness statement she explained that she attended a dinner with Mr. Ryan and Mr. English in late September 2011 on Yas Island in Abu Dhabi. During the course of the dinner, she recalls that Mr. English said that he was looking after the company to assist Mr. Ryan. She also said:-

> *"He specifically said to me, in relation to his involvement in the company, that Jerry's family and I would be looked after."*

150. In her evidence on Day 12, she said that, in the course of this conversation over dinner, there was no hint that Mr. English was being treated as the absolute owner of HKRME.

151. Ms. Walsh also explained that, in the following year, in August 2012, she collected Mr. Ryan and Mr. English at Dublin Airport where they were arriving from the Middle East on the same flight. She drove first to the home of Mr. English in North County Dublin. In her evidence on Day 12, she said that Mr. English invited them inside where they met his wife and all four had a conversation. She said that much of the conversation was taken up with Mr. Ryan thanking Mr. English for all of the help and assistance that he was providing in connection with HKRME and that Mr. English and his wife said that they were happy to be of help. At p. 146, she said:-

> *"Well, it was all, everything was, had been taken care of and Jerry was very pleased with the situation. And Catherine and Barry were so friendly and so accommodating and so nurturing and 'don't worry everything will be fine' and 'you will get through your bankruptcy and everything will be sorted out with HKR' and 'you had such a big business, it'll come back you know', 'this is just a blimp in the Celtic Tiger'…"*

152. Mr. English, in his evidence, did not deal in any detail with either the dinner in Yas Island in September 2011 or with the subsequent discussion in his home in August 2012. He simply said (in para. 265 of his witness statement) that he refutes Ms. Walsh's evidence in relation to what was said on those occasions. When it came to the cross examination of Ms. Walsh, nothing further was put to her in relation to these conversations. In these circumstances, I have no reason to doubt what was said by Ms. Walsh as to what transpired at these encounters.

153. For completeness, it should be noted that during the course of her evidence, Ms. Walsh confirmed that Mr. Ryan never mentioned the RCT to her.

Inconsistent conduct of Mr. Ryan

154. At a later point in this judgment, I will set out my findings in relation to the nature of the relationship that existed between Mr. English and Mr. Ryan with regard to the shares in HKRME. At this point, it should be noted, quite apart from the documents that exist (further examples of which will be explored in more detail below), there is also significant evidence that weighs against Mr. Ryan in relation to his contention that there was no outright sale of the shares to Mr. English. In this context, while the events described above were proceeding, Mr. Ryan was also taking steps to establish his COMI in London. Having regard to the provisions of the EU Insolvency Regulation (i.e. Regulation No. 1346/2000) ("*the Insolvency Regulation*") then in force, this was a necessary precondition to enable Mr. Ryan to obtain the benefits of the English bankruptcy regime. Under the terms of the Insolvency Regulation, any decision of the English Courts in insolvency proceedings involving Mr. Ryan would then have effect in each EU Member State including Ireland. This is clear from Article 17 of the Insolvency Regulation. There are some exceptions to this but none of them is relevant for present purposes.

155. It should be recalled at this point that Mr. Ryan was advised at an early stage that an English bankruptcy would place all his worldwide assets in the hands of his trustee in bankruptcy who would then sell these assets to discharge his debts. This is clear from the advice given to Mr. Ryan by the late Mr. O'Connell of William Fry in November 2010 (summarised in 39 above). This advice was, of course, consistent with the basic meaning of insolvency proceedings under Article 1 of the Insolvency Regulation which expressly speaks of proceedings entailing the divestment of a debtor's assets.

156. On 20th October, 2011, Mr. Ryan signed a proposal for an IVA (which did not ultimately proceed). At para. 4.3 of this proposal, Mr. Ryan stated that he was a director and shareholder in a group of architectural businesses known under the HKR umbrella and that:-

> *"One of these Abu Dhabi, has recently been sold…"*

157. Attached to the proposal was an estimated statement of affairs which Mr. Ryan purported to certify as representing a complete disclosure of his assets and liabilities and which he expressly stated he believed to be true. In the notes to the statement of affairs, Mr. Ryan stated:-

> *"I have sold my interest in the UAE architectural business and pledge the net proceeds of sale in the estimated amount of €77,000 in the IVA."*

158. Mr. Ryan did not ultimately proceed with the IVA. Nonetheless, within a very short period after the share transaction with Mr. English, he created this very important document in which he very clearly characterised the transaction as a sale. Curiously, on 9th

November, 2011, he sent a copy of the IVA to Mr. English who responded on the same day with a number of observations in relation to it. This shows the extent to which Mr. Ryan and Mr. English were cooperating at this stage. It also reinforces what Mr. English said in his own witness statement that he was familiar with Mr. Ryan's financial affairs. It also supports Mr. Ryan's evidence that Mr. English was a confidant.

159. On Day 7, Mr. Ryan acknowledged that, in completing the statement of affairs, he certified that he had made a complete disclosure of his assets and liabilities and he also expressly stated "*I believe that the facts stated in the statement of affairs are true*". Notwithstanding these very solemn statements, Mr. Ryan, in his evidence on Day 7, accepted that they were in fact untrue.

160. As noted above, Mr. Ryan did not ultimately pursue the IVA route. Instead, over a year later, he filed for bankruptcy. He was declared a bankrupt in London on 27th November, 2012. For the purposes of those bankruptcy proceedings, Mr. Ryan made a new statement of affairs on 23rd November, 2012. In completing this statement of affairs, Mr. Ryan well knew that he had an obligation to disclose all of his assets. This was for the reason that, consistent with the advice given to him in November 2010, one of the features of bankruptcy is that all of the assets of the bankrupt are realised for the benefit of the bankrupt's creditors. This is an essential and inherent part of any bankruptcy process. The bankruptcy system would be significantly undermined if a bankrupt did not make full disclosure of his or her assets and affairs for this purpose.

161. Mr. Ryan was cross examined about this statement of affairs on Day 7 of the hearing. His attention was drawn to Q. 3.5 of the form where he was asked whether, in the previous five years, he had given away, transferred or sold for less than its true value any property or possessions he owned. Mr. Ryan answered "*no*" to that question. It was put to him that, on his own case, in March 2010, he had executed a declaration of trust over the HKRME shares in favour of his children. While Mr. Ryan was very slow to answer that question, he ultimately conceded at p. 144 that he should have answered "*yes*" to that question. In the course of his attempt to deal with the question, he indicated that he was advised by an English lawyer, Mr. Karl Clowry, in relation to the completion of the form and that he never told Mr. Clowry of the existence of the RCT.

Lying to the bankruptcy trustee

162. The untruths in the statement of affairs are compounded by the lies told subsequently by Mr Ryan to his bankruptcy trustee. As noted above, the duration of bankruptcy under English law is for a period of one year. Mr. Ryan's bankruptcy accordingly ended on 27th November, 2013. In the meantime, a bankruptcy trustee had been appointed, namely Mr. Nicholas Stewart Wood. His appointment took effect from 27th March, 2013. On 24th September, 2013, his representatives interviewed Mr. Ryan in relation to his assets. I have been provided with a transcript of that interview. Having regard to the case which he now seeks to make, there are a number of startling statements made by Mr. Ryan during the course of that interview. At p. 77 of the transcript, he was asked about HKRME and he answered that Mr. English "*purchased the business in Abu Dhabi…with a full valuation and good luck to him".* This is obviously entirely inconsistent with the version of events which Mr. Ryan now puts forward for the purposes of these proceedings.

163. At p. 111 of the transcript, Mr. Ryan purported to confirm that there was nothing left in the Middle East and that the business had not been a success. It should be recalled here that, at this point, Mr Ryan had assisted in the removal of more than US$8 million from HKRME (this is described in detail in paras. 170-190 below). Nonetheless, at p. 111, he said:-

> *"The office that I work for is the London office and there is an office in the Middle East that's, I believe, being wound down at the moment. That hasn't gone particularly well."*

164. On the same page, Mr. Ryan said that he had previously been involved in the business in the Middle East but that he had sold the business and that he was no longer involved. He said "*I haven't been for quite a while*". Like the answers recorded at para. 163, this was patently untrue. At p. 116 of the transcript, Mr. Ryan seeks to create the impression that he was not familiar with Michael Gallucci (notwithstanding his central role in the wind-down of HKR Dublin and his significant role in HKRME in 2011). He says in an offhand way:-

> *"If I remember at one point there was a director there called Michael Gallucci…or something."*

165. Mr. Ryan also purported to suggest that he was not even sure of how much he was paid for the shares in HKRME. At p. 118 of the transcript, he said:-

> *"It wasn't a whole amount of money. I think it was 70,000 or something like that".*

He was then asked what happened to that money and he answered that it had:-

> *"It went up the spout, or down the spout somewhere. It was about 70,000."*

166. On Day 7 of the trial, Mr. Ryan was cross-examined about this interview with the representatives of his bankruptcy trustee. His explanation of his answers, in the course of that interview, was given as follows at p. 152 of the transcript of evidence on Day 7:-

> *"This documentation represents, Judge, the ultimate outcome of the story, the strategy, the plan devised by myself and Mr. English. There was a trust in existence. We did not want that trust to be questioned, because I was concerned and we were concerned that, you know, trusts would be scrutinised, so we came up with a plan to transfer the shares to Mr. English as a caretaker at undervalue. And in these statements, I absolutely accept that I misrepresented the position".*

167. On the same page he said that he made no excuses. It was put to him that it was all lies to which he answered:-

> *"All untruths".*

168. At that point, I intervened in the cross-examination to inquire of Mr. Ryan how he explained telling untruths to his trustee in bankruptcy. At p. 153 of the transcript Mr. Ryan responded as follows:-

> *"Well, I wasn't honest, Judge, and when – I mean, there is – I'm not going to offer any excuse, I'm going to tell it as it is and what happened throughout this story. There was a trust. I didn't declare the trust's interests, I accept that. And we went forward with a plan together to effect a sham transaction which I reported to my Trustee in Bankruptcy as a real transaction. I have nowhere to hide on this…That's what happened and, you know, I'm telling the truth. That's all I can do in this court."*

169. In order to sustain the case which Mr. Ryan now seeks to make before this court, Mr. Ryan had to accept that he had lied to his trustee in bankruptcy. That creates an obvious difficulty. If Mr. Ryan lied to his trustee in bankruptcy, how can any court be convinced that he is telling the truth now? This is an issue that I will address further below. Before doing so, it is necessary to consider some further aspects of the case – in particular the very large transfers to Sunvit out of the moneys earned by HKRME on the Aldar contract. In short succession, the arrangements described below were then put in place. As will be seen, these arrangements were entirely fictitious. They were put in place in order to provide some semblance of propriety to the very substantial payments which were then made by HKRME to Sunvit.

The creation of Sunvit and the transfers to it

170. In late 2011, Mr. Ryan made contact with a new advisor namely the Louvre Group in Guernsey. Initially, Mr. Ryan appears to have dealt with the Louvre Group personally. On 27th January, 2012, advice was received from Steve Bougard of the Louvre Group in relation to a proposal for the establishment of a Guernsey trust and a BVI company. The proposal involved the establishment of an Irrevocable Discretionary Trust governed by Guernsey law under which Mr. Ryan would be appointed the primary beneficiary with other members of his family "*default*" beneficiaries. In turn, the trust was to form a wholly owned subsidiary incorporated in the BVI which would then enter into a consultancy arrangement with Mr. Ryan.

171. Ultimately, Mr. Ryan did not proceed with this proposal personally. Instead, in early 2012 he put Mr. English and Mr. Gallucci in touch with Louvre. Subsequently, on 7th February, 2012, Mr. English emailed Mr. Derek Baudains of Louvre in which he confirmed that:-

> *"I would like to set up a company in an offshore jurisdiction in a tax friendly environment. This company will invoice companies for work done including an architectural practice I own in the UAE. The company should be controlled by a trust keeping myself as the main beneficiary and others that I may choose from time to time… Please ensure that our correspondence is kept confidential on all matters".*

172. On the following day (8th February, 2012) Mr. Ryan emailed Mr. English in the following terms:-

> *"When in paris [sic] at weekend a visit to the LOUVRE sooner rather than later is recommended. When do you think you will be able to visit?"*

173. I should explain that there was never any intention on the part of Mr. English to visit Paris. This email was written by Mr. Ryan encouraging Mr. English to make contact with Louvre. Mr. Ryan would appear not to have been aware that Mr. English had already been in touch with Louvre at this point. In the course of his evidence at the trial, Mr. Ryan had frequently suggested that documents were written in "*code*". Whatever about the other documents that were placed before the court, there can be no doubt but that this particular email was written in code. There is also no doubt that Mr. Ryan was very anxious that a structure should be put in place involving a BVI company and a Guernsey trust which would be used to receive large sums of money earned on the Aldar contract by HKRME.

174. Sunvit was subsequently established in the BVI on 15th March, 2012. A few days later on 19th March, 2012, a trust was established in Guernsey which was given the name the La Calais Trust. The principal beneficiary of this trust is named as Mr. English. This trust held the shares in Sunvit. Although this trust was said to be discretionary in nature, it is clear from the correspondence between Ms. Jenny Hennessy of the Louvre Group to Mr. English that Mr. English was in a positon to exercise a significant level of control over the trust and, in turn, over the monies that would ultimately be transferred to Sunvit. Thus, for example, in the course of June 2012, Mr. English proposed that his wife should be added to the class of beneficiaries of this trust.

175. On 26th March, 2012, a document described as a "*Consultancy Agreement*" was executed between Sunvit and Mr. English. Under Clause 1 of this agreement, Sunvit appointed Mr. English as a consultant for the purposes of procuring business for companies "*… in the architectural and engineering sectors in the Middle East…*". Clause 2 of the agreement provided that, where a successful introduction was made, Sunvit would enter into a contract with the relevant company under which it would be entitled to receive a percentage based commission.

176. In turn, an agreement was entered into between Sunvit and HKRME on 10th April, 2012, under which very large sums were stated to be payable to Sunvit in respect of introduction services provided by Mr. English to HKRME in the Middle East by which HKRME acquired clients. This agreement is very obviously a fiction. Mr. English had not introduced any clients to HKRME at this point. As noted previously, the main work being carried on by HKRME was in respect of the Aldar contract which had been secured prior to any involvement by Mr. English in the business of HKRME. Under Clause 3 of this agreement, HKRME agreed to pay Sunvit a fixed amount of AED 18,550,000 in one lump sum by 14th April, 2012. That equates to $5,044,873 or approximately €4,637,500. Thus, by this agreement, HKRME had committed to make a payment to Sunvit (a company now controlled by Mr. English) of a sum of AED 18,550,000 in respect of a service that was never provided. The entire arrangement was simply designed to provide a mechanism whereby very large sums could be transferred offshore by HKRME on a false premise.

177. The sum of AED 18,550,000 was, in due course, transferred on 23rd April, 2012. Subsequently, on 29th August, 2012, there was a further sum of $1,400,000 transferred. This was followed by three separate payments of $550,000 each on 11th February, 2013, 27th February, 2013 and 9th March, 2013. These are the payments that are now the subject of the claim made by the plaintiffs in these proceedings.

178. In each case an invoice was issued by Sunvit. For example, the first invoice for AED 18,550,000 was issued on 10th April, 2012. It was addressed to Mr. Ryan at HKRME and it sought payment in respect of "*commission based on successful introduction*". As noted above, there was no successful introduction. The entire arrangement was a complete fiction.

179. In the course of his evidence at the hearing, Mr. Ryan suggested that the reason why moneys were transferred offshore in this way was because there was a concern about the ease with which moneys held in the UAE could be attacked by Aldar or other local companies or creditors in the event of any dispute arising in the future. However, Mr. Ryan was unable to give any specific evidence in relation to this contention. In my view, if that assertion was to be substantiated, one would need much more in the way of hard evidence of the existence of such a practice or culture in the UAE. No such evidence was given at the hearing.

180. In my view, there is a more obvious and probable reason why funds were transferred in this way. To my mind, the intention was clear; Mr. Ryan's intention was to salt away money in a manner that would make it very difficult for any trustee in bankruptcy to follow the trail. Thus, these elaborate arrangements were put in place. It is quite clear that Mr. Ryan considered the moneys to be his own. This is evident from an important email that was sent by Mr. Ryan to Mr. English on 21st April, 2012. This email was written by Mr. Ryan in advance of a business trip to Kabul in Afghanistan. It is clear from the text of the email that, at the time it was written,

Mr. Ryan was genuinely concerned that he might not make it back alive from Kabul. In the email he said:-

> *"Barry. Sorry to be paranoid. Just in case anything goes wrong in Kabul over the next few days will you make sure money from company gets to Veronica in efficient way. Set aside 10 percent for Liz. In relation to company here wind it down just to complete the ADP [i.e. the Abu Dhabi Plaza project]and take cash out as above…"*

181. In the course of his evidence at the trial, Mr. English made the point, on a number of occasions, that this email is entirely inconsistent with the existence of any alleged trust for the benefit of Mr. Ryan's children and is also inconsistent with the case made by Mr. Ryan that any moneys were to be held for the benefit of the company. In my view, Mr. English is right in this contention. The email clearly shows that Mr. Ryan regarded the money as his own and that he was entitled to direct that most of it should go to Veronica (his estranged wife) with 10% for Ms. Walsh (his partner). There is no mention of any trust in favour of his children. There is not even a reference to his children.

182. If ever there was a moment to mention the existence of the RCT, it was in this email of 21st April, 2012 which was written, at a time when Mr. Ryan was clearly concerned that he might not survive his trip to Kabul. That is evident from the text of the email itself. It is also evident from an email which Mr. Ryan sent to Ms. Sockett on the following day (22nd April, 2012) in which he asked Ms. Sockett to advise the Irish Embassy of his travel arrangements to Kabul and his address in Kabul. At a time when Mr. Ryan was so concerned about his own survival, it would make no sense that, if the RCT was genuine and was already the beneficial owner of the shares in HKRME, he would not refer to the RCT and his three daughters. In addition, as noted above, the proposed distribution to Veronica and Ms. Walsh are entirely inconsistent with the existence of the RCT. If the RCT owned the beneficial interest in the shares in HKRME, then neither the late Mrs. Ryan nor Ms. Walsh could properly be made the subject of any payments from HKRME.

183. The response from Mr. English to Mr. Ryan's email is also important. That email was headed "*Re Funds*". The text of the email itself simply stated:-

> "It'll be taken care off *[sic]".*

184. Mr. English was asked, in the course of his direct examination, what he meant by that. His answer was that he intended to make sure that Mr. Ryan's family would not be destitute. He was then asked by his own counsel, whether the email was consistent with the suggestion that this was a direction to him (as a caretaker in relation to the HKRME) such that he would have been obliged to do what Mr. Ryan asked of him. His answer was as follows:-

> *"A. … I have no doubt that I would have made sure that if something happened to Jerry that I would have made sure his family were taken care of, yeah …*
>
> *Q. Okay, But did you consider yourself bound to do what Mr. Ryan told you to do?*
>
> *A. Probably, morally, yeah".*

185. On the following day (Day 17 of the hearing) Mr. English returned to the witness box. Before proceeding with the balance of his evidence Mr. English, on his own initiative, indicated that he wished to clarify what he had said on the previous day and he said:

> *"… Mark Sanfey had asked me had I a moral obligation and I said yes …. But … I wasn't saying that I had a moral obligation to do what I had been asked to do in Jerry's … email.*
>
> *… that I'd made substantial money, that his family weren't going to be left destitute or weren't going to be looked after, but not a moral obligation to do what I was asked to do".*

186. I was not sure what Mr. English meant by this. So, I asked him to clarify what he meant. He responded as follows:-

> *"Well my moral obligation would be take care of the company – or to take care of the family and Liz and Veronica … But it doesn't mean that I was going to do exactly as prescribed in the email.*
>
> *Q. … and is that in relation to the amounts then?*
>
> *A. exactly, yeah. And to say that it was a small amount or a big amount would be incorrect, because I wouldn't have considered it in that kind of detail".*

187. I have to say that I find it difficult to understand precisely what Mr. English meant by all of this. He appears to accept that he had a moral obligation to make some provision for Mr. Ryan's family in the event of the untimely death of Mr. Ryan. However, this is subject to the qualification that it would be entirely up to Mr. English himself to decide on the extent of any such provision to be made for them. None of this is evident from the text of his email. On its face, the language of the email suggests, that in the event of Mr. Ryan's death, Mr. English was going to do what had been asked of him by Mr. Ryan.

188. On Day 18 at pp. 136-137 Mr. English was cross-examined in relation to the email of 22nd April, 2012. In particular, at p. 137, the following exchange took place between counsel for the plaintiffs and Mr. English: -

> *"Q. …. But you're not doing anything to – if Mr. Ryan had an understanding that these were his monies, you're not doing anything, you're not – and by the way, when I say 'his', as I said yesterday, I mean the trust's as well. … You're not doing anything … to disabuse him of that.*
>
> *A. No. And he always had an expectation about this money. He always had an expectation of those monies …"*

189. This is not the only time on which Mr. English gave evidence that he was aware that Mr. Ryan had an understanding that he would have access to the monies transferred to Sunvit. Mr. English also gave evidence of other occasions when a similar understanding on the part of Mr. Ryan was conveyed to him and where he does not say anything to disabuse Mr. Ryan of that view.

190. In due course, it will be necessary to further consider this exchange of emails in the context of the findings of fact that require to be made in relation to the RCT and in relation to the arrangement between Mr. Ryan and Mr. English in relation to HKRME. At this point, it is sufficient to record that Mr. Ryan fully supported the transfers to Sunvit. In fact, prior to his departure to Kabul, Mr. Ryan, in his email to Ms. Sockett of 22nd April, 2012, asked Ms. Sockett to ensure that the transfer went ahead. He was obviously very

anxious that the monies should be transferred. Thus, Mr. Ryan and Mr. English worked hand in hand in relation to the transfers to Sunvit. However, during the course of the trial, I was not referred to any formal decision that was reached by HKRME in relation to the payments or in relation to the April 2012 agreement with Sunvit. Nor was I referred to any consideration of the agreement or the payments by the general assembly of HKRME. This is an issue that I may have to consider further when I deal with the case made by HKRME (which relies, in part, on UAE law).

The "*dismissal*" of Mr. Ryan

191. As previously noted, Mr. English strongly refutes any suggestion that he was party to any sham transactions or to the creation of documents for the purposes of "*look back*" in the event of any challenge by a bankruptcy trustee or creditor of Mr. Ryan. However, there are examples of documents that were clearly written for effect. This is particularly so in relation to the purported dismissal of Mr. Ryan by HKRME which occurred on 9th June, 2012. This "*dismissal*" was considered to be necessary in light of the impending steps to be taken by Mr. Ryan in London (whether by way of an IVA or a bankruptcy). Mr Ryan plainly wished to create the appearance of distance between him and HKRME (as the transcript of his subsequent interview by representatives of his bankruptcy trustee demonstrates). On 9th June, 2012, Mr. Gallucci emailed Mr. Ryan (copying this email to Mr. English) informing him that he would shortly be receiving formal notice that he had failed to devote his contracted time, ability and attention to the business of HKRME and failed to perform all duties in a professional and ethical manner. The email indicated that in those circumstances, he was in "*violation*" of his contract and that HKRME had decided to exercise the option to terminate his employment pursuant to Article 11(3) of his contract.

192. In para. 94 of his written statement, Mr. English stated that this was a genuine termination in that Mr. Ryan was to be paid from HKRAS in London but that it was *"incorrect in that he continued to perform duties on behalf of HKRME …*". However, on Day 19 at p. 33, Mr English, under cross-examination, accepted that the contents of Mr. Gallucci's email were "*complete nonsense*". On the same day, it was put to him that he, Mr. Gallucci and Mr. Ryan were "*playing a game in relation to this, writing emails putting on the record various documents which bore no relationship to the reality of the situation"*. Mr. English had no satisfactory answer to that question.

193. Notwithstanding the purported "*dismissal*" of Mr. Ryan and the sale of his shares, he continued to have significant input in the day to day operations of HKRME. This is clear from the evidence of a number of the witnesses. It is also clear from some of the contemporaneous documents that have been relied upon during the course of the hearing. In some of those documents, there is, however, a reference by Mr. Ryan to Mr. English as "*owner*" of HKRME. These are relied upon by Mr. English as evidence that there was a genuine change of ownership. For example, in para. 95 of his witness statement, Mr. English refers to an email sent by Mr. Ryan to Mr. Gallucci on 15th June, 2012 which was copied to Mr. English in which there is reference to the likely requirement of Jennifer Dixon (a director of HKRAS in London) to meet with the "*owner and his representatives to agree the new business plan …*". Mr. English contends that this is a *"clear reference to the fact that Mr. Ryan was no longer the owner …*". However, this email was written very soon after the emails of 9th June, 2012. It seems to me to be likely that it was written for the same purpose - namely to give the impression that there had been a change of ownership and that Mr. Ryan was no longer involved in HKRME. The same applies to a further email on which Mr. English relies namely Mr. Ryan's email to Mr. Al Qasem on 12th July, 2012, in which he says that "*I have been removed by the new owner as a manager of the business and he may wish to appoint another party to this role".*

194. As part of the arrangements put in place to create the impression that Mr. Ryan was no longer involved in HKRME, the remaining share held by Mr. Ryan in HKRME was transferred to Mr. English on 2nd August, 2012. Soon afterwards, a new manager was appointed namely Mr. Michael Byron. Following Mr. Byron's appointment as manager, a new arrangement was put in place in relation to sign off on payments to be made by HKRME which, incidentally also demonstrates the ongoing role played by Mr Ryan. This became known as the "*three-day rule*". It was encapsulated in an email from Mr. English to Mr. Ryan and Mr. Byron on 10th September, 2012:-

> *"As regards payment sign off I would like if they could be passed by email to Jerry and I for sign off for the immediate future. I'm asking Jerry to approve for the next couple of months and copy me as currently I will not fully understand everything being presented. If neither Jerry or I approve within three days then this is tacit approval…"*

Subsequent Events

195. It would be impossible, in this judgment, to set out a complete chronology of all of the interactions between Mr. Ryan and Mr. English which took place following the "*dismissal*" described above. Given the conflict of evidence between Mr. English and Mr. Ryan it is necessary, nonetheless, to refer to some of these interactions.

196. One such interaction involved a heated discussion between both men at the beginning of October 2012. This was the subject of an email exchange between them on 5th October, 2012. During the course of that email exchange, Mr. English suggested that Mr. Ryan needed "*to find someone else who can take ownership*". That is an issue which appears to have been discussed between both men during the course of an earlier telephone conversation which took place immediately prior to the exchange of emails. In Mr. Ryan's email of earlier the same day he also referred to the possible "*transfer*" of the company in order to avoid any unnecessary aggravation between them. However, in his email, Mr. Ryan spoke of meeting to agree what to do next. Rather bizarrely, there was also a further email of the same day which Mr. English says he intended to send to Mr. Ryan but ultimately did not do so. Instead, he simply sent it to his wife and, in para. 114 of his witness statement, he says that it reflects his thinking and frustration at the time. In that unsent email, Mr. English uses language which relegates Mr. Ryan to having no more than a business development role within HKMRE. He also emphatically sets out his own position as owner. For example, at one point in this unsent email, Mr. English says:-

> *"In becoming the owner of HKR, I have had to take abuse from people for having anything to do with you…this does not bother me.*
>
> *A clear plan has been set out… The principle would be that these would become fully standalone self-sufficient companies that would stand in their own right with you continuing to have a BD role. I think this in the long term will provide two good strong independent companies that you can help to drive onwards with your BD input. Also my long term strategy is that I will have two companies that will be independent of [sic] that can easily be sold with the existing management in place. With your ability to win work I would have believed that you may be best placed in future to make a bid for the company…"*

197. The language of that email is clearly consistent with the case which Mr. English now makes in this Court as to the nature of the arrangement between him and Mr. Ryan. However, it is very curious that the email was never sent. In the course of the trial, counsel for the plaintiffs suggested to Mr. English that the email was simply written to cover his own tracks. Counsel for the plaintiff drew attention to the fact that, notwithstanding the length of the witness statement filed by Mr. English, no reference was made in his witness statement to the language used by Mr. English in the email that was actually sent to Mr. Ryan on 5th October – namely the

reference to "*someone else who can take ownership"*. It was suggested to Mr. English that this was not consistent with his narrative. In particular, it was put to Mr. English that his language in his email was consistent with finding someone else to step into his shoes as caretaker of the business for Mr. Ryan. Counsel also suggested that in penning the unsent email, Mr. English was being too clever by half and further suggested that he could never have sent the email because, had he done so, it would have revealed to Mr. Ryan that Mr. English was not "*playing along with the arrangement that you had agreed with Mr. Ryan*". In my view, this was a revealing exchange between counsel and Mr. English. It is striking that Mr. English did not write any email to Mr. Ryan at this time asserting his position as owner and threatening to remove Mr. Ryan from HKR (the earlier termination having been, of course, a fiction). I also accept that the language used by Mr. English in his email (namely the words "*someone else who can take ownership*") is difficult to reconcile with an outright sale arrangement.

198. It is true that Mr. English, while under cross examination on Day 18, gave evidence that in a heated meeting which took place between him and Mr. Ryan in a bedroom at the Rotana Beach Hotel in Abu Dhabi on 8th October, 2012, he told Mr. Ryan that:-

> *"If you keep undermining me the way you're undermining me, I'm going to take you out of the company completely. This is not on."*

199. According to Mr. English, Mr. Ryan broke down at that point and told him that he had been suffering from depression. This had never been said by Mr. English in his witness statement or in his direct examination (which took place over the course of two days). The only explanation Mr. English could offer for not mentioning this exchange previously was that he did not wish to draw attention to the fact that Mr. Ryan was (according to him) crying in the hotel room while this conversation took place. I find that explanation to be unconvincing. Mr. English, in his witness statement, took a very robust approach in refuting the claims made by Mr. Ryan. Based on his witness statement and based also on his demeanour as a witness, I do not believe that Mr. English is a person who would hold something of this importance back. At one point, he suggested that he had told his counsel of this incident and that counsel had decided not to include it in the statement. I do not accept that this is a plausible explanation. The factual material to be placed in the witness statement was a matter for Mr. English as witness and not for his counsel.

200. I do not accept the evidence given by Mr. English in relation to what he says transpired at the Rotana Beach Hotel. One of the curious features of this case is the extent to which Mr. English failed to disabuse Mr. Ryan of the expectations which Mr. Ryan had in relation to the Sunvit monies. There were several occasions when Mr. English could have said to Mr. Ryan that he had no right to any of the money and that all of it was owned by Mr. English and that Mr. English was entitled to do with it as he wished. Yet, as the evidence shows, Mr. English did not do so. I have no doubt that Mr. English, in giving his evidence, was acutely aware that this was an anomaly in his version of events. If, therefore, there was any occasion where Mr. English had evidence to give that he had, in fact, asserted his ownership over these monies to Mr. Ryan, it is inconceivable that he would not have addressed it in his very lengthy witness statement or, at least, in his direct evidence. His witness statement goes into very significant detail in relation to a vast range of exchanges between both men. It is impossible to accept that, if this incident had happened in the manner suggested by Mr. English, he would not have mentioned it in his witness statement.

201. As noted above, Mr. Ryan was declared a bankrupt in London on 27th November, 2012. In December 2012, he was diagnosed with cancer. On 6th December, 2012, he underwent surgery for stomach cancer at St. Vincent's Private Hospital in Dublin. He had further surgery in January 2013. Not long afterwards, he was back emailing Mr. Gallucci and Mr. Byron in relation to the affairs of HKRME. In an email of 15th January, 2013, he referred to a Skype call and "*directions received from Barry English*". At the hearing, this was one of the documents on which Mr. English relied to demonstrate that he was the true owner of HKRME and in control of HKRME following his acquisition of the shares. On Day 8, at pp. 130 – 133, Mr. Ryan maintained that this reference to "*directions*" from Mr. English was written for "*optics internally within the company…"* and that he was "*writing an email to people where I wanted to make it appear as if Barry is the owner…".*

202. On 23rd January, 2013, Mr. Ryan emailed Ms. Sockett (copied to Mr. Gallucci and Mr. English) advising how to respond to a letter that had been received from Aldar in relation to his bankruptcy. In that email, he suggested that:-

> *"We should explain that I sold the company last year blah blah to BE. Mr. Ryan now works as a consultant…this allows me to still ring Aldar and chase new work albeit no longer owner."*

203. On the same day Mr. English responded saying that he agreed with this suggestion and said that he would sign the necessary letter on the following day. On their face, these exchanges support the version of events advocated by Mr. English and undermine the version of events put forward by Mr. Ryan. However, this exchange took place relatively soon after the adjudication in bankruptcy and if Mr. Ryan is correct that they were all concerned to promote the "*story*" that there had been a sale of the shares to Mr. English, the language used in these emails might be said to be explicable. The same goes for an email exchange of 23rd April, 2013, in which Mr. Ryan says at one point:-

> *"It is not my business as I am constantly reminded! I really don't need reminding. I know it!..."*

204. There are several similar exchanges. However, it would be impossible in this judgment, to deal with every single exchange which took place.

205. According to Mr. English, a meeting took place between himself and Mr. Ryan in the Langham Hotel in London in July 2013. Mr. Ryan denies that any such meeting took place. He says that the only meeting between them in the Langham Hotel took place on the day of his bankruptcy adjudication. Nonetheless, Mr. English gave evidence that, at this meeting, Mr. Ryan proposed that Mr. English should retain €1m out of Sunvit monies with the balance being distributed as to €1m to Mr. Ryan himself, €1m to Ms. Walsh and €1m to each of his three children.

206. In para. 251 of his witness statement, Mr. English says that:-

> *"I considered such an offer to be very strange as the money was not his to offer to give me."*

207. However, on Day 16, in the course of his direct examination, he said at p. 171 that his response to Mr. Ryan was "*that's kind of you*". To my mind, if Mr. English believed himself to be the true owner of the Sunvit monies, it is extraordinary that he would respond in this way. In the face of what he contends was said to him by Mr. Ryan, one would expect that Mr. English would immediately have asserted his own ownership of the money.

208. In the same month (i.e. July 2013) a new company namely HKRJLT was established in the UAE. As I understand it, HKRJLT was established with a view to undertaking new projects unconnected with the Aldar project in Kazakhstan. In the meantime, the Aldar

project continued. In the autumn of 2013, Mr. Richard Day was appointed General Director for the purposes of the project in Kazakhstan.

209. In November 2013, Mr. Ryan was discharged from bankruptcy. Not long afterwards, Mr. English sent an email to Mr. Ryan on 21st December, 2013, in which he said *"as discussed, I would be happy for you to make an offer for the company once a fair value has been established…".*

210. In the course of his evidence, Mr. Ryan maintained that this was simply another example of "*papering*". He said it was still necessary to do so in circumstances where the investigations by the bankruptcy trustee could continue notwithstanding the conclusion of the bankruptcy. In contrast, on Day 19 at p. 74, Mr. English maintains that this email means exactly what it says.

211. The evidence of Mr. English in relation to the email of 21st December, 2013, is supported by a bad tempered exchange which took place between him and Mr. Ryan in January 2014. On 23rd January, 2014, Mr. Ryan sought advice from a UAE lawyer in relation to a possible transfer of the shares in HKRME from Mr. English to an overseas company to be controlled by Mr. Ryan. On the same day, Mr. English emailed Mr. Ryan to say that he did not remember discussing this. Mr. Ryan responded on the same day explaining that it was about possibly building a new structure for the business and asking Mr. English to telephone him. This provoked the following response from Mr. English:-

> *"No. You seem to be happy going off doing things without even discussing them. I'll talk to you in 4 weeks when you learn some manners."*

212. Mr. Ryan responded on the same day to say that: "*All I am doing is moving forward with a strategy agreed … two years ago.*" On 23rd January, Mr. English responded to say:-

> *"A strategy two years ago when I bought the company was that I would be willing to sell it at market value to you when you had sorted out your own difficulties".*

213. At the hearing, counsel for Mr. English placed significant emphasis on the response that is then sent by Mr. Ryan in the following terms:-

> *"You misunderstand my intent. I had no intention of upsetting you by moving things along too quickly but I am now ready to move it along…*
>
> Of course it is my intention to buy back the business on commercial terms. To this end I have a source of funding…" (Emphasis added)

214. This is an important email. It was sent by Mr. Ryan in response to an email in which Mr. English had used language that clearly asserted his ownership over the shares. Yet, Mr. Ryan did not contradict this in his response. When Mr. Ryan was cross examined on this issue on Day 9 of the trial, he initially suggested (at p. 36) that this was part of the attempt to make it "*appear as if it was a proper transaction…albeit it was a sham transaction…".*

215. Significantly, he also said (at p. 36-37):-

> *"My sense on a lookback at these e-mails is there's also an element here of Mr. English has the money sitting in a bank account, has started spending that money buying racing cars and buying hotels and whatnot. My sense is, on a lookback, Judge, now with the discovery that we have is that it's all starting to feel a little bit like his money, I guess.*
>
> *Equally, Mr. Ryan was sick in hospital, a fair chance at the time that he might pass, a fair chance that he mightn't ever now have to deal with handing the money back. So perhaps there is also an element in here creeping in as well after he starts taking the money of writing e-mails that are perhaps more forceful and more geared towards what might be a lookback by me as a plaintiff in the future...in some of the correspondence we see from Mr. English it may be that he is writing correspondence for a lookback by myself. And what makes a complete farce of this is where I say I have found money to buy the company back. The 69,000 that I bought the company back with, I took the money from the company and gave it to Mr. English. So that's all a nonsense…."*

216. Mr. Ryan was therefore placing much greater emphasis on the shift in position by Mr. English than on any suggestion that this exchange of emails was all part of the "*sham*". One of the difficulties facing Mr. Ryan in relation to this exchange of emails is that it has all the hallmarks of a genuinely bad tempered exchange between himself and Mr. English. Given the tone of the exchange, it is difficult to accept that the parties were writing these emails for the purposes of covering their tracks in the event of a "*lookback*" by a bankruptcy trustee. This email exchange therefore lends some weight to the case made by Mr. English as to the true nature of the arrangement between the parties. At the same time, it undermines, to some extent, the case made by Mr. Ryan.

217. Subsequently, a face to face meeting took place in London on 29th January, 2014, attended by Mr. Ryan, Mr. English and two advisors. There is a handwritten attendance taken at the meeting which records the intention to sell the shares back to Mr. Ryan and that the same valuer was to be used as before, and that the parties would agree to be bound by that valuer. The note also records that due diligence might be required to satisfy the buyer "*depending on value*".

218. On the following day, Mr. English emailed Mr. Ryan to confirm that he was happy to sell his shares at a value assessed by the same valuer used when he purchased the company and using the same methodology. On 2nd February, 2014, Mr. Ryan emailed Mr. English to say that he confirmed his agreement to be bound by the valuer.

219. Thereafter, the valuation process does not appear to have been pursued with any sense of urgency. According to Mr. Ryan, he had a meeting with Mr. English at the office of Winthrop in June 2014. During that meeting, Mr. Ryan said that Mr. English explained that he would be setting up a new trust for the benefit of Mr. Ryan's three daughters and that the monies transferred to Sunvit would, once all obligations of HKRME were paid, be transferred into this new trust. Mr. Ryan also said that Mr. English explained that the La Calais Trust had become a bit complicated and that he has used the trust for some of his own business purposes. Mr. Ryan says that he was surprised by all of this but that Mr. English assured him that the monies transferred to Sunvit were all intact. According to Mr. Ryan, he told Mr. English that both he and Mr. Stafford had been willing to see some payment being made to Mr. English for his efforts but that Mr. English replied that, while this was a generous offer, it was not necessary as he was only "*helping out of friendship*". Mr. Ryan says that, at this point, Mr. English talked about his late father who had similarly helped out a friend in need. According to Mr. Ryan, the conversation ended with Mr. English assuring Mr. Ryan that he would "*sort it out*" by the New Year.

220. In para. 176 of his witness statement, Mr. English denies that he said anything about setting up a new trust for the benefit of Mr. Ryan's three daughters or that the monies transferred to Sunvit would be transferred to this new trust once the liabilities of HKRME had been paid. Yet, when Mr. English came to give his oral testimony, he did not deny that there was a conversation about the Sunvit monies at this time. When asked by his own counsel whether he had reassured Mr. Ryan that the monies were still intact, he gave the following answer at p. 30 on Day 17:-

> *"I can't specifically remember saying it or not saying it, but I could've easily said that yeah."*

221. In his evidence on the same day (p. 31), he said that it would have been an accurate statement to say that the money was still intact at that stage. He admitted to using the money by that stage but he nonetheless maintained that he had not depleted the funds. He also said that there was no mention of the RCT in that conversation and that the first mention of the RCT was in March or April 2015 when it was first raised by Mr. Stafford. With regard to the story about his father, he explained that he did tell this story to Mr. Ryan but he did not think it was at this meeting. He confirmed that his father, in the early 1960s, had been left substantial money by a person who was not a relation of his. Subsequently, when the relations of that person came looking for that money, his father gave it to them saying *"look, I was his friend, to be his friend not for his money".*

222. On Day 19, in the course of his cross examination, Mr. English was asked why there would be any discussion with Mr. Ryan in relation to the Sunvit money if the money was owned by Mr. English and not Mr. Ryan. The answer given by Mr. English at p. 98 on Day 19 was as follows:-

> *"Because it was very clear what his expectations were from the middle of 2013. There was a row going to ensue, but I was very aware there was a row going to ensue and that's why I was anxious to get the company sold back and get separated. But there was always – from that meeting in Langham's, I knew exactly what was coming down the line. I didn't know when or I didn't know how."*

223. It was then put to Mr. English that he did not disabuse Mr. Ryan of his belief in relation to the money, to which Mr. English responded *"I wasn't going to have the row then, no, absolutely not".*

224. When it was put to Mr. English that none of this was said in his witness statement, his response was that he had told his counsel about it. For similar reasons to those noted in para. 199 above, I do not accept this explanation. It has to be said that there is a striking contrast between what was said by Mr. English in para. 176 of his witness statement and his oral evidence at the trial. Reading para. 176 of his witness statement, one would form the impression that Mr. English rejected everything that was said by Mr. Ryan (as summarised in para. 219 above). It is now clear from the evidence given at the trial that Mr. English does not deny that Mr. Ryan spoke to him about the monies. It is clear that the conversation took place in a manner suggested that Mr. Ryan believed that he had some interest in the monies. Yet, Mr. English said nothing to assert his own ownership over the monies. This raises a serious question as to why Mr. English would be so reluctant to assert ownership over monies to which he now says he is so clearly entitled. I find the explanation given on Day 19 (as recorded in para. 222 above) to be unconvincing. If the arrangement between the parties always was that Mr. English was to take ownership of HKRME and be entitled to the monies earned by HKRME, it makes no sense that Mr. English would not assert his ownership of the monies in the course of this conversation. This is an issue that I must bear in mind when I come to make findings of fact in relation to the nature of the arrangement entered into between Mr. English and Mr. Ryan in 2011.

Difficulties with the Abu Dhabi Plaza Project in Astana

225. Another feature, which I must bear in mind, relates to the exchanges between Mr. English and Mr. Ryan in 2014, in relation to a requirement to fund the activities of HKRME in Astana. In this context, a serious issue arose in October 2014 in relation to the payment of HKRME staff working on the ground in Astana. Mr. Day wrote to Mr. English and Mr. Ryan on 22nd October, 2014 indicating that, having taken legal advice, action was required to be taken immediately to pay staff for the month of October, failing which it was likely that the authorities in Kazakhstan would take action. It appears that, at this time, Aldar was in delay in making payment of the HKRME September invoice. According to para. 118 of his witness statement, Mr. Ryan says that, at this time he requested Mr. English to repatriate some of the Sunvit monies to the HKRME bank account in the UAE so that HKRME could meet its commitments to staff. Mr. Ryan says that Mr. English refused to return any monies and that, as a consequence, HKRME was unable to pay staff in Astana.

226. In para. 245 of his witness statement, Mr. English accepts that Mr. Ryan asked him to transfer some of the monies back to HKRME but he said that:-

> *"I felt that this was simply an attempt by Mr. Ryan to get some of the Sunvit monies for himself. I was aware that monies had come in from other projects that HKR was involved in and that there was sufficient monies to pay wages if required."*

227. By this time, HKR JLT was already involved in a significant project (known as the Kaaki project) in Saudi Arabia. HKRME was also involved in a project in Minsk in Belarus. Yet, save for sums of AED 146,059 and AED 294,975 transferred on 7th and 21st December, 2014 respectively, none of the monies earned by HKRJLT from the Kaaki project were used to provide the necessary funds to pay salaries of employees in Astana. Although HKRME and HKRJLT were, technically, separate legal entities, Mr. Paul Jacob (an expert called on behalf of Mr. English) provided evidence that there was an established pattern of transfers between HKRME and HKRJLT and that both HKR companies were managed as a group. In para. 12 of his expert report, he said that from an accountancy perspective, the companies were "*effectively treated as one*".

228. Furthermore, it is clear that, in the period from July 2014 to February 2015, there was a total of AED 646,214.88 paid out of the accounts of HKRME to Ms. Walsh and to a daughter of Mr. Ryan. This included two very substantial payments to Ms. Walsh in September 2014 (i.e. in the weeks immediately prior to the funding crisis that arose in October 2014). There was a sum of AED 450,000 paid to Ms. Walsh on 7th September, 2014 and the sum of AED 100,000 paid to Ms. Walsh on 24th September, 2014. Mr. Ryan was cross examined about this on Day 9 and he said at p. 137:

> *"So I make no apology in terms of paying some funds out to my daughter in the context of me not even being on a salary. And likewise Elizabeth [Ms. Walsh], who was out there at times trying to make some form of life for us, at a time when I was taking no salary, she was taking some money out. I make absolutely no apology. You have to look at the totality of these figures".*

229. A little later at p. 138 Mr. Ryan added:-

> *"Yeah, Aldar was – the project was strapped. But are you suggesting that me and my family are not entitled to some payments, and me having gone out there to work on that project for four and half years, five years? You know, people have to live. It's described as salary. It was paid to [Ms. Walsh], it was paid to [my daughter]. These were monies that were required to sustain me and my family".*

230. The amounts that were paid to Ms. Walsh in 2014 should be seen in context. As Mr. Day explained in his evidence, it is a criminal offence under Kazakh law not to pay local staff. He also explained that delays in payment of salaries had begun to manifest itself as early as July 2014 and that there were no financial reserves held by HKRME in Astana to cover the day to day running costs of the project. On Day 11, Mr. Day gave evidence that it would be normal, in the Middle East to retain three months working capital as a "*rainy day fund"* which he suggested would be of the order of AED 800,000-1,000,000 in the context of the Aldar contract. Mr. Day confirmed that this amount would cover "*salaries and everything else*". It will be seen, therefore, that the payments to Ms. Walsh totalling AED 650,000 in September 2014 equated to more than half the amount required to pay salaries and other costs in Astana over a three month period. These are the payments for which Mr. Ryan makes no apology.

231. The consequences of the delay in paying staff at Astana were very stark. The delays in payment continued after October 2014 such that in January 2015 Mr. Day was summoned to the Department of Labour in Astana. On Day 10 he was asked what effect that interview had. His answer was in graphic terms:-

> *"It scared me. I was really scared. Because in Kazakhstan there's no judicial processes like you'd get in the western world. And what scared me was that they would take my passport and they might put me in jail, which is quite easy to do, and I could be there for months. Because once you get in there, it's extremely difficult to get out.*
>
> *So I went back to the site. I didn't tell anybody, because I knew if I told the client or I told the project manager, they would alert the authorities and keep a close watch on me. So I did what I thought was best for me and I got out of the country. Now, I knew that when I did that, running away effectively – absconding is what they call it – then the company would probably be held to account".*

232. On the same day, Mr. Day took the next flight to Sharja in the UAE. His departure and the continued problems with payment of employees triggered a chain of events which ultimately led to the termination of the contract by Aldar.

233. It is entirely understandable that Mr. Day should flee from Astana. He fled on 30th January, 2015. On 2nd February, 2015, the project manager, Mott McDonald wrote to Mr. Ryan demanding an immediate explanation and warning of the consequences. Mr. Ryan responded on the same day seeking to suggest that Mr. Day had a medical condition which required his immediate removal from Kazakhstan. The letter also complained that HKRME staff had been advised by Aldar that HKRME were being replaced by AECOM and the letter concluded:-

> *"Please advise the status of AECOM's appointment and the likely timing of our termination as advised verbally by the Aldar Project Director.*
>
> Our only interest here is to effect an efficient handover and to plan our resources accordingly*."* (emphasis added)

234. This letter very clearly suggests that Mr. Ryan was prepared to acquiesce in the termination of HKRME's involvement in the Astana project. This seems to me to be utterly inconsistent with the case now made by the plaintiffs in these proceedings. It should be recalled that the plaintiffs contend in these proceedings that the alleged failure of Mr. English to return the Sunvit monies led to the loss of the Astana project to HKRME. I should have thought that, if in 2015, Mr. Ryan believed that there was an agreement in place that the Sunvit monies would be returned by Mr. English to meet the liabilities of HKRME, he would have made strenuous efforts to procure their return from Mr. English before throwing in the towel on the Astana project. With the exception of a single meeting on 3rd February, 2015, there is no sufficient evidence that any such efforts were made.

235. The letter of 2nd February, 2015, was not, however, the end of the correspondence in relation to the Astana project. There was a further letter from Mott McDonald on 5th February, 2015, and this was followed on 13th February, 2015, by a letter sent by Aldar under Clause 29.2.1 of the contract listing alleged failures on the part of HKRME and requiring these failures to be remedied by 27th February, 2015. On 17th February, 2015, there was a decree and fine issued to HKRME by the Kazakh authorities in respect of the failure to pay local Kazakh employees. On 20th February, 2015, Mott McDonald wrote to Mr. English (who was still the legal owner of HKRME at this time) noting that HKRME had issued formal correspondence to all its staff in Astana terminating their employment contracts effective from 17th March, 2015. Unsurprisingly, the letter suggested that this signified that HKRME had no intention of correcting the failures identified in Aldar's letter of 13th February, 2015, and that as a result the engineer would implement procedures to arrange the formal handing over of all project documentation with immediate effect.

236. On the same day, Mr. Ryan wrote on behalf of HKRME to Aldar in response to his letter of 13th February, 2015, refuting the alleged failure. However, as he acknowledged in para. 125 of his witness statement (and as he also stated in an email of 13th March, 2015 to Mr. English) he had already terminated the employment of HKRME personnel in Astana in the first week of March 2015. This seems to me to represent further evidence of acquiescence on his part in relation to the termination. The formal notice of termination was subsequently served by Aldar on 28th April, 2015.

237. While all of this was going on, Mr. Ryan says that he had a meeting with Mr. English on 3rd February, 2015. In para. 127 of his witness statement, he said the purpose of this meeting was to impress upon Mr. English the importance of transferring money back to HKRME so that it would meet its obligation and pay staff. However, Mr. Ryan, in his evidence, is remarkably vague about the content of this conversation. Furthermore, the subsequent email of 12th February, 2015 (discussed below) makes no reference to any demand having previously been made. All Mr. Ryan says is as follows:-

> *"At the…meeting BE said that he did not wish to discuss HKRME's obligations. BE said that he had invested the money which was transferred…unwisely and that he had lost half of it. BE said that he could return US$4 million. I was stunned…and a row ensued. I was very angry…"*

238. In para. 251 of his witness statement, Mr. English rejects Mr. Ryan's recollection of the meeting and says that he certainly did not offer to return US$4m. He also says that he did not inform Mr. Ryan that the moneys were invested unwisely and were now depleted and lost.

239. In para. 129 of his witness statement, Mr. Ryan says that he tried to reach Mr. English on a number of occasions following the meeting on 3rd February but was unsuccessful. There was, however, a very important exchange of emails on 12th February, 2015. At

6.49 on that day, Mr. English sent an email to Mr. Ryan in which he said:-

> *"There's no real point in me getting involved in the issues in Astana at this stage. I've some emails directly into me which I'll forward onto you. My preference would be to write back advising that I've sold my shares and am no longer involved and they should direct their correspondence to you…"*

240. At 7:13, Mr. Ryan responded expressing concern about the threat of criminal proceedings against "*all of us*" in Kazakhstan. The email continued as follows:-

> *"The issue is plain and simple. There is f…k all money in the business but the prospect of Saudi becoming an earner later in the year.* I was too greedy with the amount taken off the table at the design stage and I need to get cash back into the business and quick. As for telling them I am owner need to be careful with TIB…*I've also figured out trust money can be put back into the company. It's not rocket science actually*." (emphasis added)

241. This is a very revealing email. It cannot be said to have been written for "*look back*" purposes since it refers to the need to be careful with "*TIB*" which is clearly an acronym for the trustee in bankruptcy. In those circumstances, it seems to me that the email can be taken to be a faithful expression of Mr. Ryan's views at the time. Notably, the email does not contain any demand for payment from Mr. English. Furthermore, the email says nothing about the existence of any trust in favour of HKRME in respect of its liabilities. As outlined above, at the time this email was written, HKRME had significant liabilities to its staff in Astana. If the monies had been transferred to Sunvit for the purpose of meeting future liabilities of HKRME in relation to the Astana project, it is remarkable that nothing is said about this in the email. Given that HKRME was not in a position to pay its own staff in Astana, this was the moment to assert the existence of a trust to meet such liabilities. The email says nothing about such a trust. Instead, the email speaks of Mr. Ryan being personally too greedy in respect of the amount taken off the table. This clearly suggests that Mr. Ryan believed that the transfer of monies from HKRME to Sunvit had been done for his own benefit rather than for the benefit of HKRME or its creditors.

242. The email is also revealing in the context of the case now made by the plaintiffs in these proceedings that it would not have been appropriate for any monies held by HKRJLT (the entity carrying on the Kaaki project in Saudi Arabia) to be used to deal with the immediate liabilities of HKRME. Contrary to the case now made, the language used in the email about the prospect of "*Saudi becoming an earner later in the year*" strongly suggests that Mr. Ryan believed that there would be money available, later in 2015, from the Kaaki project in order to assist in relation to Astana. It should be noted, in this context, that although Mr. Ryan, Mr. Day and Mr. Koirala all gave evidence to the effect that it would not be appropriate to use the proceeds from one project to fund liabilities of another, there was no evidence that there was any contractual or legal provision which prevented HKRJLT from making profits earned from one project available to HKRME. I have, therefore, not been persuaded that there was any impediment to intercompany transfers.

243. The email is also important in the context of the RCT. There is no reference to the RCT in the email. In relation to the transfers to Sunvit, Mr. Ryan uses the first person singular. He says that he was too greedy. There is a reference to "*trust money*" in the email. But, in this regard, it should be borne in mind that it was always intended by the parties that the monies transferred to Sunvit should be held on trust. The La Calais Trust was set up for this purpose. The reference to "*trust money*" must be understood against that background. What is completely absent from the email is any indication that the money which had earlier been transferred to Sunvit was held by it on trust for HKRME or for the benefit of the RCT. If the agreement between the parties was, to the effect, that the monies were to be held on trust to meet the liabilities of the HKRME in the first instance, it is inexplicable that no reference is made in the email to any obligation on the part of Mr. English to return the monies for that purpose. The email is written at a time when HKRME had very significant liabilities in relation to the payment of staff and was under threat of criminal proceedings in Kazakhstan. If there was, in truth, an arrangement between Mr. English and Mr. Ryan that the Sunvit monies were to be held on trust in the first instance to meet any liabilities of HKRME, this was the moment to draw attention to it. To my mind, the email strongly suggests that Mr. Ryan considered that he personally had an interest in the Sunvit monies. It is inconsistent with any suggestion that the monies were held for the benefit of HKRME (in order to meet its liabilities) or for the benefit of the RCT.

244. In the circumstances, it is difficult to see the basis on which Mr. Ryan can say that the alleged failure on the part of Mr. English to return the Sunvit monies resulted in the failure to pay staff and the consequent loss of the Aldar contract. I also draw attention, in this context, to the fact that, during the course of 2014 and early 2015, very substantial monies were paid by HKRJLT to an account in Cyprus in the name of Lightkey International Limited (Lightkey). I should explain that Lightkey was incorporated in the BVI in February 2012. Its shares were acquired in the name of Ms. Sockett in February 2014. At the same time, a similar arrangement was put in place between HKRJLT and Lightkey in February 2014 as had been put in place between Sunvit and HKRME. A "*consultancy contract*" was entered into on 27th February, 2014. Thereafter, invoices were issued by Lightkey to HKRJLT in respect of alleged "*consultancy services*". On foot of these invoices, very substantial sums were paid into the account of Lightkey in Cyprus. In the course of her evidence, Ms. Sockett explained that she was acting as a trustee and was not personally entitled to these monies. In the period 26th April, 2014 to 24th March, 2015, a total of €599,000 together with AED3,680,000 and US$2,215,020.30 was paid by HKRJLT to Lightkey. While some of these monies were transferred back to HKRJLT, there were significant sums paid out for other purposes. For example, in the period between 19th December, 2014, and 9th January, 2015, a total of €523,922.50 was transferred to Noel Smyth & Partners (who then acted for Mr Ryan) to purchase an investment property in Dun Laoghaire, County Dublin.

245. At a later point in this judgment it will be necessary to address the case made by the plaintiffs that the loss of the Aldar contract arose as a consequence of any alleged wrongdoing on the part of Mr. English. I will also address the case made by the plaintiffs that, but for the alleged wrongdoing of Mr. English, HKRME would have been awarded a contract for the next phase of the development in Astana. It is sufficient to record, at this point, that the correspondence from Mott McDonald and from Aldar itself suggests that there were serious ongoing problems in the performance by HKRME of its obligations under its existing contract with Aldar.

Mr. Ryan reacquires ownership of the HKR companies

246. On 5th December, 2014 final valuation reports for both HKRAS and HKRJLT were circulated showing a value of AED50,000 for HKRJLT (which equated to £8,000stg) and £50,000stg for HKRAS. At that point, the shares formerly held in the name of Mr English in HKRME had been put in the name of HKRJLT under a new corporate structure. The valuation for HKRAS appears to have been available in draft since at least July, 2014. On 17th July, 2014 Mr. Ryan had emailed Mr. English suggesting that Mr. Galluci had received a valuation for HKRAS of £50,000stg. On the same day, Mr. English responded by email in the following terms:

> *"Before anything is transferred can I please have a copy of the valuation for review. It is extremely disappointing that the company has gone down in value since I bought it. I agreed to sell based on the valuation received but hadn't anticipated selling at a loss".*

247. On day 19 Mr. English was cross-examined about this email. The effect of this cross-examination was to suggest that the email was a fiction particularly in circumstances where Mr. English had paid no more than £1 for HKRAS in 2011. Mr. English was remarkably evasive in his response to the cross-examination but, conceded, that he was glad to be selling having previously made "*extremely good money*". This was a reference to the monies transferred to Sunvit which, although held in the name of a trust, were effectively under his control.

248. Subsequently, on 25th April, 2015 a formal agreement was concluded between Mr. Ryan and Mr. English which provided for the acquisition by Mr. Ryan of the shares in HKRJLT and in a company called Healeyford Limited (which was a vehicle which Mr. English had used to acquire HKRAS). According to clause 3 of this agreement, the purchase price was €1 in respect of the shares in HKRJLT and €69,100 (which he equated to £50,000stg) in respect of the shares in Healeyford Limited. Subsequently, on 15th December, 2015, the share transfers in favour of Mr. Ryan were completed. Mr. Ryan is therefore the ultimate owner of all of the HKR companies including HKRME).

Further dealings between Mr. Ryan and Mr. English

249. Mr. Ryan gave evidence that he called, unannounced, to the office of Mr. English in April, 2015. When he was told that Mr. English was unavailable, he walked past the reception desk, mounted the stairs, and sat in Mr. English's private office until the latter returned from a meeting with a colleague. When Mr. English returned to his office, he told Mr. Ryan that he had to go to an external meeting. Mr. Ryan said that he was sorry that it had come to this but that they needed to sort things out at which point (according to Mr. Ryan) Mr. English:

> *"turned on his heels and … starting moving down the stairs at speed. I followed him down as best I could. He got into his car and I stood in front of [the] car. Then he nudged forward maybe a foot or two at a time and I'd take a step back, and that went on for maybe half a minute. Then he took a lunge and I stepped out of the way and he drove off at great speed … along the front for about a distance I'd say of 100 metres, turned and then drove straight back at me, turning at the last minute, rolling down the window and saying: 'basically if want … this to sort out you better go and talk to a lawyer' and then took off*." (Day 5, pp. 22-23).

250. In para. 131 of his witness statement, Mr. Ryan had used slightly different language. He said that when Mr. English opened his car window (having previously driven at Mr. Ryan) he said: "*if you want your money, talk to a lawyer*".

251. In para. 254 of his witness statement, Mr. English deals with this altercation. According to Mr. English, when he found Mr. Ryan waiting for him in his office, he instructed Mr. Ryan to leave the office immediately and said that his behaviour was unacceptable (after Mr. Ryan had "*barged past*" his receptionist). Mr. English said: "*I eventually left the office and got into my car to drive away. He stood in front of my car. I then drove away but more than slowly enough for him to get out of the way. I certainly did not try and hit him as he implies in his witness statement. I then drove back and told him to use a solicitor for any further contact".*

252. In his direct examination, Mr. English (Day 17 at pp. 65-66) said that, when he found Mr. Ryan in his office, he told them there was not going to be any meeting. In relation to the incident in the carpark, Mr. English said that Mr. Ryan had stood in front of his car and that he: "*drove slowly at him until he moved out of the way*".

253. Paragraph 121 of Mr. Ryan's witness statement was drawn to Mr. English's attention and he was asked whether he had said: "*if you want your money talk to a lawyer*". He confirmed that this was correct. When I asked him to confirm that these were the words that were spoken, Mr. English then said that what was actually said was "*if you want money back"* was more likely the words that were used.

254. The evidence, on both sides, as to what transpired during the course of this altercation, is not consistent. What is clear is that a very bad tempered exchange took place. Mr. English was obviously so incensed that, having driven towards the exit of his premises, he drove back again to tell Mr. Ryan that if he wanted to get any of the money back, he would need to pursue his claim through a solicitor.

255. Relations between both men had, very obviously, deteriorated significantly at this point. There was a further chance meeting in Heathrow Airport in the same year. On Day 5, Mr. Ryan described how he was waiting in the Aer Lingus lounge at Heathrow Airport when Mr. English walked in. Mr. Ryan says that he could see "*out of the corner of my eye he saw me, stopped in his tracks and turned around and walked away*". Mr. Ryan followed him downstairs to a dining area outside the lounge. According to Mr. Ryan, he put out his hand and said: "*Barry, I hear things are going really well for you at the moment*" but that "*they are going terrible for me and we … need to sort this out*". Mr. Ryan says that, in response, Mr. English picked up his hand luggage, put his hand out and said: "*I'll sort all this out in my own time"* and walked away.

256. Notwithstanding the unsatisfactory nature of these interactions, Mr. Ryan did not immediately instruct solicitors. Instead, he asked Mr. Stone and Mr. Stafford to intercede on his behalf with Mr. English. Mr. Stone gave evidence on Day 16 that, at the end of a meeting he had with Mr. English in relation to a project in which they were both involved, he indicated that he wanted to speak to Mr. English about Mr. Ryan. Mr. Stone explained that Mr. English immediately cut him short. He said: Barry wasn't happy about it and he basically told me to – it was none of my business and that he would deal with Jerry himself. So I didn't go into it any further. It was very clear … There was no – I knew from Barry's demeanour that there was no point in moving it along any further". Mr. Stone said that he assumed that Mr. English had a "*different take to what Jerry had*".

257. There was also a meeting between Mr. Stafford and Mr. English. According to Mr. Stafford, he was stunned when he was told by Mr. Ryan in March, 2015 (following the latter's return from surgery in Germany) that US$8million had been retained by Mr. English. He said that Mr. Ryan did not know what to do. A few days later, Mr. Stafford picked Mr. Ryan up from his home and they went over to the offices of Winthrop in Walkinstown. They did not give Mr. English advance notice of their intention to call. Mr. Ryan remained in the car while Mr. Stafford went into the Winthrop offices to meet with Mr. English. On Day 14 at p. 148 Mr. Stafford says that he told Mr. English that: "*we need the money back"* but Mr. English replied that it had nothing to do with Mr. Stafford. In response, Mr. Stafford says that he said: "*sorry, Barry, this is the trust money, any issue you have with Jerry is your problem, I want the money back for the trust, … I'm a trustee of the trust*". Mr. English reiterated that the issue was between him and Mr. Ryan following which the very brief meeting came to an end.

258. It is important to note that, according to Mr. English, this conversation with Mr. Stafford was the first time he heard anything about the existence of a trust. Under cross-examination, Mr. Stafford suggested that he had no doubt that Mr. English knew that he was there as the trustee for the RCT. However, Mr. Stafford provided no basis to substantiate this statement. Mr. Stafford was also unable to explain, on cross-examination, how he could maintain to Mr English that the money was the property of RCT when the claim being made in these proceedings was that the money belongs to HKRME in the first instance with any surplus (after discharge of the

liabilities of HKRME) going to the RCT.

259. A further significant feature of Mr. Stafford's evidence was that, prior to early 2015, he does not recall any conversation with Mr. Ryan in relation to the money which is now the subject of these proceedings. To my mind, this is very difficult to understand in circumstances where Mr. Stafford is the trustee of the RCT and, according to the case made by the plaintiffs in these proceedings, Mr. Ryan was simply acting as his delegate. If, in truth, there was a trust in place, it is quite extraordinary that Mr. Ryan, the delegate, would not have reported to Mr. Stafford, the trustee, that monies had been transferred off shore to Sunvit for the benefit of the RCT. It is equally remarkable that Mr. Ryan had not previously had any conversation with Mr. Stafford that he had been unable to secure the return of those monies from Mr. English. It is also noteworthy that, after his discussion with Mr. English, Mr. Stafford did not even write to Mr. English expressing his concern about the retention of monies which, on his evidence, were, at least, partly owned by the RCT. I fully appreciate that Mr. Stafford has said, in his evidence, that he has difficulty with paperwork. However, it is quite clear that Mr. Stafford is used to dealing with lawyers and I find it very difficult to understand how, if the RCT had any substance, Mr. Stafford did not instruct solicitors at that time to seek the return of the moneys from Mr. English. After all, Mr. Stafford was the trustee. A trustee has very solemn duties to the beneficiaries and bears ultimate responsibility for the assets of a trust.

260. At this point, it is important to record that, at no time during the course of the hearing, was I referred to any letter of demand issued by Mr. Ryan or solicitors on his behalf calling for the return of the monies from Mr. English. Nor was I referred, in the course of the hearing, to any "*letter before action*" – i.e. a letter setting out the nature of the plaintiff's case and calling upon the defendant to make reparation.

261. The proceedings were ultimately launched by a plenary summons issued on 11th July, 2017. It should be noted, at that point, only HKRME and Mr. Ryan were named as plaintiffs. A motion was brought in July 2017, to admit the proceedings into the Commercial List. On 19th October, 2017, an order admitting the proceedings into the Commercial List was made. At the same time, the court adjourned the plaintiff's application for interlocutory relief to the trial of the action in circumstances where Mr. English undertook that he would not dispose of transfer or otherwise use the monies, the subject matter of these proceedings held in the Guernsey branch of Investec Bank subject only to the discharge of the fees and bank charges set out in an affidavit made by Mr. English on 12th October, 2017.

262. On 19th October, 2017, the plaintiffs also brought a motion pursuant to O. 15, r. 1 seeking to join Mr. Stafford as a plaintiff to these proceedings in his capacity as trustee of the RCT. An order to that effect was subsequently made.

The Settlement with the Trustee in Bankruptcy

263. In the course of the opening of the plaintiffs' case at the commencement of the trial, counsel for the plaintiff indicated to the court that the proceedings were being pursued by the plaintiffs with the support of Mr. Ryan's bankruptcy trustee. However, there was no evidence to that effect before the court. In those circumstances, the plaintiffs agreed to provide a statement from Mr. Nicholas Wood, the bankruptcy trustee, which was subsequently furnished on 29th November, 2018. It was only then that it became apparent that, in fact, some weeks before the commencement of the trial, a deed of settlement had been entered into between Mr. Wood as bankruptcy trustee, Mr. Ryan, HKRME and Mr. Stafford on 26th October, 2018. It is apparent from this deed of settlement that if the plaintiff succeeds in these proceedings, they will be required to pay over to the bankruptcy trustee a proportion of any amounts recovered. This settlement is inconsistent with the impression created, in the course of the opening of the case, that the trustee in bankruptcy was supporting the proceedings. Of course, he is supporting the proceedings to the extent that the bankrupt estate will benefit from the proceedings. This is quite different to the impression created by the opening which had led me to believe that the trustee was supporting the claim made by the plaintiffs in the proceedings. It should be recalled in this context, that, if the plaintiffs were successful in these proceedings, this would have resulted (in the absence of any settlement agreement with the trustee) in no payment being made to the bankruptcy trustee. This is in circumstances where no claim was made in these proceedings that Mr. Ryan is personally beneficially entitled to any of the monies transferred to Sunvit. The court was not apprised, either in the course of the opening or in the course of Mr. Ryan's evidence, of the existence of the settlement agreement. However, I do not believe that the failure to do so was prompted by any desire to mislead the court. The plaintiffs' legal team has acted very professionally and properly throughout the trial and I therefore cannot believe that there was a deliberate withholding of information.

264. Under the terms of the settlement agreement, Mr. Wood as bankruptcy trustee, acknowledges the existence and validity of the RCT "*notwithstanding any determination to the contrary that may be made by a court at any point in the future on this issue*". The deed of settlement covers a number of different claims by the trustee including all claims relating to the RCT and any claim arising out of the case made in these proceedings. As a condition of entering into the settlement agreement, Mr. Ryan was required to pay to the trustee a sum of US$500,000. In the event that the plaintiffs in these proceedings recover more than US$500,000, they are to pay to the trustee, 22.5% of the amount recovered less any legal costs (to the extent that they are not paid for by Mr. English).

265. It is, therefore, clear from the terms of the deed of settlement that the trustee now has an interest in the outcome of the proceedings. Thus, when the court was informed that the trustee supported the proceedings, this did not tell the full story. The trustee was not a disinterested supporter. On the contrary, he had a vested interest in the outcome on behalf of the creditors of Mr. Ryan. More importantly, by indicating support for the proceedings, he was not in any way conceding that the proceeds of recovery (if any) in these proceedings were all beneficially owned by the RCT or by any other parties.

266. Mr. Wood, the bankruptcy trustee, subsequently gave evidence on Day 15 of the trial. Regrettably, Mr. Wood did not appear to have foreseen that he would be open to cross examination and he, therefore, had not refreshed himself by reference to the underlying papers. His recollection of the details of Mr. Ryan's bankruptcy was, as a consequence, very patchy. In the course of his cross examination, he was asked whether it was correct to say that, even prior to the deed of settlement, he supported the proceedings. Mr. Wood, in his evidence on Day 15, confirmed that he did support the proceedings (as from the time interlocutory relief was sought in July 2017) but he explained that the rationale for his support at that time was similar to the rationale now (after the deed of settlement has been executed). On Day 15, at p. 63, the following exchange took place between Mr. Wood and counsel for Mr. English (which shows his rationale very clearly):-

> *"Q. Mr. Ryan was a plaintiff but wasn't bringing the case personally on his own behalf, and I am wondering why, in circumstances where you acknowledged that alarm bells were ringing as to the circumstances…you were prepared to be fully supportive of a case like that?*
>
> *A.* If a large amount of money had come back into the trust we would then have attacked the trust.
>
> *Q. You would have attacked the trust?*

A. Yeah.

Q. Did you ever say that to Mr. Ryan?

A. Yes." (Emphasis added)

267. Again, this shows very clearly that the "*support*" for the claim made in the proceedings was not disinterested support. At an earlier point in his cross examination, Mr. Wood had explained why he had not pursued any claim against Mr. English himself. In his evidence on Day 16 at p. 60, he said:-

> *"…the fact that US$8 million has come back to Mr. English…looks concerning to me and therefore there is a possible claim. Why didn't I bring this claim myself? Because it's very fact specific and very reliant on oral evidence and it's not a claim that I would bring as a trustee because – simply because of that."*

Mr. Stafford's evidence in relation to the Deed of Settlement

268. The cross examination of Mr. Stafford on Day 15 also dealt with the Deed of Settlement. As noted above, he is a party to the deed of settlement. Given that he is the trustee of the RCT and given the nature of the claim made in these proceedings on behalf of the RCT, it was obviously crucial that he should be a party to the deed. Yet, when it came to his cross examination, he appeared to have no recollection of the circumstances in which the deed of settlement was executed, notwithstanding that the execution had occurred less than two months previously. On Day 15 at p. 103, he was asked whether he was a party to the deed of settlement. He answered that he was not "*one hundred percent sure on that"*. When the deed of settlement was put to him in the witness box, he did not initially recognise it. When he was asked if he had read the document, he answered no. However, on further cross-examination, he confirmed that his signature appeared on the deed. He also said that he did not take any legal advice in relation to the deed and that he could not remember where he had signed it. He said that Mr. Ryan had asked him to turn up to sign the document. When he was asked whether Mr. Ryan had explained to him what it was about, he said "*I forget, I'll be honest*". Mr. Stafford was also unable to explain what claims had been dropped against the RCT in the deed.

269. It should be noted that the deed contains a representation by Mr. Stafford that he was independently legally advised in relation to the deed. I asked Mr. Stafford whether he was aware that it contained such a representation and he said that he was. Mr. Stafford volunteered at that point that he had spoken to his brother in law who is a barrister and who is also familiar with Mr. Ryan. Mr. Stafford then said (at p. 115):-

"And we talked about it and he said 'look' he says, 'if it's Jerry' my brother in law knows Jerry for 20 years…and 'if it's Jerry, sure look ok'…"

270. When I asked him whether this was the height of the advice that he got, his answer was that this was exactly so.

271. In my view, this raises serious questions about the reality of the RCT. I find it impossible to understand how a trustee of a trust could proceed to enter into a deed of settlement on the basis outlined by Mr. Stafford in his evidence on Day 15. The deed in question had significant implications for the RCT of which Mr. Stafford is the sole trustee. Even more remarkably, on the same day, he acknowledged under cross-examination that he was not even aware whether the RCT had a bank account and he was not aware of how the sum of US$500,000 came to be paid to the bankruptcy trustee although he indicated that he thought the RCT had paid that sum out of its assets.

Mr. Stafford's evidence in relation to the Ryan Children's Trust

272. There were also a number of other revealing exchanges which took place during the course of Mr. Stafford's cross examination. For example, on Day 14 at pp. 154 – 155, Mr. Stafford was asked about the execution of the deed of trust of the RCT on 15th November, 2009 and the subsequent delegation executed on 1st December, 2009, to Mr. Ryan. Mr. Stafford confirmed that, on both occasions, Mr. Ryan took the documents to Mr. Stafford, asked him to sign the document and then took it away. Mr. Stafford was asked whether he had read the documentation carefully. His answer was as follows (at p. 155 on Day 14):-

> *"I genuinely would have read it. Did it make much sense to me, genuinely? Probably not, genuinely. But my lean on it was this is the kids' dad,…he's not going to hurt these kids in any form. So I just read through it. I liked what I saw and I signed it. If I didn't like it, I wouldn't have signed it. Now, in fairness, as I said, reading for me is an issue."*

273. It was then put to him on the same day that for anyone suffering from reading difficulties, one would need to proceed with caution to be doubly sure that the implications of signing the documents were understood. Mr. Stafford said that in this case, he simply trusted Mr. Ryan as father of the children.

274. On Day 14, Mr. Stafford confirmed that he did not retain any copy of either the deed of trust or of the delegation. He was then asked when was the next time he saw the deed of trust for the RCT. He confirmed that he had not seen it until a few months before his evidence at the trial. Under further cross examination on Day 15, it was put to him that, in light of his evidence on the preceding day, what he seemed to be saying was that "*whatever way Mr. Ryan wanted to play it, that was his business; is that right?*". His answer was "*to a good degree*". He confirmed on Day 15 that he did not know anything about Mr. Ryan's dealings with the shares as a delegate of the RCT. He accepted that it was fair comment to say that he did not really want to have any involvement in the running of the RCT. The following exchange then took place between him and counsel for Mr. English at pp. 83 – 84 of Day 15:-

> *"Q. …what I am saying, Mr. Stafford, is this: that the way in which Mr. Ryan dealt with the shares… between November 2010 and the time Mr. English acquired the shares in August/September 2011…was that he didn't tell anybody that the [RCT] existed and acted in a way which was, we say entirely inconsistent with its existence because he was talking about putting it into trusts and that sort of thing. You're saying that (a) you weren't aware of that and (b) that it was really matter for Mr. Ryan to do what he wanted?*
>
> *A. That's right.*
>
> *Q. Is that your position?*
>
> *A. That's a good assumption, yes.*
>
> *Q. Alright, he was in charge as you say yourself.*

A. When I delegated this, this was that."

275. Mr. Stafford said that he was aware that the business in Abu Dhabi "*was the trust*" but that he did not know that it was the shares that were put in trust. In fact, he said that it did not matter to him that the shares were to be put in trust.

276. As noted above, it will be necessary, in due course, to make findings in relation to the RCT. At this point, it is sufficient to record that the evidence of Mr. Stafford does little to support the case made by the plaintiffs as to the establishment and operation of the RCT.

The claim made by HKRME

277. Before addressing the nature of the agreement reached between Mr. Ryan and Mr. English and before making any further findings in relation to that issue and in relation to the RCT, it may be helpful, at this point, to identify the nature of the case which is made by HKRME.

278. The case made on behalf of HKRME in the amended statement of claim, in respect of the Sunvit monies, is put forward on three different bases:-

(a) In the first place, in paras. 28 – 30 of the statement of claim, it is alleged that the agreement between Mr. English and Mr. Ryan was that the monies transferred from the account of HKRME to Sunvit would be held on trust for HKRME and the RCT. The money was to be available at all times to be repatriated to the UAE to meet the obligations of HKRME (to include payments to consultants, suppliers and staff). When the project in Astana was completed and all amounts owed by HKRME had been paid, the remainder of the monies would be held for the benefit of the RCT.

(b) The second basis on which the case is made is set out in paras. 31 – 51 and paras. 65 - 67 of the amended statement of claim. In those paragraphs, the plaintiffs contend that Mr. English well knew that the money transferred to Sunvit was money of or for the benefit of HKRME and/or the RCT and/or was trust money which was beneficially owned by HKRME and/or the RCT. It is contended that, in those circumstances, Mr. English held the monies transferred from HKRME on trust for HKRME and/or the RCT. In para. 51, the case is then made that Mr. English has misappropriated the monies in question, converted them to his own use and is in "*knowing receipt*" of the monies and is liable to account for them to HKRME and/or the RCT. Insofar as the HKRME claim is concerned, it is alleged in para. 62 of the Statement of Claim that HKRME has unmet obligations of approximately AED 8.7m.

(c) The third basis on which the case on behalf of HKRME is put forward is that Mr. English acted in breach of the law of the UAE and is liable to account to HKRME for the transferred monies. The plaintiffs rely on Articles 82, 84, 162 and 218 of Federal Law No. 2 of 2015 on Commercial Companies ("*the 2015 Companies Law*"), Article 665 of the Civil Transactions Law and Article 404 of Federal Law No. 3 of 1987 on the Penal Code ("*the Penal Code*").

279. In my view, the first ground depends very much on the findings I make in relation to the nature and terms of the agreement put in place between Mr. English and Mr. Ryan in relation to the HKRME shares (dealt with below) and on the findings I make in relation to the arrangement between Mr. English and Mr. Ryan with regard to the transfers from HKRME to Sunvit. To some extent, those findings of fact are also relevant in the context of the second ground. For completeness, it should be noted that, in addition to making a case based on trust law, the plaintiffs also seek to advance a claim based on (a) unjust enrichment and (b) money had and received.

280. At this point, I should outline the evidence available to the court in relation to the third ground which is based on UAE law (i.e. the claim described in para. 279 (c) above).

281. Mr. Adrian Cole gave evidence as to UAE law. He is a partner in King & Spalding LLP of Abu Dhabi. He has been practicing UAE law for twelve years. He explained that HKRME is a limited liability company under UAE law. He further explained that such companies are managed by one or more managers as determined by the partners in the relevant memorandum of association. He explained that under UAE company law the terms "*partner*" is equivalent to a shareholder and he also explained that the terms "*manager*" and "*director*" are used interchangeably. Mr. Cole drew attention to the fact that, under the agreement for the transfer of shares, Mr. English was appointed as general manager. This is made clear by Article 9 of the 2012 agreement. Under Article 22 of the UAE Companies Law 2015, the manager is the person authorised to manage a company and is required to preserve the company's rights and extend such care as would be required of a diligent person. However, it should be noted that the Companies Law 2015 did not become operative until 1st July, 2015, which is after the date of the transfers to Sunvit. During the course of his oral evidence, there was an attempt by the plaintiffs to adduce evidence from Mr. Cole relating to the pre-existing UAE Companies Law namely Federal Law No. 8 of 1984. However, objection was taken to that evidence by counsel for Mr. English on the basis that no advance notice was given of any such evidence. Having heard submissions from counsel for both sides, I ruled on Day 13 (which is the day when Mr. Cole came to give his evidence) that Mr. Cole could not give evidence in relation to matters which were not previously addressed in his written witness statement. It should be noted, in this context, that the defendant chose not to call an expert as to UAE law following receipt of Mr. Cole's witness statement. Accordingly, it would have been manifestly unfair to the defendant to allow Mr. Cole to expand on his evidence in such a significant way.

282. In his evidence, Mr. Cole dealt with Article 82 of the 2015 Companies Law. Under Article 82, a partner (a shareholder) in a limited liability company is liable:-

"against the company for any of its properties held by such partner as a trustee or any profits or benefit made through the business or activities of the company, or by the use of the property, name or commercial relationships of the company."

283. In para. 4.14 of his witness statement, Mr. Cole said that, on the "*Assumed Facts*", Mr. English is holding assets of HKRME on trust in the form of the monies transferred to Sunvit and that his failure to account for the transferred monies to HKRME, when required to do so by HKRME, offends Article 82 rendering Mr. English liable to pay damages in compensation for his failures. On Day 14, at pp. 100 – 101, Mr. Cole added that Article 82 of the 2015 Companies Law would apply in relation to the continuing failure of Mr. English to return the Sunvit monies after 1st July, 2015.

284. However, it is important to bear in mind that Mr. Cole's evidence to this effect proceeds, as para. 4.14 of his witness statement makes clear, on the basis of the "*Assumed Facts*". At para. 4.1 of his witness statement, Mr. Cole explains what he was asked to assume in terms of facts for this purpose. These were:-

(a) that Mr. English had agreed with Mr. Ryan that the money transferred to Sunvit would be held offshore on trust for

HKRME and the RCT;

(b) Mr. English agreed that the money transferred in this way will be available at all times to be repatriated to the UAE to meet the obligations of HKRME;

(c) invoices for services provided by Mr. English, through Sunvit, to HKRME were fictitious in that no such services were, in fact, provided;

(d) despite demand, Mr. English has refused to return any money to HKRME and has instead used that money for his own purposes; and

(e) HKRME continues to have unmet liabilities, including staff salaries and payments to creditors.

285. Mr. Cole's evidence must, therefore, be read in light of these assumed facts. Mr. Cole does not suggest that there is any breach of Article 82 based on some prior breach of UAE law which occurred at the time of the transfers (such as a breach of the UAE law in relation to the manner in which profits or other monies can be extracted from a company). Instead, it is based on the agreement described in para. 284(a) and (b) above.

286. The next provision of UAE law addressed by Mr. Cole was Article 84 of the 2015 Companies Law. Under Article 84, every partner (i.e. shareholder) in a limited liability company is liable for any fraudulent acts by a manager and also liable for any losses or expenses incurred as a consequence of any gross error on the part of the manager. While Mr. Cole sought to suggest that Mr. English may be liable under Article 84, the article by its terms, appears to be concerned with the liability of shareholders for the acts of the manager rather than with the liability of the manager himself. In the course of his oral testimony, Mr. Cole sought to link Article 84 with Article 22 of the Companies Law 2015 under which a person authorised to manage the company is under a positive duty to preserve the companies' rights and act diligently with regard to the companies. However, Article 22 was not relied upon in the amended statement of claim and in those circumstances, I do not believe that I can have regard to it.

287. Mr. Cole also referred to Article 162 of the 2015 Companies Law. Under Article 162, the members of the Board of a limited liability company will be liable to the company, the shareholders and third parties for all acts of fraud, misuse of power and violation of the provisions of the 2015 law. On Day 14 at p. 100, Mr. Cole gave evidence that, on the assumed facts, Article 162 was breached by Mr. English if there was a continuing refusal by him to return the Sunvit monies. Again, it will be seen that this evidence by Mr. Cole is based on the assumed facts.

288. Although Article 218 of the 2015 Companies Law is relied upon in the amended statement of claim, Mr. Cole confirmed in para. 4.25 of his witness statement that Article 218 is of no application.

289. The next provision of UAE law addressed by Mr. Cole was Article 655 of Federal Law No. 5/1985 on Civil Transactions. That provision essentially requires the manager of a company to act within the scope of the powers given to him. In para. 4.28 of his witness statement, Mr. Cole suggested that, on the assumed facts, Mr. English was not authorised to utilise the monies transferred to Sunvit for improper purposes and was, therefore, not entitled to reject HKRME's requests for the return of those monies. Again, it will be seen that this evidence proceeds on the basis of the assumed facts.

290. In para. 4.29 of his witness statement, Mr. Cole dealt with the Penal Code but, in his oral evidence on Day 14, he confirmed that, the Penal Code is not directly relevant in the context of a civil action. Thus, the reliance which is placed on the Penal Code in the amended statement of claim does not give rise to any cause of action under UAE law.

291. In his witness statement, Mr. Cole also addressed the provisions of Article 30 of the Companies Law 2015, which make it clear that no fictitious profits may be distributed to partners or shareholders and that any profits distributed in violation of the provisions of this Article must be returned to the company. Mr Cole confirmed in his evidence that Article 30 would have been breached by the raising of invoices in respect of fictitious services. However, no reliance was placed on Article 30 in the statement of claim. No application was made to amend the statement of claim. Unsurprisingly, in these circumstances, counsel for Mr. English, in their closing submissions, have objected to any attempted reliance by the plaintiffs in Article 30. In these circumstances, it seems to me that Article 30 cannot be relied upon by the plaintiffs here. This has significant consequences in that Article 30 was the only provision of UAE law addressed by Mr. Cole which would have provided an independent basis for the maintenance of a claim by HKRME against Mr. English in relation to the monies transferred to Sunvit. The balance of the claim made by HKRME by reference to UAE law is dependent upon the establishment of the "*Assumed Facts*".

292. In addition, HKRME makes a claim against Mr. English for damages arising out of the termination of the Aldar contract in 2015. HKRME seeks to make the case that, as a consequence of the alleged failure by Mr. English to return the Sunvit monies to HKRME, the Aldar contract was lost. In addition, HKRME makes the case that it lost the opportunity of a follow-on contract with Aldar on which HKRME had been asked by Aldar to bid. According to the statement of claim, HKRME (as the incumbent architect) was confident of securing this follow-on contract. According to para. 59 of the statement of claim, as a consequence of the termination of the existing Aldar contract, HKRME lost a total of AED 35.2 in fees. In addition, the gross value of the follow-on contract was of the order of AED 117 million.

Principal findings of fact

293. In the course of recounting the events described in paras. 30 to 276 above, I have already made certain findings of fact. However, I have refrained from making my principal findings of fact in relation to (a) the status of the RCT and (b) the nature of the arrangement entered into between Mr. Ryan and Mr. English. It is now necessary to address those issues. In this section of my judgment, I will deal first with the RCT. I will then address the nature of the arrangement between Mr. Ryan and Mr. English.

Findings in relation to the Ryan Children's Trust

294. As set out in the earlier parts of this judgment, Mr. Ryan contends that many of the documents he signed during the period relevant to these proceedings are shams. In contrast, he maintains that the documents relating to the establishment of the RCT are valid and were intended to be legally binding.

295. Mr. English, in his defence, has put the plaintiffs on proof in relation to the RCT. Furthermore, Mr. English maintains that the evidence adduced in the course of the hearing very clearly shows that the RCT has no substance and that there was never any true intention that the shares in HKRME were to be beneficially owned by the RCT. In short, it is submitted on behalf of Mr. English that the evidence very clearly shows that the RCT was, in truth, a sham.

296. In order to make the relevant findings of fact in relation to this issue, it is important to identify the relevant legal principles which apply where an issue arises in relation to the veracity of a legal document.

297. The classic explanation of a "*sham*" is the judgment of Diplock L.J. (as he then was) in *Snook v. London and West Riding Investments LTD* [1967] 2 QB 786 where he said (at p. 802):-

> *"…it means acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But one thing I think, however, is clear in legal principle, morality and the authorities . . that for acts or documents to be a 'sham', with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating…"*

298. The approach taken by Diplock L.J. in Snook requires that all parties to the alleged sham have a common intention to deceive. More recently, in *Midland Bank Plc v. Wyatt* [1995] 1 FLR 696 David Young Q.C. (sitting as a deputy High Court judge) suggested that it is not always necessary that all the parties to the sham transaction must have a common intention, as such. It is sufficient if a party goes along with the "*shammer*" either not knowing or caring what he or she is signing. At p. 699, the deputy judge said:-

> *"I do not understand Diplock L.J.'s observations regarding the requirement that all the parties to the sham must have a common interest to be a necessary requirement in respect of all sham transactions. I consider a sham transaction would still remain a sham transaction even if one of the parties to it merely went along with the 'shammer' not either knowing nor caring about what he or she was signing. Such a person would still be a party to the sham…".*

299. However, in my view, it would be wrong to think that the approach taken by the deputy judge in the Midland Bank case went so far as to dispense with the requirement to show a common intention. It seems to me that a common intention must be shown. But, in assessing whether there is a common intention, reckless indifference by one party as to the conduct of the "*shammer*" will be sufficient to establish the necessary common intention.

300. The requirement to show common intention is clear from the subsequent decision of the English Court of Appeal in *Hitch v. Stone (Inspector of Taxes)* [2001] EWCA Civ. 63 where Arden L.J. said, with regard to Snook, at paras. 64-69:-

> *"(64) An inquiry as to whether an act or document is a sham requires careful analysis of the facts and the following points emerge from the authorities.*
>
> *(65) First, in the case of a document, the court is not restricted to examining the four corners of the document. It may examine external evidence. This will include the parties' explanations and circumstantial evidence, such as evidence of the subsequent conduct of the parties.*
>
> *(66) Second, as the passage from Snook makes clear, the test of intention is subjective. The parties must have intended to create different rights and obligations from those appearing from (say) the relevant document, and in addition they must have intended to give a false impression of those rights and obligations to third parties.*
>
> *(67) Third, the fact that the act or document is uncommercial, or even artificial, does not mean that it is a sham. A distinction is to be drawn between the situation where parties make an agreement which is unfavourable to one of them, or artificial, and a situation where they intend some other arrangement to bind them. In the former situation, they intend the agreement to take effect according to its tenor. In the latter situation, the agreement is not to bind their relationship.*
>
> *(68) Fourth, the fact that parties subsequently depart from an agreement does not necessarily mean that they never intended the agreement to be effective and binding. The proper conclusion to draw may be that they agreed to vary their agreement and that they have become bound by the agreement as varied…*
>
> *(69) Fifth, the intention must be a common intention: see Snook's case, above."*

301. These principles apply equally to the creation of a trust as they do to a commercial document. This was made clear by Munby J. in *A. v. A.* [2007] EWHC 99 (Fam.) at para. 34. In that case, Munby J, having previously cited the observations of Arden L.J. in *Hitch v. Stone,* agreed with the approach taken by the deputy judge in *Midland Bank Plc v. Wyatt* holding that reckless indifference by a party will be sufficient to give rise to the necessary common intention. In taking that approach, he cited the decision of the Royal Court of Jersey in Re Esteem [2003] Jersey Law Reports 188 where the court said:-

> *"58. …In our judgment the court in Wyatt was simply confirming*
>
> *that a party who goes along with a sham neither knowing nor caring what he is signing (i.e., who is reckless) is to be taken as having the necessary intention.*
>
> *59. It follows that in our judgment, in order to succeed, the plaintiffs will need to establish that, as well as Sheikh Fahad, Abacus intended that the assets would be held upon terms otherwise than as set out in the trust deed or, alternatively, went along with Sheikh Fahad's intention to that effect without knowing or caring what it had signed, and that both parties intended to give a false impression of the position to third parties or to the court."*

302. At para. 52 of his judgment in A.A., Munby J. expressly agreed with the analysis of the Jersey Court in Re Esteem. Munby J. said:-

> *"What is required is a common intention, but reckless indifference will be taken to constitute a necessary intention".*

303. A useful illustration of the application of these principles is to be found in the decision in *Midland Bank Plc v. Wyatt* (cited in paras. 298-299 above). In that case, the defendant, Mr. Wyatt, was sued by the plaintiff bank ("*the bank*") in respect of a liability he had to the bank on foot of a loan facility taken out for the purposes of funding a new business which he intended to establish. A few years prior to establishing the business in question, Mr. Wyatt had executed a declaration of trust over his interest in his family home in favour of his wife and two daughters. The declaration of trust in question was executed on 17th June, 1987. Legal assistance was provided by a family solicitor for this purpose. At the time of taking out the business loan, Mr. Wyatt did not tell the bank about the

existence of the deed of trust executed in 1987. On 4th July, 1991 Mr. Wyatt and his wife entered into a further declaration of trust over their family home in which they agreed that, out of the proceeds of sale of the family home (if ever sold), the loan to the bank would be repaid. They did not inform their solicitors at the time (who were different to the solicitor who had advised in 1987) of the existence of any earlier declaration of trust in favour of Mrs. Wyatt and the two daughters. Furthermore, in the first recital to the deed of trust executed in July 1991 it was specifically stated that Mr. and Mrs. Wyatt held the family home as beneficial tenants in common in equal shares.

304. The bank subsequently sought to obtain a charging order over Mr. Wyatt's interest in his family home in respect of the business loan debt. In response to that application, Mr. Wyatt attempted to rely on the previous declaration of trust executed in 1987 and contended that he no longer had any beneficial interest in the family home. The deputy High Court judge came to the conclusion that the 1987 declaration of trust was a sham. In coming to that conclusion, he drew attention (at pp. 706-707) to the following conduct on the part of Mr. Wyatt which was plainly inconsistent with the existence of a trust:-

> (a) In the first place, at the time of the execution of the 1987 declaration of trust, the other party to it, Mrs. Wyatt, was not aware of its import or effect.
>
> (b) Secondly, once the declaration of trust was executed, it was placed in a safe and was not acted upon in any way;
>
> (c) Subsequent to the execution of the declaration of trust, Mr. Wyatt continued to act as though he remained a joint owner of the family home. On the basis of his dealings with the bank and with the later firm of solicitors, they all believed that he had a joint beneficial interest in the home with his wife;
>
> (d) Mr. Wyatt acknowledged that, following his appointment as a trustee in 1987, his powers under the declaration of trust ought to have been exercised for the benefit of the beneficiaries namely his wife and his two daughters. Notwithstanding this acknowledgment, within a relatively short period after the execution of the declaration, he was seeking to borrow £50,000 as a personal loan for his new business on the security of the family home;
>
> (e) He continued to pay interest on the mortgage loan over the family home after the declaration of trust had been executed and he claimed tax relief for his own benefit on these payments.

305. In these circumstances, the deputy judge came to the following conclusion at p. 707 of the report:-

> *"I do not believe that Mr. Wyatt had any intention when he executed the trust deed of endowing his children with his interest in [the family home], which at the time was his only real asset. I consider the trust deed was executed by him, not to be acted upon but to be put in the safe for a rainy day – as Mr. Wyatt states in his affidavit, as a safeguard to protect his family from long-term commercial risk should he set up his own company. As such I consider the declaration of trust was not what it purported to be but a pretence or, as it was sometimes referred to, a 'sham'. The fact that Mr. Wyatt executed the deed with the benefit of legal advice…does not in my view affect the status of the transaction".*

306. In my view, the approach taken by the deputy judge in *Midland Bank Plc v. Wyatt*, is very helpful in illustrating how the principles discussed in the case law should be applied. In reaching his decision, it is clear that the deputy judge was heavily influenced by the sheer extent of Mr. Wyatt's conduct, subsequent to the execution of the declaration of trust, which was utterly inconsistent with the existence of such a trust. For reasons which I explain in more detail below, it seems to me that there is a significant parallel between the facts of *Midland Bank Plc v. Wyatt* and the present case. In both instances, the settlor (in this case Mr. Ryan) has acted inconsistently with the existence of the RCT. Likewise, in both cases, the other party to the declaration of trust (in the Midland Bank case, Mrs. Wyatt; in the present case, Mr. Stafford) did nothing to prevent the settlor acting in that way. In both cases, the other party to the declaration acted with complete indifference to the existence and operation of the purported trust. In Mr Stafford's case this is very apparent from what I describe in paras. 258-259 and 268-275 above.

307. In making my findings in relation to the RCT, I fully accept that a court should exercise caution before making a finding that a trust is a sham. I bear in mind the observation of Neuberger J. (as he then was) in *National Westminster Bank Plc v. Jones* [2001] 1 BCLC 98 that there is a strong and natural presumption against holding a document to be a sham. However, in this case, this presumption is tempered by the fact that Mr. Ryan has, himself, positively contended that many documents which he put in place, during the course of the events in issue here, are shams and were not intended to take effect in accordance with their terms. In light of this very unusual fact, it is not at all surprising that the declaration of trust in favour of the RCT might also be a sham.

308. I also wish to make it clear that any finding I make in relation to the status of the RCT is solely for the purposes of these proceedings as between the plaintiffs and Mr. English. I do not wish in any way to cut across any rights which the named beneficiaries of the RCT might possibly have against any party. They will need to take their own advice.

309. On the basis of the evidence which I have heard in these proceedings, I have come to the conclusion that the evidence overwhelmingly establishes that the RCT is a sham at least insofar as HKRME is concerned. Mr Ryan has, by his own admission, sought to put on place a number of elaborate - but false - paper trails and the documents in relation to the RCT appear to me to fall into this category. In addition, the conduct of both Mr. Ryan and Mr. Stafford was entirely inconsistent with the existence of any enforceable trust over the shares in HKRME in favour of the beneficiaries of the RCT.

310. As noted in para. 21 above, one of the curious features of the RCT is that it was established pursuant to a draft deed prepared by Mr. Ryan himself. Of itself, this might not be remarkable. However, in circumstances where Mr. Ryan was consulting a plethora of advisers as to how he could deal with his assets in a way that minimised his exposure on a bankruptcy, it is inexplicable that he would not wish to ensure that any deed of trust executed at this time was prepared by solicitors. This is particularly so in circumstances where the shares in HKRME represented Mr. Ryan's future as he himself acknowledged in the course of his evidence. The manner in which the RCT was purportedly put in place is in marked contrast to the establishment of the ENA trust which was clearly intended to have legal effect.

311. It is equally inexplicable that Mr. O'Donovan of Orpen Frank was not made aware of the existence of the trust during the summer months of 2011. I reject Mr Ryan's contention he did not do so because he was afraid that the information would be passed to a director of HKR Dublin. That is simply not credible. Mr Ryan, as an experienced businessman, would know very well that Mr O'Donovan, as a solicitor, could not lawfully divulge confidential client information to a third party. During the first half of 2011, a complex corporate structure was under discussion (in relation to the Middle East business) between Mr. Ryan and a number of advisors including Mr. O'Donovan, Mr. Rothwell and Mr. Lernihan. As noted in para. 68 above, the corporate structure that was under discussion at that time was inconsistent with the existence of a trust in which the shares in HKRME were already beneficially owned

by the RCT. This was not the first time that an inconsistent structure was under consideration by Mr. Ryan, in conjunction with a suite of advisers. A similar inconsistency arises in the context of the PWC memorandum discussed in para. 40 above. At that time Mr. Ryan was being advised not only by Mr. Rothwell but also by the late Owen O'Connell of William Fry. Under the terms of the proposed trust described in the memorandum of advice from PWC, Mrs. Veronica Ryan was to be a beneficiary. She was not a beneficiary of the RCT. Again, it is impossible to understand how, if the shares in HKRME were already held on trust for Mr. Ryan's children, any new structure could conceivably be contemplated which would see the business run for the benefit of a different trust of which there would be at least one different beneficiary namely Mrs. Ryan.

312. There are also a significant number of contemporaneous statements by Mr. Ryan which are manifestly inconsistent with the existence of the RCT. For example, as noted in paras. 41 to 42 above, at a board meeting of HKR Dublin on 18th March, 2011, Mr. Ryan confirmed to the directors of HKR Dublin that HKRME was held in trust for HKR Dublin by him. Similarly, in an email of 1 April, 2011 (addressed in para. 60 above) Mr. Ryan proposed a plan to Mr. Griffin (another of his advisers) that would involve the transfer of the UK and UAE businesses to a third party and the onward transfer of the businesses to a trust. If the shares in HKRME were already held on trust for the RCT, such an arrangement could not have gone forward. It is also significant that when, in early 2011, Mr. Ryan approached Mr. Stone about a possible "*warehousing*" or "*caretaker*" deal, he said nothing to Mr. Stone that the Middle East Business was already held on trust for his children. Given that Mr. Stone was a friend of Mr. Ryan, there would be no reason for Mr. Ryan to withhold from him any information in relation to the existence of a trust.

313. It is also striking that, at about this time, Mr. Ryan asked Mr. Stafford to act as a caretaker of the business. However, if the shares in HKRME were already held on trust for the RCT, it is difficult to see why Mr. Stafford would be asked to act as a "*caretaker*" of a business which already formed part of the assets of a trust of which Mr. Stafford was already the sole trustee. In those circumstances, to ask Mr. Stafford to act as caretaker would make no sense. It would involve a rather bizarre structure under which Mr. Stafford, the trustee, who had appointed Mr. Ryan as his delegate in relation to the RCT, would then act as a caretaker on behalf of his own delegate. Yet, that was the evidence that both Mr. Ryan and Mr. Stafford put forward at the hearing and asked me to accept.

314. It is also noteworthy that there is nothing in the handwritten note made by Mr. Ryan of his conversation with Mr. English in March 2011 (when he asked Mr. English to act as caretaker of the Middle East business) which makes any reference to the RCT. Even more importantly, when Mr. Ryan, in October, 2011, came to create a draft caretaker agreement, para. 1 of the draft document contained a covenant that Mr. English held the shares in HKRME for Mr. Ryan and his estate. As noted in para. 143 above, this is plainly inconsistent with the shares being held on trust for the benefit of the RCT. On the contrary, it strongly signifies that the shares were to be held by Mr. English for the benefit of Mr. Ryan personally. The draft caretaker agreement is particularly important in circumstances where there is no suggestion that it was a sham. It sets out what Mr. Ryan would very much like to have put in place if he only had the courage to ask Mr. English to execute the document. Moreover, it is a contemporaneous document. There is no suggestion that it was constructed after the event. Ms. Sockett confirmed that she typed the document while acting as Mr. Ryan's secretary in Abu Dhabi.

315. There are also a number of other contemporaneous documents which are very revealing and which have never been suggested by any party to constitute a sham. Thus, for example, as discussed in paras. 180-182 above, a critical email was sent by Mr. Ryan to Mr. English on 21st April, 2012, immediately before Mr. Ryan departed for Kabul. This email was written at a time when Mr. Ryan very clearly had a concern as to whether he would return alive from Afghanistan. In the email, Mr. Ryan asks Mr. English to set aside the "*money from company*" (i.e. HKRME) for Veronica Ryan, his estranged wife. He also asks that 10% would be set aside for Ms. Walsh, his current partner. This email, written at a time when Mr. Ryan was very obviously concerned about his survival, is particularly telling. There is no mention of the RCT or of any trust in favour of his children. In fact, there is no mention, at all, of his children. As stated in para. 182 above, if ever there was a moment to mention the existence of the RCT, it was in this email of 21st April, 2012. If, in truth, the RCT was genuine and was already the beneficial owner of the shares in HKRME, it is inconceivable that Mr. Ryan would not have referred to the RCT and his three daughters in this email. The proposed distribution to Mrs. Ryan and Ms. Walsh are entirely inconsistent with the existence and operation of the RCT. Neither woman was a beneficiary of the RCT. Plainly, if the RCT owned the beneficial interest in the shares in HKRME, then neither the late Mrs. Ryan nor Ms. Walsh could properly have been made the subject of any payments from HKRME. Yet, that is what Mr. Ryan himself requested Mr. English to do, at this critical moment when he believed that his life was at risk.

316. Furthermore, the payments made to Ms. Walsh during the course of 2014 (discussed in paras. 228 to 230 above) are also inconsistent with the existence of a trust in favour of the RCT over the shares in HKRME. At a time when HKRME had serious financially difficulties, a total of AED 550,000 was paid to Ms. Walsh during the course of 2014. In the course of his evidence, Mr. Ryan appeared to be oblivious to the very obvious inconsistency between his contention that the shares in HKRME were held for the benefit of the RCT and his admission that these sums were paid out to Ms. Walsh. As noted in para. 228 above, Mr. Ryan said, in the course of his evidence, that he made no apology for the money paid to Ms. Walsh who was "*out there …trying to make some form of life* for us" (emphasis added). It is quite clear from this evidence that Mr. Ryan considered that he was free to direct how the moneys of HKRME could be expended and that he considered that he was free to pay moneys out of HKRME to persons who were not beneficiaries of the RCT.

317. It is particularly striking that Mr. Ryan considered that he was entitled to facilitate the transfer of very significant sums from HKRME to Sunvit. While Mr. Ryan has contended in these proceedings that these sums were for the benefit of the RCT, this is not borne out by the contemporaneous evidence. In the first place, it is inconsistent with the terms of the email of 21st April, 2012 (discussed in para. 312 above). It is also completely inconsistent with the email of 12th February, 2015 discussed in paras. 240-242 above. In that email, Mr. Ryan, speaking of the Sunvit transfers, says, in the first person singular, that: "I *was too greedy with the amount taken off the table at the design stage*…". As noted in para. 241 above, this email cannot be said to have been written for "*look back*" purposes since it refers to the need to be careful with the trustee in bankruptcy. The email says nothing about the existence of any trust in favour of the RCT or Mr. Ryan's children. No indication whatever is given in the email that the money which had been transferred to Sunvit was held by it on trust for the RCT or the children. On the contrary, the email very clearly shows that Mr. Ryan regarded the monies transferred to Sunvit as monies held for his personal benefit. Furthermore, if the agreement between the parties had been to the effect that the monies were to be held on trust for the benefit of the RCT (after payment of the liabilities of HKRME) it is inexplicable that no reference is made in the email to the RCT.

318. To my mind, all of these features strongly point in the direction that the RCT was never intended to take legal effect insofar as the shares in HKRME are concerned. Moreover, when one looks at the behaviour of Mr. Stafford, the purported trustee of the RCT, his conduct is also completely inconsistent with the existence and operation of a trust over the HKRME shares. As described in para. 272 above, the circumstances of the execution by Mr. Stafford of the deed of trust of the RCT on 15th November, 2009 and the subsequent delegation executed by him on 1st December, 2009 are revealing. Mr. Stafford confirmed that, on both occasions, Mr. Ryan took the documents to him, asked him to sign the documents and then took them away. When Mr Stafford was asked whether

he had read the documentation carefully, his answer was that it probably did not make much sense to him. As further noted in para. 274 above, Mr. Stafford confirmed that he did not retain any copy of either the deed of trust or of the delegation. It is impossible to understand how any trustee could perform his duties in such circumstances. It is a basic requirement that a trustee should comply with the terms of the trust deed. If there was, in truth a trust in existence, Mr Stafford could not have performed his duties without a copy of the deed available to him at all times. Yet, he did not see the deed of trust again until a few months before his evidence at the trial. As described in para. 274 above, it was put to Mr. Stafford, on cross examination, that what he seemed to be saying was that: "*whatever way Mr. Ryan wanted to play it, that was his business; is that right?*" to which he answered: "*to a good degree*". He confirmed on Day 15 that he knew nothing about Mr. Ryan's dealings with the shares in HKRME notwithstanding that, under the terms of the delegation, Mr. Ryan was simply his delegate. He accepted that it was fair comment that he did not really want to have any involvement in the running of the RCT. He also frankly admitted that he was not aware of how Mr. Ryan had dealt with the shares or what he had said to anyone about the existence of the RCT. Even more remarkably, he admitted that it was really a matter for Mr. Ryan "*to do what he wanted*". This conduct on the part of Mr. Stafford is completely at variance with the duties and obligations of a trustee. At the hearing, it was submitted on behalf of the plaintiffs that Mr Stafford's conduct could be explained by the fact that he had executed a delegation in favour of Mr Ryan. I reject that submission. In this context, it is important to recall that, under the terms of the purported delegation of 1 December, 2009, Mr. Ryan was not given carte blanche to deal with the assets of the purported trust. The terms of the delegation were confined to the entry of such documents and agreements and the payment of such fees as might be required in the UAE to establish HKRME and to assist in its future management. All of this was expressly on the understanding that the RCT would at all times be the beneficiary of the shares and any value created. If, in truth, there was a trust in existence, then Mr. Stafford, as trustee, had an obligation to perform the role of trustee. The role of trustee was not delegated to Mr. Ryan under the terms of the delegation. This is reinforced by a consideration of the terms of the purported declaration of trust over the HKRME shares. Under that declaration, Mr. Ryan purported to acknowledge and declare that he held the shares in HKRME on trust for the RCT and he further agreed to transfer those shares and any "*derivative capital sum and interest payable in respect thereof and any bonuses other payments rights and privileges arising therefrom*" in such manner as the trustee (i.e. Mr. Stafford) "*shall from time to time direct*". Thus, the terms of the declaration (if it had ever been intended to have legal effect) envisage that Mr. Stafford would, as trustee, from time to time give directions in relation to the property of the trust (which included not only the shares in HKRME but all payments derived from them). On the basis of Mr. Stafford's evidence, it is abundantly clear that he did not make any attempt to discharge his obligations and duties as trustee. He left everything to Mr. Ryan. This is plainly inconsistent with the existence of a trust over the shares. On the contrary, it is consistent with a belief that Mr. Ryan was the true owner of the shares.

319. Mr. Stafford's evidence in relation to the execution of the Deed of Settlement with the bankruptcy trustee was also very revealing. Although the deed had only been executed several weeks prior to his evidence, he was unsure whether he was a party to the deed. When the Deed of Settlement was put to him, he did not initially recognise it. When he was asked if he had read the document, he answered no. However, he confirmed, on cross examination, that his signature appeared on the deed. He was asked whether Mr. Ryan had explained to him what the deed was about and his answer was: "*I forget, I'll be honest*". As noted in para. 268 above, he was unable to explain what claims had been dropped against the RCT in the deed.

320. For the reasons set out in para. 271 above, I find it impossible to understand how a trustee of a trust could proceed to enter into a Deed of Settlement on the basis outlined by Mr. Stafford in his evidence on Day 15. The deed in question had significant implications for the RCT of which Mr. Stafford was purportedly the sole trustee. Significantly, Mr. Stafford was not even aware that the RCT had a bank account. He was also not aware of how the sum of $500,000 came to be paid even though he understood that this had been paid by the RCT out of its assets. Again, this evidence shows very clearly that Mr. Stafford was not, in fact, acting as trustee. He was a trustee in name only. He was not a trustee in reality. As noted above, the terms of neither the delegation nor the declaration of trust over the shares in HKRME relieved Mr. Stafford of his obligations of trustee (if, in truth, there was any trust requiring a trustee to act).

321. It is also a curious feature of the Deed of Settlement that, as noted in para. 264 above, the deed provides an acknowledgment on the part of the bankruptcy trustee as to the existence and validity of the RCT "*notwithstanding any determination to the contrary that may be made by a court at any point in the future on this issue*". This suggests that there was sensitivity on the part of Mr. Ryan (and possibly Mr. Stafford) in relation to the validity of the RCT.

322. Thus, on the one hand, there is a sequence of conduct on the part of Mr. Ryan which is completely inconsistent with the existence and operation of the RCT. On the other hand, there is complete indifference on the part of Mr. Stafford as to the activity of Mr. Ryan, as his delegate, in relation to the operation of this purported trust. It is quite clear that Mr. Stafford paid no attention whatever to the limited terms of the delegation to Mr. Ryan or to the way in which Mr. Ryan purported to operate as his "*delegate*". There is no suggestion that Mr. Ryan reported to Mr. Stafford at any stage. Nor is there any suggestion that Mr. Stafford monitored the performance of the trust or the security of its assets or gave any directions to Mr. Ryan as to how the assets should be dealt with. To my mind, there can be no doubt but that Mr. Ryan, in setting up the RCT, had no genuine intention that the shares in HKRME would be held for the benefit of the RCT. Likewise, Mr. Stafford acted with what can only be described as reckless indifference as to what Mr. Ryan did with regard to the shares in HKRME. Neither party acted in a manner which was consistent with the existence or operation of a trust over the HKRME shares.

323. In these circumstances, I have come to the conclusion that the RCT is, in truth, a sham, at least insofar as the shares in HKRME – and the payments from HKRME - are concerned. I do not believe that Mr. Ryan had any intention, when he executed the deed of trust of the RCT or the subsequent declaration of trust over the shares in HKRME, of transferring a beneficial interest in the shares in HKRME to a trust on behalf of his children. In my view, the evidence very clearly shows that the establishment of HKRME was done with a view to protecting Mr. Ryan's own livelihood. HKRME was seen as his future and he was determined to take any step (including the creation of sham documents) to insulate the HKRME business from the consequences of his personal insolvency. To my mind, it is very clear that Mr. Ryan executed the deed of trust, the delegation, and the declaration of trust with a view to putting them aside to potentially be used and relied upon in the future (if so required) in order to make a case that the HKRME shares were not beneficially owned by Mr. Ryan himself and, therefore, not subject to attack by a trustee in bankruptcy or by creditors. To paraphrase the deputy judge in Wyatt, these documents were put aside for a rainy day in an attempt to protect Mr. Ryan's most valuable unsecured asset from the consequences of bankruptcy. They were also put in place as part of his "*optioneering*" process but never put to use in circumstances where Mr. Ryan decided, instead, to go forward with what was ostensibly a "*sale*" to a friendly third party, namely Mr. English.

324. Insofar as Mr. Stafford was concerned, it is very obvious that he acted with complete disregard for his obligations as trustee. He never, in fact, undertook any of the obligations of trustee. This was for the very simple reason that, notwithstanding the execution of these documents, the trust was never in fact pursued. I do not believe that Mr. Stafford would have acted in the way that he did unless it was never intended that the trust would take effect.

325. This finding has significant implications for the claim made by Mr. Ryan and Mr. Stafford in these proceedings. The only claim which they make in the proceedings is in their capacity as delegate and trustee (respectively) of the RCT. In circumstances where, I have held, that, for the purposes of these proceedings, the RCT is a sham, their claim necessarily fails. Notwithstanding this finding, I believe, for completeness, I should make findings as to the nature of the arrangement put in place between Mr. Ryan and Mr. English in relation to HKRME and in relation to the transfers to Sunvit.

Findings in relation to the nature of the arrangement between Mr. Ryan and Mr. English

326. On the face of it, Mr. English purchased the shares in HKRME from Mr. Ryan and subsequently sold those shares back to Mr. Ryan. As described in para. 78 above, the letter dated 31st May, 2011 (actually executed in August, 2011), by its terms, purports to evidence the purchase of the shares in HKRME for a consideration of €100,000 adjustable up or down depending on the outcome of an independent market valuation. Mr. Ryan contends that this is a fabricated document created for the purposes of disguising the true nature of the agreement from his trustee in bankruptcy and from his creditors. Mr. Ryan contends that the true nature of the arrangement was that Mr. English would simply act as a caretaker to look after HKRME pending the resolution of Mr. Ryan's financial difficulties. All of this is strongly contested by Mr. English who forcefully makes the case that the legal documents put in place evidencing a purchase of the shares in HKRME mean what they say and were always intended to mean what they say.

327. In determining which version of events might be correct, Mr. Ryan is at a significant disadvantage. He has accepted that he has lied on many occasions in the past. On the basis of his own case, he has created sham documents and participated in the manipulation (in a materially misleading way) of the accounts of HKRME. On the basis of his evidence and that of Mr. Mohammed, he has conspired with Mr. Mohammed and Mr. Kingston to create false invoices to give the impression that large sums were due by HKRME to Green Cube. As described in para. 128 above, Mr. Ryan was aware that the Winthrop VAT invoice was to be used for the purposes of falsely reducing the tax liabilities of HKR Dublin to the Revenue Commissioners and for the purposes of assisting in the compromise of a winding up petition presented by the Revenue against HKR Dublin. Furthermore, Mr. Ryan was, in my view, aware that there was no genuine debt owed to Winthrop by HKR Dublin. What made this even more reprehensible was that, at the time those events occurred, HKR Dublin was clearly in financial difficulty. Yet, Mr. Ryan actively cooperated in the presentation of an invoice by Winthrop to HKR Dublin at this time notwithstanding that no monies were in fact lawfully due by HKR Dublin to Winthrop.

328. On the basis of his own evidence, Mr. Ryan also lied at a board meeting of HKR Dublin in March 2011. As described in para. 41, the minutes of the meeting of the board of HKR Dublin on 18 March, 2011 record that Mr. Ryan confirmed that the shares in HKRME were held in trust for HKR Dublin. Yet, on Day 6, at p. 16, Mr. Ryan said that the reality was quite different. His intention was to retain HKRME as an independent new company.

329. Most troubling of all, are the lies that were told by Mr. Ryan in his application for an IVA in England and in response to questions asked of him by representatives of his trustee in bankruptcy in England. In completing the statement of affairs for the purposes of the proposed IVA, Mr. Ryan expressly stated that he believed the facts stated to be true. Among the facts stated in that statement of affairs was that Mr. Ryan had sold his interest in the UAE architectural business. He said nothing about the existence of any alleged caretaker agreement. He characterised the transaction with Mr. English as an outright sale. While Mr. Ryan did not ultimately pursue the IVA, it is quite clear from the documents which he completed in October 2011, that he was prepared to go forward with it on the basis of what he now accepts were lies. Certainly, if Mr. Ryan is correct in suggesting that the arrangement with Mr. English was in the nature of a caretaker agreement, the characterisation of the transaction in the statement of affairs was false and untrue.

330. The interview between Mr. Ryan and the representatives of his bankruptcy trustee has already been described in paras. 160-169 above. As described in those paragraphs, Mr. Ryan very consciously and deliberately told lies to the representatives of his bankruptcy trustee as to the value of the HKRME business, the nature of the arrangements with Mr. English, and his knowledge of Mr. Gallucci. On Day 7 of the trial, Mr. Ryan acknowledged that, in making these statements to the representatives of his bankruptcy trustee he misrepresented the position. In answer to a question from me, he accepted that he was not honest. As noted in para. 169 above, this creates an obvious difficulty for Mr. Ryan. If Mr. Ryan lied to his trustee in bankruptcy, it is difficult for any court to accept that he is necessarily telling the truth now in the course of his evidence in these proceedings. Mr. Ryan has shown himself in the past to be prepared to lie when it suits him to do so. It is particularly shocking that he should lie to his trustee in bankruptcy. Bankruptcy represents a very important mechanism to deal with personal insolvency. It is a crucial facet of bankruptcy that all of the assets of the bankrupt become available for his or her creditors. It is therefore essential that any bankrupt fully discloses to his or her trustee all details in relation to assets. The bankruptcy system could not operate if such disclosure was not made. The making of such disclosure is the quid pro quo for the benefits which bankruptcy provides (in particular the discharge from historic indebtedness obtained by the debtor on the conclusion of bankruptcy). Lying to a trustee in bankruptcy is therefore a very serious matter and one which I believe cannot be excused. The gravity of Mr. Ryan's misconduct is accentuated by the extent of the transfers that were made to Sunvit in the period between April 2012 and March 2013. All of these transfers took place before the interview with the representatives of the trustee in bankruptcy in September 2013. As the emails of 21 April, 2012, and 12 February, 2015 make clear, Mr. Ryan clearly regarded the Sunvit monies as held for his own benefit. In facilitating these transfers, Mr Ryan was attempting to salt away very substantial assets for his own benefit and to conceal his interest in these monies from his bankruptcy trustee.

331. In the circumstances described above, I cannot treat Mr. Ryan as a credible witness. Accordingly, in determining the true nature of the arrangements between Mr. Ryan and Mr. English, I do not believe that I can safely rely solely on Mr. Ryan's evidence.

332. On the other hand, I also have reservations about the evidence of Mr. English. There are a number of aspects of his conduct and his evidence which cause me serious concern. In the first place, Mr. English willingly entered into the arrangements (described in paras. 174-178 above) in relation to the "*Consultancy Agreement*" with Sunvit. It is clear from these arrangements that the very substantial payments to be made to Sunvit were in return for fictitious introductions by Mr. English to sources of work for HKRME. As explained in para. 176 above, HKRME committed to make very substantial payments to Sunvit in respect of a service that was never provided by Mr. English and was never intended to be provided by him. The entire arrangement was simply designed to provide a mechanism whereby extremely large sums could be extracted from HKRME and transferred offshore. The fact that Mr English agreed to be party to such a bogus arrangement raises a very serious issue in relation to his probity.

333. I was also deeply unimpressed by the alacrity with which Mr. English proceeded to issue an invoice on behalf of Winthrop to HKR Dublin in 2011, in respect of introductions alleged to have been made several years previously and which had never been the subject of any agreement by HKR Dublin to make any payment. This invoice was written at a time when Mr. English was clearly aware that HKR Dublin was in financial difficulty. It was written at a time when Mr. English, on the basis of his own evidence, says that he was keen to be seen to put pressure on HKR Dublin to pay the "*debt*" in case payment of the invoice was subsequently challenged by a liquidator appointed to HKR Dublin. As explained in para. 130 above, Mr. English personally directed the issue of this invoice. The invoice in question claimed payment of VAT which Mr. English must have known was likely to be used for the purposes of claiming a VAT credit. This was done even though the invoice was bogus in circumstances where there had never been any agreement on the part of HKR Dublin (at the time the introductions were allegedly made) to make any payment to Mr. English or any of his companies.

334. Furthermore, as explained in paras. 191-192 above, Mr. English was involved in a sham termination of Mr. Ryan's involvement with HKRME. While Mr. English in his witness statement had tried to suggest that the termination of Mr. Ryan was genuine, he accepted, under cross-examination, on Day 19, that the grounds relied upon for the "*dismissal*" of Mr. Ryan were "*complete nonsense*". As noted in para. 192 above, he had no answer to the suggestion made to him that the grounds bore "*no relationship to the reality of the situation".*

335. The circumstances in which Mr. English paid for the shares in HKRME are also very revealing. While Mr. English sought to characterise the transaction as a normal purchase of shares by him, it is clear that the purchase price was in fact funded by HKRME. The byzantine manner in which this transaction was carried out is described in paras. 108-109 and 115-122 above. Although the funds were provided by HKRME, it is clear that no money whatever was owed by HKRME to Mr. English or to any of his companies. Yet Mr. English saw fit to direct his assistant, Audrey, to send an invoice to Kingston for the provision of "*consultancy work*" for €100,000 notwithstanding that Mr. English knew that no relevant consultancy services had been provided. As noted in para. 120 above, I was unimpressed by the evidence given by Mr. English on Day 17 when he purported not to know the difference between "*introductions*" on the one hand and "*consultancy*" on the other. As stated in the same paragraph, it is my view that Mr. English generated a fictitious invoice for non-existent consultancy services in order to create a paper trail which would suggest that there was a reason why Kingston International was making a payment to Penman, a company controlled by Mr. English. As further noted in paras. 121-122 above, the belated attempt by Mr. English to suggest that there had been some form of novation is equally unimpressive.

336. Furthermore, as explained in paras. 104-107 above, I found that the evidence of Mr. English in relation to providing "*fair value*" for the shares in HKRME was inconsistent and unconvincing. Such inconsistencies are a hallmark of unreliable evidence. Contrary to the evidence which he gave, I came to the conclusion that Mr. English was aware that the consideration paid by him represented an undervalue for the HKRME shares.

337. The evidence given by Mr. English in relation to the backdating of the agreement to acquire the shares to 31st May, 2011, also gives cause for concern. As noted in para. 85 above, his tortuous explanation for his acquiescence in the misstating of the documents does him little credit. There is a similar issue in relation to the explanation given by Mr. English for his response to the email written by Mr. Ryan on 21st April, 2012, prior to his departure to Kabul. Mr. English was extremely cagey about this email and what he intended by it. From my observations of his evidence on this issue in the course of Days 16 and 17, I formed the view that he was desperately trying to explain away this email which, on its face, appears to acknowledge that Mrs. Ryan and Ms. Walsh would be looked after in the event of Mr. Ryan's death while in Afghanistan.

338. In their submissions, counsel for the plaintiffs have also drawn attention to the shifting nature of the evidence given by Mr. English in relation to an alleged request by Mr. Ryan for a "*side agreement*". On Day 16 at p. 67, Mr. English, for the first time, said that Mr. Ryan had asked him "*a couple of times*" to enter into a side agreement and Mr. English refused to do so. This evidence had never been given in the very lengthy witness statement furnished by Mr. English. Furthermore, it had never been put to Mr. Ryan on cross-examination. However, Mr. English was remarkably vague about the issue. On Day 17 at p. 21 he said that he could not be precise about the number of times a side agreement was raised and he then said:

> *"But I can say that I've a recollection of a couple of times that Jerry said "should we have a side agreement?"* and I said no. *…".*

339. Under cross-examination, when he was pressed as to when a request for a side agreement was made by Mr. Ryan, his response was (on Day 18 at p. 37) that it was suggested on "*day one*" that there should be a side agreement. He contended (for the first time) that the side agreement was purely about the sale back of the company. A little later on Day 18 (at p. 39) he was pressed on cross-examination as to what the side agreement was to be about. His response was:

> *"We never got into the details of a side agreement."*

340. It was then put to him that no more than a few minutes earlier, he had said that the side agreement was to be about the sale back of the company. When Mr. English was confronted with the stark inconsistency between these two aspects of his evidence his only response was (Day 18 at p. 40):

> *"Well, for me back then it could only be about the purchase back of the company because the company subsequently went on to have a lot of money but that wasn't in the discussion at all back then".*

341. In my opinion, this was a glaringly inconsistency in the evidence given by Mr. English. Along with the other factors outlined above, it undermines his credibility generally. A further striking feature of his evidence is that, according to him, there were several occasions when Mr. Ryan expressed an expectation in relation to the Sunvit monies and where Mr. English did nothing to disabuse him of that expectation. This is addressed, for example, in paragraphs 108, 207, and 222-223 above.

342. A further striking feature of the case made by Mr. English relates to the unsent email discussed in paragraphs 196-197 above. In that email (which was apparently created in October, 2012 but never sent to Mr. Ryan) Mr. English used language which (had the email been sent to Mr. Ryan) would have put Mr. Ryan on notice that Mr. English regarded himself as the owner of HKRME and that he regarded Mr. Ryan as having no more than a business development role within that company. It is very curious that this email was never sent. It is equally strange that the email that was sent by Mr. English to Mr. Ryan on 5th October, 2012 used quite different language and in particular suggested that Mr. Ryan needed "*to find someone else who can take ownership*". The language in the email that was actually sent is difficult to reconcile with an outright sale arrangement. I have to say that I find it difficult to understand why, if the arrangement between the parties always was an outright sale agreement, that Mr. English did not say so in his email of 5th October, 2012.

343. A further puzzling feature of the evidence of Mr. English relates to the evidence given by Ms. Walsh (as recounted in paras. 149-152 above). As explained in paragraph 152, I have no reason to doubt what was said by Ms. Walsh as to what transpired at the meetings on Yas Island in September, 2012 and in North County Dublin in August, 2012. Ms. Walsh gave evidence that, on each occasion, the language used by Mr. English, in the course of his conversations with Mr. Ryan and Ms. Walsh was consistent with Mr. English providing assistance to Mr. Ryan rather than acting as absolute owner of HKRME. As noted in para. 152 above, none of this evidence was addressed in detail by Mr. English (other than to refute it in broad terms). Likewise, nothing was put to Ms. Walsh on cross-examination to suggest that her evidence was false or misleading in relation to what she suggested was said by Mr. English during the course of these encounters.

344. In these circumstances, I am not persuaded that Mr. English is a reliable witness in respect of the events in issue. The aspects of his evidence (discussed above) lead me to conclude that much of what he says is simply not credible.

345. In light of the views which I have formed about the credibility of Mr. Ryan and Mr. English respectively, it is impossible to treat the evidence of either of them as reliable. I must be equally cautious in considering many of the documents in the case. Both Mr. Ryan and Mr. English have shown themselves to be willing to create bogus documents. In these circumstances, I must (like Baker J. in *Crowley v. Wilsons Auctions Limited* [2014] IEHC 404 at para. 15) rely on such objective facts that can be discerned and in particular on the overall probabilities.

346. In this context, I bear in mind the observations of Robert Goff L.J. in *Armagas Ltd. v. Mundogas SA* [1985] 1 Lloyd's Rep 1 at p.p. 56-57 where he said: -

> *"speaking from my own experience, I have found it essential, in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence … reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth".*

347. It is an objective fact that Mr. Ryan, in the course of 2010 and 2011, was in very severe financial difficulties. It is also uncontested that, during this period, Mr. Ryan was desperately searching to find a mechanism which could be used to insulate the HKRME business from his creditors and also from the effects of his bankruptcy. It is equally clear that Mr. Ryan saw the HKRME business as the ongoing source of his livelihood. In short, he saw it as his future. He was therefore desperately anxious that it should not fall into the hands of his trustee in bankruptcy.

348. Although Mr. Ryan discussed the possibility of setting up a trust (involving a quite elaborate structure including entities in Malta and the BVI) Mr. Ryan was concerned that the establishment of a trust would very likely be investigated by any trustee in bankruptcy. It was against this background that he ultimately decided to go forward with a different structure. This is apparent from the evidence given by Mr. Stone (discussed in paras. 45-49 above). Mr. Stone was, in my view, an honest witness. I accept his evidence. He gave very clear evidence that he was approached by Mr. Ryan in early 2011 with a proposal that he would facilitate the taking over of Mr. Ryan's business in the Middle East by means of a transaction whereby Mr. Ryan would provide funds to Mr. Stone via a third party and Mr. Stone would, pay those funds to buy the Middle Eastern company and give it back to Mr. Ryan when he came out of bankruptcy. It is clear from Mr. Stone's evidence (quoted in para. 47 above) that the underlying intention of this proposal was that Mr. Ryan would remain the beneficial owner of the company and would continue to carry on its business. This was, essentially, the "*caretaker*" proposal. As discussed in paras. 43-44 above, a similar proposal was made to Mr. Stafford. I have no reason to doubt Mr. Stafford's evidence in that respect. His evidence is consistent with that of Mr. Stone.

349. Mr. Stone's evidence is also borne out by the handwritten note dated 26th March, 2011 made by Mr. Ryan of his meeting of that date with Mr English. While I am concerned about the veracity of many of the documents in this case, I do not believe that the handwritten note is bogus. It is consistent both with the evidence of Mr. Stone and with the evidence in relation to the meeting with Mr. Hannigan of Noel Smyth & Partners (discussed below). The relevant extract from the note is quoted in para. 53 above. What the note suggests is that a "*story*" would be pursued which would involve a sale of the UAE and London businesses to a third party. It would be part of this "*story*" that Mr. Ryan could not cope with the UAE and London businesses. Curiously, this is the "*story*" which ultimately appears in the "*board minutes*" emailed by Mr. Gallucci to Mr. Ryan on 14th and 20th August, 2011 (quoted in paras. 81-82 above) where it was stated that Mr. Ryan had come to the "*difficult decision to sell his shares … He has found life extremely difficult living in the region …*".

350. The terms of the handwritten note of 26th March, 2011 are also corroborated by Mr. Ryan's email to Mr. Griffin of the same day (quoted in para. 58 above) where Mr. Ryan, excitedly, in a eureka moment, stated that: "*from now on I'm not going to refer to a trust! It's a third party …*". This email is written in such frank terms that I do not believe that it could be said to be a sham. Moreover, both the email and the handwritten note of 26th March, 2011 are consistent with what transpired at a meeting between Mr. Ryan and Mr. Hannigan of Noel Smyth & Partners on 19th April, 2011 (addressed in paras. 62-63 above). Mr. Ryan's handwritten note of that meeting records that Mr. Hannigan advised him to sell the "*Middle East company*" to a trustworthy third party. It is significant that Mr. Ryan was not cross-examined about this meeting. His evidence in relation to it has therefore not been challenged. It is also significant that Mr. Hannigan was not called to give evidence. It would have been open to Mr English to do so in circumstances where Mr Ryan did not claim privilege over the note of the meeting and must thus be taken to have waived privilege over what transpired at this meeting. In these circumstances, I therefore accept the evidence that exists in relation to what transpired at this meeting.

351. The evidence of Mr. Stone is further corroborated by the evidence of Mr. Mohammed. This evidence is considered in paras. 93-96 above. Given that Mr. Mohammed admitted to fabricating documents, I must treat his evidence with caution. Nonetheless, I have come to the conclusion that, on the issue of the Green Cube invoices, his evidence is credible. As part of that evidence, Mr. Mohammed described a proposal made to him and Mr. Kingston by Mr. Ryan in which HKRME monies would be routed through Kingston International with a view to providing funds to a purchaser to pay for Mr. Ryan's shares in HKRME. This is also, of course, precisely what happened. The money trail is summarised in paras. 115-119 above. It is also evidenced by the contemporaneous emails sent between Mr. Ryan, Mr. Kingston and Mr. English.

352. In these circumstances, I am of the view, on the balance of probabilities, that the proposal which Mr. Ryan made to Mr. English whereby the latter would acquire Mr. Ryan's interest in HKRME and HKRAS, was consistent with the proposal previously made to Mr. Stone and Mr. Stafford namely that Mr. English would acquire the shares, ostensibly as a third party purchaser, but in reality as a caretaker, on the basis that the shares would be returned to Mr. Ryan, once the latter emerged from bankruptcy. At that point, the shares would be "*bought back*" by Mr. Ryan. For the reasons discussed in paras. 87-101 above, I am of the view that the price paid for the shares by Mr. English (with the assistance of the monies provided by HKRME) represented an undervalue for the shares. Furthermore, for the reasons outlined in paras. 102-107 above, I have also come to the conclusion that Mr. English was aware that the price paid (with the assistance of the funds provided by HKRME) was an undervalue.

353. The question remains whether Mr. English agreed, in turn, to acquire the shares as caretaker. He vehemently denies that he ever agreed to purchase the shares on that basis. I reject his evidence to that effect. In my view, it is wholly implausible that Mr. Ryan would have sold his interest in what he considered to be a very valuable asset (which would secure his future livelihood) to Mr. English for €77,000 and on the basis that this sum would be supplied to Mr English by HKRME itself. Such an arrangement makes no sense whatever. It would effectively mean that Mr Ryan had agreed to give away his most valuable asset for nothing other than the promise that he could buy it back at some stage in the future. Such an arrangement is also inconsistent with the evidence given by Ms. Walsh (recorded in paras. 149-152 above). As noted above, I accept Ms. Walsh's evidence in relation to what transpired in the course of the dinner at Yas Island in Abu Dhabi in September, 2011 and at the home of Mr. English in August, 2012. While her

evidence is in relatively broad terms, it is nonetheless clear from her account of what was discussed on both occasions that what Mr. English said was not consistent with his being the absolute owner of HKRME. It is also highly significant that Mr. English never saw fit to send the email discussed in para. 196 (which was sent solely to his wife and not to Mr. Ryan). If that email had been sent, it would provide some evidence that, during the events in issue, Mr. English had asserted the rights of an absolute owner of the shares in HKRME. The text of that email is not consistent with the email that was actually sent to Mr. Ryan on 5th October, 2012 in which Mr. English suggested to Mr. Ryan that he might need to find "*someone else who can take ownership*". As noted at 197 above, it is difficult to reconcile the language in that email with an outright sale arrangement.

354. I appreciate that the legal documents that were put in place do not reflect that Mr. English was to act as a caretaker only. However, in my view, it is clear that these legal documents were put in place on these terms solely in order to put any trustee in bankruptcy off the scent. As described above, Mr. English was, very plainly, quite prepared to enter into bogus documents. The bogus invoices discussed above are an example of this. So, too, is the Sunvit "*consultancy agreement*" under which vast sums of money were transferred by HKRME to Sunvit in respect of fictitious services that were never supplied by him. I therefore regard it as probable that Mr. English would equally be prepared to enter into a bogus share purchase arrangement. Mr. English has shown himself to be all too ready to put his name to documents that were never intended to operate in accordance with their terms.

355. I appreciate that there are also other documents which are consistent with the case made by Mr. English. These include, for example, the emails of 21st September, 2011, and 6th October, 2011 (discussed in paras. 134-138 above). However, while such emails, on their face, support the case made by Mr. English, it seems to me to be more likely that they were written as part of the "*story*" that was then being pursued in order to give the appearance of an outright sale of the business to Mr. English. In fact, those emails were never followed up. Moreover, Mr. Ryan remained in the driving seat insofar as the running of the business of HKRME was concerned right up to the time he was adjudicated a bankrupt. This is supported by the evidence given by Ms. Sockett (summarised in para. 145 above). It is also supported by the very obvious fabrication of the "*dismissal*" of Mr. Ryan (discussed in paras. 191-94 above). As noted in para. 192, Mr. English, under cross-examination, accepted that the purported grounds of "*dismissal*" were "*complete nonsense*" and he had no satisfactory answer to the proposition that was put to him that he, Mr. Gallucci and Mr. Ryan were "*playing a game in relation to this, writing emails, putting on the record various documents which bore no relationship to the reality of the situation".*

356. A further example of email exchanges which support the case made by Mr. English occurred in early 2014 (as summarised in paras. 209-216 above). In the course of that email exchange, Mr. Ryan accepted that it was his intention to buy back the business on commercial terms which would suggest that it had been acquired by Mr. English on commercial terms in 2011. However, I am not persuaded that these emails reflect the true nature of the relationship between the parties in relation to HKRME. These emails were written at a time when relations between the parties appeared to have soured. It seems to me to be likely that, at this time, Mr. Ryan (who had, relatively recently, emerged from bankruptcy) was concerned to keep Mr. English "*on side*" and that he was anxious to secure the cooperation of Mr. English in transferring ownership of HKRME back to him.

357. Moreover, these emails were written at a time when it must have become apparent to Mr. Ryan that he had failed to comprehensively spell out the terms of the caretaker arrangement to Mr. English in 2011, when Mr. English agreed to acquire the shares in HKRME. In this context, Mr. Ryan, in his evidence, was very vague as to the terms of the agreement reached with Mr. English in 2011. While I accept that he and Mr. English agreed that the latter would acquire the shares in a caretaker capacity, there is no evidence to suggest that the parties discussed the terms in any detail. There was, nonetheless, an understanding that Mr. English would transfer the shares back to Mr. Ryan on a similar basis to that used to value the shares in 2011. That is in fact what ultimately happened. However, there is no evidence of any detailed discussions as to what was to happen in terms of the running of HKRME or as to the manner in which the profits (or other monies) of HKRME would be dealt with while the shares were held in Mr English's name. What is clear is that Mr. Ryan continued to believe that he should be in a position to direct how the profits (or other monies extracted from the business) should be managed and applied. This is evident from the manner in which Mr. Ryan colluded with Mr. English in relation to the transfers to Sunvit and in relation to the retention of Louvre as advisors for this purpose. It was Mr. Ryan who made the initial contact with Louvre. Mr. Ryan was clearly very anxious that Mr. English should meet with Louvre with a view to putting in place the necessary mechanisms to allow monies to be extracted from HKRME and transferred offshore to the BVI or the Channel Islands. This is evident both from the cryptic email of 8th February, 2011 (quoted in para. 172 above) recommending a visit to the Louvre "*when in Paris…*" and from the email to Ms. Sockett of 22nd April, 2012 (discussed in para. 190 above) when Mr. Ryan asked Ms. Sockett to ensure that the transfer went ahead while Mr. Ryan was in Kabul. It is also clear from Mr. Ryan's email of 12th February, 2015 (quoted in para. 240 above) where he said:-

> *"I was too greedy with the amount taken off the table at the design stage…"*

358. Although Mr. Ryan clearly regarded himself as beneficially entitled to the monies transferred from HKRME to Sunvit, there is no clear evidence of what was agreed between himself and Mr. English in relation to these monies. However, given that Mr. English was acting solely as a caretaker, I do not believe that it is in any way plausible to suggest that Mr. English would be personally entitled to retain all of the monies transferred to Sunvit. I have already held that the Sunvit consultancy agreement was a fabrication. It was simply the mechanism that was put in place to enable the transfers to be "*papered*". There were, in fact, no monies due by HKRME to Sunvit. In particular, Mr. English had never provided any introductions of new business to HKRME in the manner suggested in the consultancy agreement.

359. Furthermore, it is clear from the response sent by Mr. English to Mr. Ryan's email of 21st April, 2012 (immediately prior to Mr. Ryan's departure to Afghanistan) that Mr. English acknowledged that the money to be transferred to Sunvit was to be transferred to the late Mrs. Ryan with 10% for Ms. Walsh (in the event that Mr. Ryan did not survive this trip to Afghanistan). In response, Mr. English said in very plain terms that it would be taken care of. Mr. English made no claim to ownership of any of the monies in that email.

360. In addition, there were several occasions when Mr. Ryan spoke to Mr. English about the Sunvit monies in terms which clearly signalled that Mr. Ryan believed that he was entitled to direct how those monies should be used. Yet, on none of these occasions, was anything said by Mr. English to disabuse Mr. Ryan of his belief. This included the evidence given by Mr. English (although not accepted by Mr. Ryan) of a meeting in the Langham Hotel in London in July, 2013 (addressed in paras. 205-207 above), when Mr. English contends Mr. Ryan proposed that, out of the Sunvit monies, Mr. English should retain €1 million, Mr. Ryan should receive €1 million, Ms. Walsh should receive a further €1 million with €1 million being distributed to each of his three children. According to Mr. English on Day 16, he said that his only response to Mr. Ryan was:-

> *"That's kind of you."*

As stated in para. 207 above, to my mind, if Mr. English believed himself to be the true owner of the Sunvit monies, it is extraordinary

that he would respond in this way.

361. As discussed in paras. 219-224 above, there was a further conversation between Mr. Ryan and Mr. English in relation to the Sunvit monies in June, 2014. Both parties accept that a conversation took place at this time although there was dispute between them as to precisely what was said. What is clear is, however, is that Mr. Ryan again spoke of the Sunvit monies as though he had the power and authority to direct how they should be spent. It is equally clear that Mr. English did not deny this at the time. If the arrangement between the parties was that Mr English was to be entitled to these monies, it makes no sense that he would not assert his ownership of the monies in the course of this conversation.

362. A somewhat similar issue arises in relation to Mr. Ryan's email of 12th February, 2015 (addressed in para. 240 above). In that email, it is clear that Mr. Ryan regarded himself as owner of those monies. Yet, there was no response from Mr. English to contest what Mr. Ryan said.

363. The only evidence given by Mr. English to the contrary relates to the alleged conversation which took place in a bedroom at the Rotana Beach Hotel in Abu Dhabi on 8th October, 2012 (considered in paras. 198-200 above). As noted in para. 200, I do not accept the evidence given by Mr. English in relation to what he says transpired on that occasion. It was not mentioned in his witness statement or in his direct evidence.

364. Thus, there were several occasions when Mr. English could have said to Mr. Ryan that he had no right to any of the money and that all of it was owned by Mr. English personally. Yet, as the evidence very clearly demonstrates, Mr. English did not do so. In this regard, it is significant that when Mr. English sought to have his wife named as a beneficiary of the La Calais trust, he did not wish this to become known to the settlor. In a revealing email of 18th June, 2012, to Ms. Jenny Hennessy of Louvre, Mr. English said:-

> "*I am happy for my wife… to have equal rights as a beneficiary*. Hopefully this negates the requirement to go back to the settlor which I would prefer not to." (emphasis added)

365. If the arrangement between the parties was that Mr. English was to have ownership of the monies transferred to Sunvit, then there would be no reason for him to have any concern about going back to the settlor of the La Calais trust.

366. In light of the factors outlined above and in circumstances where Mr. English made no overt claim to ownership of the Sunvit monies in the period between 2012 and 2015, I have come to the conclusion that it cannot have been a term of the agreement between Mr. English and Mr. Ryan that Mr. English was to be beneficially entitled to the Sunvit monies. As already discussed, I do not believe that Mr. Ryan and Mr. English addressed, in any detail, the question of ownership of the Sunvit monies. I believe it is likely that Mr. Ryan considered that the Sunvit monies would be safe with Mr. English (acting as a custodian of them) pending his discharge from bankruptcy. One would not expect a caretaker to pocket part of the assets over which he was appointed. Given that Mr. English was (as I have found) acting as caretaker, this was a reasonable assumption for Mr. Ryan to adopt. In my view, if the parties had intended that beneficial ownership in the monies would pass to Mr. English, they would have expressly addressed that in their conversation. I have no evidence that it was ever agreed that Mr. English should become beneficially entitled to the Sunvit monies although it appears to be the case that Mr Ryan contemplated that some of the money might ultimately go to Mr English (such as his reference to €1 million out of €4 million. The fact that he did not assert ownership of the monies during the 2012 – 2015 period reinforces that. If Mr. English had believed that it was a term of his agreement with Mr. Ryan that he was beneficially entitled to the Sunvit monies, it is inconceivable that he would have not raised that with Mr. Ryan on every occasion when Mr. Ryan made any suggestion to the contrary. In my view, the fact that he did not do so speaks volumes about the true nature of the agreement between the parties.

367. Accordingly, I find that, although the issue was, in all likelihood, not the subject of any detailed discussion between the parties, it was never intended by them that Mr. English should be entitled to a beneficial interest in the Sunvit monies. That is not to say that there may have been an expectation that Mr. Ryan would make a generous apportionment to Mr. English out of the Sunvit monies in return for his services in acting as "*caretaker*" and in rescuing the HKRME asset from the clutches of Mr. Ryan's creditors. However, it is unnecessary for me to make any finding to that effect in circumstances where no claim has been made in these proceedings that Mr. Ryan is, himself, the beneficial owner of the Sunvit monies. In circumstances where no such claim has been made, there would be no basis on which I could make an award in Mr. Ryan's favour. If Mr. Ryan wishes to pursue such a claim, he would have to do so in fresh proceedings. If any such proceedings were to be taken, a court would have to consider very carefully whether there were public policy reasons (either based on illegality or on more general considerations of public policy) as to why Mr. Ryan should not be permitted to succeed in such a claim. Careful consideration would have to be given in those proceedings to the judgment of the Supreme Court in *Quinn v. Irish Bank Resolution Corporation Limited* (in special liquidation) [2015] 1 I.R. 1 and to the subsequent decision of the UK Supreme Court in *Patel v. Mirza* [2017] AC 467. In particular, consideration would have to be given as to whether, in order to uphold the public policy in fostering full disclosure of assets in bankruptcy, any claim to ownership of the monies by Mr. Ryan should be dismissed or whether it would be disproportionate to take that course. In light of the fact that no such claim has been made in these proceedings on behalf of Mr. Ryan, this is not a question which I need to consider here.

368. For completeness, I shall say that there may also be other issues that would arise in any such proceedings should Mr. Ryan choose to proceed in that way. For example, an issue may well arise as to whether such proceedings would be caught by the rule in *Henderson v. Henderson* (1843) 3 Hare 100.

Consideration of the claims made by HKRME

369. I now turn to address the claims made by HKRME in these proceedings.

Was there any agreement in relation to the liabilities of HKRME?

370. I deal, in more detail below, with whether HKRME might be said to have a claim to the return of any part of the Sunvit monies independently of any agreement between Mr. English and Mr. Ryan. Before doing so, I should first address the claim made on behalf of HKRME that it is entitled to the return of some of the Sunvit monies (in order to meet its liabilities) on foot of an agreement between Mr Ryan and Mr English.

371. On Day 3, Mr. Ryan gave evidence that the money transferred to Sunvit was to remain the property of HKRME. His evidence was in the following terms:-

> *"Well, put simply, as and when needed this money that is held offshore is and can be returned to the company. So it is the company's and while Mr. English may have offered to swap beneficiaries in relation to the cash, it is the company's and it must and should be returned when needed to the company. The beneficiaries of the trust, as I understand it, if there is a profit made by the company, ultimately the company can decide to make a dispersement to the beneficiaries.*

But the money is wholly owned by the company.

Q. [the judge]: So the only entitlement the beneficiaries had was to the profits after payment of all debts of the company?

A. Debts. Absolutely.

Q. [counsel]: Well, and following a distribution I think is what he was saying effectively, or a disbursement he said.

A. Yeah, I was struggling for the words. Sorry".

372. I regret to say that I do not believe that there is any credible evidence to support a case that HKRME was to be entitled to any part of the Sunvit monies on the basis of an agreement. In the first place, I have not been referred to any record of HKRME which suggests that this was a term of the transfer. Secondly, it is clear that the transfers were arranged on the basis of fictitious arrangements including the purported consultancy agreement (described above) which had no basis in truth or reality. The consultancy agreement and related arrangements were a fiction to allow monies to be funnelled away from HKRME for the private benefit of either Mr. English or Mr. Ryan.

373. Thirdly, the arrangement now contended for is entirely at variance with Mr. Ryan's email of 12th February, 2015 (quoted in para. 240 above). This email was written at a time when HKRME was starved of cash. It was not in a position, on an ongoing basis, to continue to pay its staff in Astana. For the reasons stated in para. 241 above, it seems to me that this email can be taken to be a faithful expression of Mr. Ryan's views at the time. It was about to lose the Astana contract as a consequence. If the agreement between Mr. English and Mr. Ryan in relation to the Sunvit monies was that they were to be held on trust, in the first instance, to meet any liabilities of HKRME, this was the moment to draw attention to it. However, inexplicably, no reference whatever is made in the email to any obligation on the part of Mr. English to return the monies for that purpose.

374. It is also highly significant that no mention is made of any such arrangement in the email sent by Mr. Ryan to Mr. English nearly three years earlier (immediately before the Sunvit transfers came to be made). This is the email that was sent by Mr. Ryan to Mr. English on 21st April, 2012 in advance of his trip to Kabul. As noted previously, this email was written at a time when Mr. Ryan was genuinely concerned that he might not make it back alive from Kabul. If ever there was a moment to make any reference to the terms of any trust in favour of HKRME, that was the moment to mention it. Yet, no reference whatever to such an arrangement is made in the email. Given that the email was sent immediately prior to the first transfer to Sunvit, I cannot believe that Mr. Ryan would not have made reference to the liabilities of HKRME if it had been part of his agreement with Mr. English that the transferred monies would be held (at least partly) for this purpose.

375. There is nothing in the intervening period between April 2012 and February 2015 which provides any support for the case now made in relation to the liabilities of HKRME. In particular, notwithstanding the financial difficulties of HKRME in relation to the Astana project in the summer of 2014, there is no email or other document evidencing any demand by Mr. Ryan to Mr. English to pay back any part of the proceeds in satisfaction of the liabilities of HKRME. While Mr. Ryan, in paras. 118-119 of his witness statement, makes the case that he met Mr. English at this time and requested that the monies be "*repatriated*", the only documentary material that Mr. Ryan relied on in his witness statement is a memorandum sent by Mr. Day to Mr. English and Mr. Ryan on 22nd October, 2014 and an email exchange between Mr. Day and Mr. Ryan on 2nd December, 2014. However, although these documents highlight the financial crisis within HKRME with regard to the Astana contract, they make no reference whatever to the Sunvit monies. Furthermore, neither document contains a demand to Mr. English to return any of the monies from the BVI or from Guernsey.

376. In all of these circumstances, I am driven to the conclusion that it was no part of the agreement between Mr. English and Mr. Ryan that the monies transferred to Sunvit should be held on trust to meet any liabilities of HKRME.

377. The next question which I must now consider is whether, on the basis of the case made in these proceedings, there is some alternative ground on which HKRME would be entitled to recovery of any part of the Sunvit monies.

The remainder of the claim made by HKRME

378. In paras. 277-292, I have sought to summarise the claim made by HKRME in respect of the Sunvit monies. As noted in para. 288 above, that claim was put forward on three different bases. In the first place, it proceeded on the basis of the alleged agreement between Mr. English and Mr. Ryan that the monies transferred from HKRME to Sunvit would be held on trust for HKRME. In light of my findings in relation to the nature of that agreement, this element of the claim must fail. In my view, Mr. Ryan never intended that these monies would be held on trust for HKRME. He believed that they were held on trust for himself and no-one else.

379. The second basis upon which the claim in respect of the Sunvit monies was put is that set out in paras. 31-51 and para. 65-67 of the amended statement of claim. In the submissions made on behalf of Mr. English, it is contended that this claim also substantially depends on the alleged agreement between Mr. English and Mr. Ryan and in those circumstances, it is submitted that the claim must also fail. To the extent that the claim does depend on that agreement, it seems to me that this submission is correct (insofar as it goes). However, for completeness, I will examine in more detail below, the contention of the plaintiffs that HKRME has a case to make for the return of AED 8.7 million based on (a) an alleged constructive trust or (b) unjust enrichment or (c) the remedy of "*money had and received*". It should be noted that in the case of each of the three remedies, the case made by HKRME is expressly limited to the amount of its unpaid liabilities which, as noted above, are stated to amount to AED 8.7 million. Save to that extent, the case made by the plaintiffs is that the balance of the Sunvit monies were held on trust for the RCT. For the reasons outlined above, the latter element of the claim fails.

380. The third basis on which a case is made on behalf of HKRME in relation to the Sunvit monies is the alleged breach of the law of the UAE. The relevant evidence in relation to UAE law is summarised in paras. 282-292 above. It is clear from the evidence of Mr. Cole, the expert as to UAE law, that, save for his evidence as to Article 30 of the Companies Law 2015, the balance of his evidence depends on the "*Assumed Facts*" which are set out in para. 285 above. One of the assumed facts was that Mr. English had agreed with Mr. Ryan that the money transferred to Sunvit would be held on trust for HKRME and the RCT. I have already found that there was no such agreement. In those circumstances, that element of Mr. Cole's evidence falls away.

381. The only element of Mr. Cole's evidence that does not depend on the assumed facts is his evidence in relation to Article 30 of the Companies Law, 2015. As noted in para. 292 above, Mr. Cole confirmed in his evidence that Article 30 would have been breached by the raising of invoices in respect of fictitious services. It seems to me to be unlikely that any such case could have been made in circumstances where Article 30 of the 2015 Companies Law only came into force after the relevant payments were made on foot of such invoices. Quite apart from that consideration, it is clear that no case can be advanced by the plaintiffs on foot of Article 30 in

circumstances where no such case is made in the statement of claim and no application was made to amend the statement of claim. In those circumstances, it seems to me that the case based on UAE law fails in its entirety.

382. An issue arises as to whether, in such circumstances, reliance can be placed on Irish law in order to maintain a claim by the company. Under Irish law, there could be no doubt but that a company would be entitled to pursue the recipient of a payment that was made on foot of fictitious invoices. In this context, it is suggested in Dicey Morris & Collins in "*The Conflict of Laws*", 15th ed., vol. 1 at para. 9-025 that:

> *"The burden of proving foreign law lies on the party who bases his claim…on it. If that party adduces no evidence, or insufficient evidence, of the foreign law, the court applies English law".*

383. In light of that principle, it might be thought that, in circumstances where Mr. Cole's evidence as to UAE law is insufficient, the plaintiffs would be entitled to rely on Irish law in relation to the Sunvit transfers. However, Dicey Morris & Collins, at para. 9-027, suggest that where evidence of foreign law overlooks a material aspect of that law, the presumption that English law should apply (or in this case Irish law) does not necessarily arise. At para. 9-027, the authors say:-

> *"The recent practice of the English courts also suggests that the default application of English law where foreign law is not proved, is not unqualified, and is more likely to be challenged where the rule of English law is statutory rather than being a rule of the common law….for example, Part 15 of the Companies Act, 2006 does not apply to companies incorporated under some other law. The Court of Appeal was unwilling to generalise from it to produce or invent a rule of 'English law' which would be applicable to an issue otherwise governed by Pennsylvanian law which had not been proved*. A claim based on a contract pleaded as governed by the law of Saudi Arabia was simply struck out as disclosing no ground for bringing the claim; and in a case in which the foreign law was pleaded and proved, but one point overlooked and not proved, the court refused to allow the gap in the case to be filled by applying English law". (emphasis added).

384. In this context, Dicey Morris & Collins cite the decision of Cooke J. in *Tamil Nadu Electricity Board v. ST-CMS Electric Company Private Ltd* [2007] EWHC 1713 (Comm). In that case, Cooke J., at para. 99, approved the following principles extracted from Fentiman "*Foreign Law in English Courts*":-

> (a) There is no adequate support in the decided authorities for the principle that English law should govern by default, where foreign law is relied on by a party, who declines to, or is unable, to prove it.
>
> (b) It would be wrong to allow the presumption to be used by a party where he pleads or wishes to rely on foreign law but declines to prove it. That would reward a person who alleges foreign law without proving it. The presumption (that foreign law is the same as local law) is aimed at the situation where foreign law is neither pleaded nor proved and the parties and the court are to be taken as content to proceed on the basis of the presumption, since no one has sought to establish that there is any relevant difference.
>
> (c) If the failure to prove foreign law by a party is the result of a tactical decision, after seeking to rely on it, reliance by that party may amount to an abuse of process, depending on the circumstances.

385. I am of the view that the approach taken by Cooke J. in the Tamil Nadu case should be treated with some caution. In the first place, I am not convinced that the principles taken from Fentiman are consistent with the authoritative treatment of the subject by Dicey Morris & Collins. The authors of that text clearly take the view that even where insufficient evidence of foreign law is adduced, the law of the forum will ordinarily apply albeit that this principle is not unqualified. This approach is consistent with the observation made by Binchy in "*Irish Conflicts of Law*" at p. 113 where he says (having previously discussed the decision of the Divisional Court in the *State (Lavelle) v. Carroll*) :

> *"… the general view among commentators, surely correct, is that the rules should be expressed in … realistic terms, namely, that where foreign law is not pleaded or is not proved, the law of the forum will be applied".*

386. Secondly, it is important to bear in mind that the Tamil Nadu case was itself concerned with provisions of Indian regulatory law relating to the electricity industry. I can understand why, in those circumstances, Cooke J. was so reluctant to allow the plaintiff in those proceedings to rely on any presumption as to the equivalence of Indian law with English law. Moreover, he was also concerned that to permit the plaintiff to do so would be inconsistent with the previous case management order which had been made by a different judge.

387. For the reasons outlined in para. 381 above, there is no basis on which I can make any finding that any relevant provision of the UAE companies law has been breached in this case. However, that is not the only basis on which the case is pleaded in the statement of claim. Equally, the case made on behalf of HKRME in the statement of claim is not based exclusively on the alleged agreement between Mr. Ryan and Mr. English. The following case is also pleaded:-

> (a) In para. 35, the consultancy agreement with Sunvit is pleaded under which the sum of AED 18,550,000 was agreed to be paid on foot of introductions made by Mr. English for HKRME. It is expressly pleaded in the same para. that there were in fact no such introductions provided by Mr. English or any other service provided by him.
>
> (b) Similarly, in para. 40 it is pleaded that on 10th July, 2012, a further payment of US $1.4 million was made in respect of "*commission*" for what was stated to be a "*successful introduction that had been made by Mr. English…*". It is expressly pleaded that no such introduction was in fact made and that no other service was provided.
>
> (c) Crucially, in para. 49 the case is made that, at all material times to the transactions outlined previously (i.e. including the transactions pleaded in paras. 35 and 40), Mr. English well knew that the money concerned was the money of HKRME. In light of the findings which I have already made, there can be no doubt but that this allegation is entirely correct. Mr. English was well aware that he had provided no introductory services to HKRME and that accordingly the money that was paid over to Sunvit (of which he was the principal beneficiary) was, in truth, the money of HKRME.
>
> (d) In para. 50 of the statement of claim, it is alleged that "*in the premises*" (i.e. as a consequence of the matters pleaded previously) Mr. English holds the monies transferred on trust for HKRME and/or the RCT. For the reasons which I have already addressed in this judgment, I can see no basis for the case made on behalf of the RCT. However, insofar as a case is made on behalf of HKRME itself, this plea deserves examination.

(e) In para. 51, it is alleged that "*in the premises*" Mr. English has misappropriated the transferred monies and converted them to his own use and is liable to account to (*inter alios*) HKRME.

(f) The statement of claim goes on to plead the refusal by Mr. English to return any part of the transferred monies and relief is sought on a number of different bases including a declaration that Mr. English holds the transferred monies on trust for (*inter alios*) HKRME by reason of a constructive trust and also on the basis of unjust enrichment. Insofar as I can see, the "*money had and received*" remedy is not expressly invoked in the statement of claim but, nonetheless, it seems to me that such a case is made in substance in para. 65 of the statement of claim where it is expressly alleged Mr. English has failed, refused and neglected to return the transferred monies and has misappropriated them. Furthermore, it seems to me that the plaintiff has, in substance, made a case in paras. 35 and 40 that there was a failure of consideration. Both of those paras. highlight the very substantial payments that were made by HKRME in respect of services in circumstances where no such services were in fact provided.

388. Based on my analysis of the case made in the statement of claim, it is clear that a case is pleaded which is not based on UAE company law and is likewise not based on the alleged agreement between Mr. Ryan and Mr. English. The arrangements for the making of these payments did not occur in Ireland. In the event that UAE law applies, I believe that this is an appropriate case in which to presume that the law of the UAE in relation to unjust enrichment is the same as the law of Ireland. Mr Cole did not address the position under UAE law in relation to unjust enrichment or analogous principles. For the reasons explained in para. 385 above, I am not persuaded that his failure to do so justifies my taking the approach adopted by Cooke J in the Tamil Nadu case. Accordingly, I can see no reason why I cannot presume that the law relating to the recovery of monies paid for fictitious services or for services which were never supplied is not the same in the UAE as it is in Ireland. It would be grotesque to think that, under any system of law, there would not be a remedy for recovery of monies paid in the circumstances which arose here. This is illustrated by the readiness with which the courts of common law countries have been prepared to fashion remedies to deal with circumstances such as these. The ancient remedy of money had and received is an example of this readiness. That remedy certainly predates the judgment of Lord Mansfield in *Moses v. Macferlan* (1760) 2 Burr 1005. The somewhat more modern remedies of unjust enrichment and constructive trusts are further examples of the readiness of courts to compel a person who has received money which in equity belongs to another to pay it over to the latter. It is inconceivable that there is not a similar remedy in any civilised system of law. In these circumstances, I am of the view that, if UAE law applies, it is entirely appropriate to presume that the law of the UAE in relation to unjust enrichment is the same as Irish law.

389. Before going further, I should deal with the contention made by Mr. English that the payments in question were intended to compensate him for what was described as his "*significant contributions of time and effort to HKRME*" and that they were also the "*mechanism through which he intended to withdraw surplus funds from a business which he owned*". In my view, there is no substance to that contention. I have not been provided with any sufficient evidence to establish that this was the basis for the payments. Moreover, for the reasons already discussed above, I reject the suggestion that Mr. English was the outright owner of the business. On the contrary, it seems to me, on the balance of probabilities that he was no more than a caretaker. In such circumstances, he had no basis on which to pocket such large sums of money. Moreover, I have no sufficient evidence to establish that these funds were in fact "*surplus funds*" or that any appropriate steps had been taken, in accordance with the terms of the memorandum of association of HKRME, to authorise the making of these payments.

390. I have also not lost sight of the case made on behalf of Mr. English that he is no more than a beneficiary of the trust holding the shares in Sunvit and that it is Sunvit and not him personally who has received the monies from HKRME. This argument is put forward in para. 67 of the opening submissions delivered on behalf of Mr. English. While superficially, the argument may appear to have some substance, I do not believe that it has any substance in reality. It is quite clear that Mr. English is in a position to control the monies held in the name of Sunvit. The very fact that he was in a position to utilise the transferred monies bears this out. Paragraph 67 of the submissions expressly acknowledges that he has utilised the transferred money. At no time, in the course of the evidence which I heard over the course of 24 days, was anything said by Mr. English which would suggest that there is any impediment to the exercise of control by him over the monies transferred to Sunvit. I therefore reject the argument made in para. 67 of the submissions.

391. Quite apart from the considerations outlined in paras. 388 above, it seems to me to be extremely doubtful, in any event, that the law of the UAE applies to the claim by HKRME insofar as unjust enrichment is concerned. In circumstances where Ireland is a Member State of the EU, I am required to apply the conflict of law rules contained in Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations ("*Rome II*"). These rules are mandatory. Article 10 of Rome II sets out the principles which must be applied in determining which law applies to a claim for unjust enrichment. Article 10 provides as follows:-

> *"1. If a non-contractual obligation arising out of unjust enrichment, including payment of amounts wrongly received, concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that unjust enrichment, it shall be governed by the law that governs that relationship.*
>
> *2. Where the law applicable cannot be determined on the basis of paragraph 1 and the parties have their habitual residence in the same country when the event giving rise to unjust enrichment occurs, the law of that country shall apply.*
>
> *3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the unjust enrichment took place.*
>
> *4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of unjust enrichment is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply."*

392. I do not believe that it is possible to rely on Article 10.1 here. While it could be argued that the law of the UAE is closely connected with the relationship between HKRME and Mr. English, the relevant agreements between Sunvit and Mr. English and between Sunvit and HKRME are expressly stated to be governed by the law of Switzerland. This suggests that none of the relevant parties regarded the law of the UAE as applicable. The position is complicated still further by the fact that any directions given by Mr. English in relation to the movement of monies to Sunvit were given by Mr. English in Ireland. While Mr. English, as a director and shareholder of HKRME may have owed duties, under UAE law, to HKRME, the claim that I am currently considering is not based on UAE company law. Instead, it is based on the much more simple and straightforward proposition that no one is entitled to claim money on foot of fictitious invoices in respect of services which were never provided. Since Mr. English was based in Ireland at all times, it is arguable that his duty not to cause fictitious invoices to be issued in order to extract monies from HKRME arose in Ireland rather than in the UAE. There are, accordingly, connections with several different jurisdictions. In these circumstances, I do not believe that it is possible to determine, under Article 10.1, which law governs the relationship between Mr. English and HKRME.

393. In circumstances where HKRME and Mr. English do not have their habitual residence in the same country, Article 10.2 cannot apply. Nor do I believe it is possible to say that the obligation in issue here is manifestly closely connected to any particular country. In those circumstances, I cannot see any room for the application of Article 10.4. Accordingly, it seems to me that Article 10.3 is applicable. The governing criterion is therefore the country in which the unjust enrichment took place. The law of that country will govern the unjust enrichment claim. In the present case, the monies were transferred by HKRME to Sunvit. While Sunvit has its registered office in the BVI, it is clear from the invoices issued by Sunvit that its bank account was in Guernsey. In those circumstances, it seems to me that the unjust enrichment occurred in either BVI or Guernsey. Both of those jurisdictions are heavily influenced by common law. It is thus entirely reasonable to assume that their law in relation to unjust enrichment claims is very similar to the law of Ireland. I can therefore see no difficulty in applying Irish law to the unjust enrichment claim made here.

394. It is clear from the decisions of the Supreme Court in *East Cork Foods Ltd v. O'Dwyer Steel Co.* [1978] IR 103, *O'Rourke v. Revenue Commissioners* [1996] 2 IR 1 and *Corporation of Dublin v. Building and Allied Trade Union* [1996] 1 IR 468 that Irish law recognises unjust enrichment as a cause of action where a defendant has received money or some other property of a plaintiff in circumstances where it would be unjust for him to retain it. In order to avoid the development of what Keane J. (as he then was) described as "*palm tree justice*" in *O'Rourke v. Revenue Commissioners*, the courts have generally confined the cause of action to a number of clearly defined categories of case. These have been very usefully summarised by Barton J. in *Vanguard Auto Finance Ltd v. Browne* [2014] IEHC 465 at pp 22-23. In summary, these are:-

> (a) Where money has been paid under a mistake either of fact or law;
>
> (b) Where the plaintiff seeks to recover a benefit that was to be conferred on him under the terms of a contract which has been discharged either by breach or frustration;
>
> (c) Where a plaintiff seeks to recover a benefit provided by him to the defendant under a transaction which becomes unenforceable in law;
>
> (d) Claims where a plaintiff has discharged a debt of the defendant; and
>
> (e) A restitution for "*wrongs*". At p. 22, Barton J. explained that the wrong in question can be tortious, a breach of contract, a breach of fiduciary duty or a breach of confidence. That does not appear to me to be an exhaustive list. On the same page, Barton J. explained that there can be unjust enrichment by wrongdoing in circumstances where the enrichment of the defendant arises "*by virtue of the commission of legal or actionable wrong against the plaintiff".*

395. On p. 24 of his judgment, Barton J. identified that there are two essential preconditions to the unjust enrichment remedy. These are:-

> (a) enrichment of the defendant at the expense of the plaintiff; and
>
> (b) that the enrichment in question is unjust.

This second precondition does not give the court a licence to apply some subjective notion of injustice. Barton J. cited in this context, the observation of Keane J. in *Dublin Corporation v. Building and Allied Trade Union* that total failure of consideration is one of the circumstances in which courts will accept that an injustice has arisen.

396. "*Consideration*", in this context, has a broader meaning than it has in the context of the formation of a contract. In *Fibrosa Spolka v. Fairbairn Lawson* [1943] AC 32 at p. 48 Lord Simon explained the difference in the following terms:-

> *"…in the law relating to the formation of contract, the promise to do a thing may often be the consideration. But when one is considering the law of failure of consideration and of the quasi-contractual right to recover money on that ground, it is, generally speaking, not the promise which is referred to as the consideration, but the performance of the promise."*

397. McDermott & McDermott in "*Contract Law*" , 2nd ed., para. 24.61 cite the Irish case of *Hayes v. Stirling* (1863) 14 ICLR 277 as an example of a decision where the court upheld a claim on this ground. In that case, the plaintiff had paid a sum to the defendant to secure shares in a company that was to be formed in the future to build and sell railway carriages and in respect of which the defendant was to be a director. The company was never established and the money was held to be recoverable on the basis of a total failure of consideration.

398. The decision of Barton J. in the *Vanguard Auto Finance* case is a further example of this approach. In that case, the defendants were involved in a development project undertaken by a company of which the first and third defendants were directors. They generated a number of invoices ostensibly issued to purchase goods to be used in fitting out the development. The plaintiff bank paid advances on foot of these invoices. It transpired that the invoices were a fiction; no goods of any description were in fact acquired. The company went into liquidation and the plaintiff bank sought restitution of the monies from the first and third defendant. The claim for restitution succeeded on two grounds – namely on the grounds of a mistake of fact on the part of the bank and also on the basis of a total failure of consideration in circumstances where payment had been made on foot of a fictitious invoice.

399. It seems to me that there is a very clear parallel between the circumstances in the *Vanguard Auto Finance* case and the present case. Here, very substantial payments were made by HKRME to Sunvit in respect of completely fictitious introduction services purportedly to be provided by Mr. English. Those services were not provided and were never intended to be provided. There was accordingly a total failure on the part of Mr. English to perform what was promised under the agreement. In fact, the entire arrangement was simply a mechanism that had been put in place to enable monies to be extracted by Mr. English. For the reasons already explained above, there is no basis upon which it can be said that Mr. English was not the recipient of the benefit. While the monies were notionally received by Sunvit, it is Mr. English who was the beneficiary. The very fact that he was in a position to utilise the transferred monies (as para. 67 of the opening submissions filed on his behalf frankly acknowledged) demonstrates that he was, in truth, the beneficiary. Sunvit was no more than a vehicle to receive funds on his behalf.

400. In these circumstances, it seems to me that this is a classic case in which the remedy of unjust enrichment applies and accordingly I find that HKRME (as opposed to Mr. Ryan or Mr. Stafford) is entitled to a remedy against Mr. English arising out of the transfers in question. However, given the way in which the case has been pleaded in the statement of claim and has been run, it is clear that the only claim which is made by HKRME in this regard is in respect of its unpaid liabilities which are alleged to amount to AED 8.7 million.

401. It is also clear from the statement of claim and from the evidence given by Mr. Ryan that HKRME has not made a claim, in these proceedings, for the return of the entire of the monies paid to Sunvit. In these circumstances, the only relief which I can grant is in relation to the liabilities of HKRME. Those liabilities have yet to be proven. In these circumstances, it seems to me that the appropriate order to make at this point in the proceedings is to direct that an account and enquiry be taken of the unpaid and lawful liabilities of HKRME. At the conclusion of that account and enquiry, an order will be made requiring the payment by Mr English to HKRME of the amount found to be due. Given my familiarity with the case, I believe that any such account should be taken before me. At this point, I do not have any details of the nature of the liabilities in issue. In particular, I do not know whether any of the liabilities may relate to sums claimed to be due to Mr. Ryan himself or to members of his family. Should it transpire that some of the liabilities are of that nature, it may become necessary, at that point, to consider whether any issues of illegality or public policy arise which would make it inappropriate that any such liabilities should be recovered from Mr. English.

402. In circumstances where I have concluded that HKRME is entitled to succeed in its unjust enrichment claim to the extent outlined in para. 401 above, it seems to me to be unnecessary to consider the claims based on constructive trust or on the remedy of money had and received.

The damages claim

403. The final element of the claim made by HKRME comprises the claim for damages for the loss of the Aldar contract and for the loss of the prospect of being awarded the alleged follow-on contract which, it is contended, HKRME was invited to bid for. In paras. 225-245 above, I have summarised the evidence in relation to the difficulties which arose with regard to the activities of HKRME in Astana.

404. The damages claim advanced by HKRME is succinctly summarised in para. 43 of the opening submissions delivered on behalf of the plaintiffs in which it is contended that the refusal of Mr. English to return the transferred monies resulted in the following losses:-

> (a) The loss of fees of AED 3.2 million earned on the Aldar contract which Aldar refused to pay following termination of the contract;
>
> (b) The loss of AED 13 million in respect of fees remaining on the Aldar contract, had it not been terminated;
>
> (c) The loss of profit of approximately AED 46 million which it is alleged HKRME could have earned had it won the Aldar follow-on contract which, it is alleged, it was in a prime position to win given that it was the incumbent contractor.

405. It is, however, acknowledged in para. 45 of the opening submissions that the claims in respect of AED 13 million and AED 46 million are, essentially, loss of chance claims. In making that claim, the plaintiffs accept that, in accordance with the guidance given by McKechnie J. in *Minister for Communications v. Figary Watersports* [2010] IEHC 541, they must show:-

> (a) That, on the balance of probabilities, HKRME had a real and substantial chance of success, not merely a speculative one;
>
> (b) This extends to showing that there were not actions which, on the balance of probabilities, would have prevented that chance from being real and substantial;
>
> (c) Only if the plaintiffs surmount the hurdles at (a) and (b), will the court assess the quantum of damages based on the likelihood of that chance.

406. I can see no basis on which HKRME is entitled to succeed in respect of any aspect of its claim for damages. Both the claim for unpaid fees of AED 3.2 million and the loss of chance claim in respect of the alleged loss of AED 13 million and AED 46 million depend on the contention that there was a failure by Mr. English to repay the Sunvit monies at some stage prior to the loss of the Aldar contract. That contention has not been proven, on the balance of probabilities. In the first place, I have not been given any evidence of a demand having been made by HKRME to Mr. English for the return of the Sunvit monies in the critical period comprising the second half of 2014 and the first quarter of 2015. I have already drawn attention to the lack of any documentary evidence of any such demand. In this context, the documents relied upon by Mr. Ryan in paras. 118-119 of his witness statement do not in fact demand the return of the Sunvit monies at all.

407. I appreciate that, as recorded in para. 237 above, Mr. Ryan says that he made oral requests to Mr. English to transfer the money back to HKRME so that it could meet its obligations and pay staff. However, as noted in that paragraph, Mr. Ryan, in his evidence, is remarkably vague about the content of any such conversation. Mr. Ryan's evidence is also inconsistent with the terms of his very frank email sent at 7.13 am on 12th February, 2015 (quoted in part in para. 240 above). I have previously drawn attention in para. 243 above to the stark fact that there is no reference in the email to any obligation on the part of Mr. English to return the monies for the purposes of discharging the liabilities to staff in Astana. Even more remarkably, there is no reference in the email to the monies being held on trust to meet any liabilities of HKRME. On the contrary, the email clearly regards the money as Mr. Ryan's own personal property. He admits that he was too greedy in arranging for the transfer of the monies in question. I am not satisfied, in the circumstances, that there is any sufficient evidence of any demand having been made at the relevant time. Regrettably, the fact is that Mr. Ryan regarded these monies as his own. There was therefore no incentive to him to cause HKRME to make any demand for the return of the monies at that time.

408. Secondly, even if there had been a demand made on Mr. English at the time, there is no evidence to suggest that the failure to return the monies to HKRME is the event that led to the inability of HKRME to pay its staff (with all of the consequences that flowed from that in terms of its ability to continue to service the Aldar contract). As recorded in para. 244 above, very substantial monies were available within HKRJLT at this time. A similar arrangement to the Sunvit transaction had been put in place between HKRJLT and Lightkey on foot of which very substantial sums were paid into the account of Lightkey in Cyprus. Some of these monies were used for purposes entirely unrelated to the business of either HKRME or HKRJLT. This included, for example, the purchase of an investment property in Dun Laoghaire, County Dublin.

409. Furthermore, during this period, Mr. Ryan had no compunction in drawing large sums from HKRME at a time when it did not have the resources to cover the day to day running costs of the project in Astana. This issue is addressed in paras. 228-230 above. As noted there, the sums paid to Ms. Walsh during this period (for which Mr. Ryan made no apology) would have assisted in the payment of salaries and other costs in Astana during the critical period in the autumn of 2014. On the basis of the evidence which I have heard, the failure to pay staff at this time is what ultimately led to the downfall of the Astana project. It led to the departure of Mr. Day (in the dramatic circumstances described in paras. 231-232 above). Almost immediately thereafter, Mr. Ryan (as noted in para. 236 above) took the portentous decision to terminate the employment of HKRME personnel in Astana. This termination of the employment of the employees in Astana meant that HKRME was not able to continue to perform its obligations under its contract with

Aldar. It is entirely unsurprising in those circumstances that Aldar should trigger the steps necessary to put it in a position to lawfully terminate the contract. While Mr. Ryan (and indeed Mr. Day), in the course of their evidence, have sought to suggest that the problems highlighted by Aldar and Mott McDonald (the project directors) were insubstantial, I have no evidence, beyond the mere assertions of Mr. Ryan and Mr. Day, that this is so. On the face of the correspondence from Aldar and from Mott McDonald, there were significant failures on the part of HKRME in relation to the performance of its contract. I have not been provided with any sufficient evidence to establish that, contrary to the terms of this correspondence, HKRME had fully performed its obligations. In these circumstances, I find it impossible to hold that the loss of the existing Aldar contract arose as a consequence of any failure on the part of Mr. English. On the contrary, there appears to me to have been sources of funds that could have been used to pay staff. If that course had been taken, it would not have been necessary to take the virtually irreversible step of terminating the employment of the HKRME personnel employed in Astana. I find it very difficult to understand the alacrity with which Mr. Ryan chose to take that step rather than arranging an intercompany transfer from HKRJLT. I have already made clear, at an earlier point in this judgment, that I reject the suggestion that there was some legal impediment to the transfer of monies in that way. No sufficient evidence has been tendered which supports that suggestion.

410. For similar reasons, I cannot see any basis on which any case can be made in relation to the follow-on contract. To my mind, the plaintiff has not demonstrated that it satisfies the first and second of the three criteria identified by McKechnie J. in the Figary Watersports case. The plaintiffs have not shown, on the balance of probabilities, that HKRME had, in the circumstances just described, a real and substantial chance of success in obtaining the follow-on contract. On the contrary, in failing to pay their own employees and by taking the drastic decision to terminate the employment of the HKRME employees, there was no realistic prospect that Aldar would be prepared to award the follow-on contract to HKRME.

411. Likewise, it seems to me that the failure to pay staff and the decision to terminate the employment of those staff was an action which prevented any chance of the award of the follow-on contract from "*being real and substantial*".

412. For the reasons outlined above, I therefore reject the claim made on behalf of HKRME for damages arising out of the loss of the Aldar contract and the loss of the chance of obtaining the follow-on contract.

Conclusion

413. For the reasons outlined in this judgment, I have come to the following conclusion:-

(a) The claim made by Mr. Ryan and Mr. Stafford as trustees of the RCT must be dismissed. I am not satisfied that the RCT had any beneficial interest in the shares in HKRME and accordingly the claim made on behalf of the RCT must fail.

(b) As described earlier in this judgment, the true nature of the agreement between Mr. Ryan and Mr. English was that Mr. English would act as a caretaker on behalf of Mr. Ryan personally and not as a caretaker on behalf of the RCT. As Mr. Ryan has made no personal claim in these proceedings to ownership of the monies, this finding is of no avail to Mr. Ryan in these proceedings;

(c) In so far as the claim of HKRME is concerned, I cannot see any basis upon which HKRME can succeed based on the terms of the agreement between Mr. English and Mr. Ryan. Nor can I see any basis on which HKRME can succeed based on any element of UAE company law.

(d) However, I am of the view that HKRME is entitled to succeed against Mr. English in relation to its claim for unjust enrichment but only to the extent of its claim in relation to unpaid and lawful liabilities.

(e) Since the trial which took place in late 2018 and early 2019 was confined to issues of liability, the court has yet to hear any evidence in relation to the liabilities of HKRME. In these circumstances, I will direct the holding of an account and enquiry as to the nature and extent of those liabilities. In the event that any of the liabilities are said to be owed to Mr. Ryan or potentially to persons connected with Mr. Ryan, I will reserve to a later time any decision as to whether those liabilities are properly recoverable or whether they should be regarded as irrecoverable on the grounds of illegality or on other public policy grounds;

(f) On the conclusion of the account and enquiry directed at (e) above, there will be an order directing Mr English to pay to HKRME the amount found to be due in respect of its unpaid liabilities;

(g) The claim brought by HKRME for damages in respect of fees left unpaid on the Aldar contract, the loss of the Aldar contract and the loss of a chance to secure the follow-on contract must all be dismissed. There is no evidential basis for any of those claims.