Neutral Citation Number: [2024] EWCH 1236 (Ch)

Case No: BL-2022-000590

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

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

Date: 22/05/2024

Before :

CHARLES MORRISON
(Sitting as a Deputy Judge of the High Court

- -

Between :

(1) INVENIO BUSINESS SOLUTIONS LIMITED **Claimants**
(2) INVENIO BUSINESS SOLUTIONS HOLDINGS LIMITED

- and –

(1) MANISH GOYAL

(2) JYOTI GOYAL

Defendants

- -
- -

Timothy Collingwood KC and **Gregor Hogan** (instructed by **CMS Cameron McKenna Nabarro Olswang**) for the **Claimants**

Manish Goyal and Jyoti Goyal (appeared as Litigants in Persons) Defendants

Hearing dates: 6,7,8, 11,12,13,14,15 and 18 March 2024

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 10.30 am on 22 May 2024.

.....

Charles Morrison (Sitting as a Deputy Judge of the High Court)

Charles Morrison (Sitting as a Deputy Judge of the High Court) :

Introduction:

1. The first Defendant in this matter, Mr Goyal, established Invenio Business Solutions Limited (**Invenio**) in July 2006. Invenio is the first Claimant in this action. The second Defendant is Mr Goyal's wife, Mrs Goyal. Mrs Goyal was employed by Invenio in 2006: she became a shareholder in 2007.

2. In due course Mr Partha Bhattacharya (**PB**) joined Invenio as its Managing Director and, with two others, was allotted shares in Invenio. In 2013, Mr Arun Balasubramaniam (**AB**) joined Invenio as its COO and in March 2015, was also allotted shares.

3. In the second half of 2016, Mr Goyal and his colleagues agreed that the business of Invenio would be sold. At the same time, they agreed that AB would take over the role of Managing Director and that the business would be run on a basis designed to maximise the sale value. AB was appointed a director of Invenio in April 2017.

4. Late in 2017, Mr Goyal changed his mind and decided that he no longer wished to sell his shares; PB on the other hand wanted to continue with the planned transaction; other shareholders also wished to sell. As a result, it was agreed that AB would become Managing Director in January 2018, and that steps would be taken to arrange for the sale of the relevant Invenio shares. The well-known accountants PwC, were instructed to market the opportunity, whilst another prominent accounting firm RSM, was appointed to produce a due diligence report.

5. In March 2019, Mr Goyal, Mrs Goyal, PB, AB and other shareholders, sold their shares in Invenio to the second Claimant (**IBSHL**). As a result of the transaction, the Defendants and AB converted their Invenio shares into a shareholding in IBSHL. In March 2019, Mr Goyal became the Chief Financial Officer of IBSHL, and later its Chief Investment Officer.

6. As a result of the facts and matters giving rise to the trial before me, Invenio terminated Mr Goyal's appointment as CIO, on 18 November 2019; he ceased to be a director of Invenio and IBSHL on 26 November 2019. Mrs Goyal's employment with Invenio was summarily terminated on 13 December 2021

   The Claimants' Case

7. The Particulars of Claim (**PoC**) notwithstanding, although as will be seen, I will be turning to them in some detail, before me, five distinct grounds of complaint against the Defendants were pursued by the Claimants. In addition to the five grounds themselves, which it was argued justified a finding of bad faith and breach of duties owed to Invenio, it was also argued that the existence of the "five grounds" as I shall refer to them, taken together with a further matter which turned upon a loan given by

Invenio to a company controlled by Mrs Goyal, justified characterising the Defendants as "Bad Leavers" for the purposes of the IBSHL Articles of Association (the **Articles**)

8. The Claimants sought to persuade me that even though the five grounds were not known by Invenio at the time it parted company with the Defendants, had it known then what it now knows, it would have dismissed the Defendants summarily, the summary nature of the termination being required in order to engage the Bad Leaver provision in the Articles.

9. Recognising a possible impediment by virtue of a proper but for them, adverse construction of the Bad Leaver provision, the Claimants also put forward an alternative argument by way of a fall-back position. It was argued that Mr Goyal had a duty to inform Invenio of any bad faith or breach of duty on his part; he failed to discharge that duty. Had he acted as he should have, Invenio would have been entitled to summarily dismiss him and thus he would have been a Bad Leaver. On this footing the court was invited to grant a permanent injunction, in terms preventing the Defendants from asserting that they were otherwise than Bad Leavers.

The Five Grounds

10. I have set out below, a short outline of the five complaints made against the Defendants.

11. The first is that a loan was made by Invenio to one of its valuable consultant employees, a Mr Antish Awootar (**AA**). This was described in the proceedings as the MUR Loan because the advance was made in Mauritian Rupees to AA, who was intent on building a dwelling for himself in Mauritius. The Claimants alleged that the loan was improperly recorded as "subcontractor charges" in the Invenio ledgers, and to the extent that PB later agreed that the loan could be novated to Mr Goyal as he claimed, there was no proper or any record of that transaction. At all events it is said, Mr Goyal should not have received, as he admitted he did, and then retained, loan repayments from AA.

12. The second complaint turned on an allegation of improper accounting treatment of a contract with the Fiji Revenue Service (the **FRCS Contract**). Put simply, the Claimants contended that Mr Goyal was responsible for recording the gross value of the FRCS Contract in the books of Invenio, when he knew perfectly well that such treatment was misleading because the substantial part of the value of the FRCS Contract was being invoiced direct to the FRCS by a local computer hardware supplier. It was alleged that Mr Goyal recorded the gross contract value in this way because he had an interest in inflating the revenue of Invenio, chiefly for the purposes of an accounting valuation of the business. I should mention that this claim was originally put as seeking damages or equitable compensation for a sum certain, that is to say the accounting entry in the value of £1,456,884. That claim was abandoned and formed no part of the proceedings before me.

13. The third allegation pursued against Mr Goyal, was that he had arranged for Mrs Goyal and his daughter to travel with him to Mauritius at the time of an Invenio company event there. It was said that he had no business taking his wife, a junior part-time employee with him, and on no account could there be a justification for Invenio to bear the costs of the daughter's travel and hotel costs. The default was exacerbated say the Claimants, in that not only did the family arrive in Mauritius some four days prior to

the company event and so enjoyed in terms, a holiday, but that they also took up residence in a villa at a luxury hotel resort rather than taking rooms at the more modest hotel where the Invenio event was scheduled to take place. All of this say the Claimants, happened absent proper approval by Invenio. Neither was the travel itinerary on the return leg approved or in the interests of Invenio; Mr Goyal took his wife and Daughter to India, at the expense of Invenio.

14. AA featured again in the fourth complaint advanced. He had been in receipt of a further loan, this time to assist in his relocation to Fiji from Saudi Arabia. The grievance with Mr Goyal is that he failed, when it had been his responsibility, to properly administer this loan; he did not check the expense receipts submitted to him, which were treated as amounts in repayment of the loan; he did not ensure that only proper expenses connected with the relocation were the subject of a claim and reimbursement by way of settlement of the loan. This failure on his part, it was said, amounted to a breach of duty.

15. The final charge laid at Mr Goyal's door was his responsibility for a series of transactions appearing on an HSBC credit card account that was settled by Invenio. In the skeleton argument, for which I was grateful, delivered to me by Mr Timothy Collingwood KC and Mr Gregor Hogan, who appeared on behalf of the Claimants, the simple case was made that 15 card transactions totalling £8,648.14, were improperly charged to Invenio, being in each case without any commercial rationale or purpose. The expenses covered airfares to and from, and also within, India; there were also purchases of Apple computers and a mobile phone which were neither purchased for nor approved by Invenio. These payments were relied upon as evidence of a further breach of duty on the part of Mr Goyal.

16. Turning to Mrs Goyal, in closing, Mr Collingwood relied upon four clear allegations: the first was that in regard to the first loan to AA, she well knew that repayments had been received but not transmitted on to Invenio; in reality she knew the money was being retained by her husband. The second allegation was that she failed to challenge the expenses being claimed for her and her daughter to attend the Mauritius retreat; she ought to have known that this was not the proper use of Invenio funds; by "going along with it" she breached her duty to Invenio, given her central role as someone who processed payments. It is to be noted however that whilst the allegation concerning the loan repayments was pleaded against Mrs Goyal and thus could form the basis for the declaration sought, the complaint in respect of the Mauritius expenses, was not.

17. The Claimants' case as it was developed before me in respect of the Apple products purchased on the Invenio HSBC credit card was equally plain: Mrs Goyal knew that the products purchased were intended not for company use, but for the personal use of members of her family. It is also important to have in mind the case as it was pleaded. Whilst the claim was set out in detail as against Mr Goyal, it is not easy to distil what the case is against Mrs Goyal when regard is had to the relevant passages of the PoC, principally, paragraphs 56 – 63.

18. There were also members of the Defendants' family involved in the final complaint. The case made was that Invenio had advanced a loan to a company by the name of Brothers' Housing Estate Limited. Mrs Goyal was a director of this company. The

PoC assert that on account of a serious conflict of interest and also by virtue of her failure to procure repayment of the advance, Invenio was entitled to summarily terminate Mrs Goyal's employment. On this basis, and although as will be seen, this is not the only way in which the case against Mrs Goyal was put, at paragraph 78, the Claimant seeks a declaration that Mrs Goyal was a Bad Leaver for the purposes of the Articles.

19. It is important at this point to turn to the nature of the relief sought; in a sense this was the second part of the case which Mr Collingwood had to make. Not only had he to persuade me that the Claimants had succeeded in establishing the misconduct alleged on the part of Mr and Mrs Goyal, he also needed to convince me that Mr Goyal's conduct fell within the four corners of the Bad Leaver provisions of the Articles. Achieving this objective allowed his clients to operate the compulsory transfer provisions in a manner materially advantageous to them both in terms of number of shares to be transferred and the relevant strike price.

20. Given the way the case was pleaded and then put at the hearing in respect of Mrs Goyal, it seems to me that the proper course is to assess the case against her on the basis of whether the claim for a Bad Leaver declaration is made out on the evidence in regard to the Brothers' Housing Estate Limited loan and her behaviour in relation to the AA loan repayments. These are the two matters pleaded at paragraph 18 of the PoC as being the foundation for her dismissal.

21. The Bad Leaver provision in the Articles, so far as relevant, was as follows:

> "A Bad Leaver is defined as, unless otherwise determined by the Board with Investor consent, a leaver whose reason for ceasing employment or appointment with the Company is…. that their employment or appointment is terminated by the Group due to circumstances which would entitle any Group Company to summarily dismiss him."

22. Leaver's Shares as defined in the Articles, included all shares in the company held by the Leaver and also those held by a Privileged Relation; a "Privileged Relation" is defined as being, in relation to a member, the spouse of the member. As will be seen, this definition is said to have relevance to Mrs Goyal and is the foundation for a claim advanced by the Claimants. It should also be noted before I leave the subject of the Articles, that at 9.1.1., a Transfer Notice, as defined in Article 10, is deemed to have been served on the date that, in essence, the Leaver ceases to be an employee, in respect of 25% of the Leaver's Shares if that Leaver is a Bad Leaver. This is where the material advantage arises that I referred to earlier. But for the operation of the Bad Leaver mechanic, the Transfer Notice would bite on only 20% of the holding and at a better price for the employee.

23. For the Claimants to succeed and obtain the declaratory relief they seek from the court, it must be established that there was conduct or behaviour which justified summary dismissal. The construction of the Bad Leaver clause in the Articles must also allow the conduct relied upon to be treated as falling within the Bad Leaver definition.

24. In the PoC at paragraph 15, it was set out that the dismissal of Mr Goyal turned on his unauthorised purchase of an office property in Delhi, employment of foreign staff

without properly accounting for tax, committing Invenio to office purchases without proper approval, authorising the loan to Brothers' Housing Estates Limited without board approval and engaging in disruptive behaviour and undermining the position of the Invenio Chief Executive Officer and Chief Technology Officer.

The Legal Framework

25. As the learned authors of *Gore-Browne on Companies* 45th Edn., explain at Chapter 15, directors of companies must act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. This is the essence of the statutory duty set out in section 172 (1) of the Companies Act 2006. It is worth having regard to the whole of the section which had the effect of codifying the previously existing law:

> "(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—
>
> (a) the likely consequences of any decision in the long term,
>
> (b) the interests of the company's employees,
>
> (c) the need to foster the company's business relationships with suppliers, customers and others,
>
> (d) the impact of the company's operations on the community and the environment,
>
> (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
>
> (f) the need to act fairly as between members of the company.
>
> (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.
>
> (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company."

26. Relying upon Lord Greene MR in *Re Smith & Fawcett* [1942] Ch. 304, at 306, *Gore-Browne* goes on to make the important point that directors are bound to exercise the powers conferred on them bona fide in what they consider, not what a court may consider, is in the interests of the company. That case concerned the motives which lay behind the exercise by directors of a power in the Articles which permitted the directors to decline to register a transfer of shares. It was held that there was no ground

for saying that the refusal was otherwise than due to a bona fide consideration of the interests of the company, as determined by the directors.

27. In the All England version of the Report of *Re Smith & Fawcett*, there appears a rare but helpful "Editorial Note" which points to the extent to which the court will look behind or doubt the evidence of a director that discretion has been exercised in the interests of the company:

> "As Lord Greene MR points out, it is now a well-established practice for articles of private companies to contain severe restrictions on the transfer of the shares of the company. Such companies are more in the nature of a private partnership than of a public corporation. The greater part of the shareholding is usually vested in the principal director or directors, and powers are taken in the articles to control the beneficial interest in the remainder of the shares. These powers are, however, fiduciary powers which must be exercised in the interest of the company, but it is assumed that they are being so exercised unless there is clear evidence to the contrary. Each article, of course, falls to be construed according to its terms, and it may, by its very wording, show how the interest of the company is to be safeguarded. A common form of article permits transfers to named persons only, unless the transfer to some other transferee is approved by the directors and in the latter case the transfer is often made subject to rights of pre-emption. The article here considered gave the directors a much wider discretion, and it is held to be controlled only by the principle that, being a fiduciary power, it must be exercised for the benefit of the company. If the directors state upon oath that they have so exercised their discretion, that statement must prevail unless it is shown to be wrong by cross-examination of the deponents or by evidence establishing a substantive case showing how the discretion has been wrongly exercised, though, in some cases, the affidavit may show on its face that the discretion has been wrongly exercised."

28. The subjective nature of the assessment of the discharge of the duty was a matter picked up by HHJ Russen QC (sitting as a judge of the High Court), in his judgment in *Fairford Water Ski Club Ltd v Cohoon* [2020] EWHC 290 (Comm). At [**48**] the Judge recited the submission that had been made to him:

> "Section 172: the duty to act in good faith and in the Club's best interests. They said that the duty involved directors exercising their discretion bona fide in what they consider, not what a court may consider, to be in the interests of the company: *Re Smith and Fawcett Ltd, [1942] Ch 304*, 306, per Lord Greene MR. The test is a subjective one and the relevant question is whether the director honestly believed that his act or omission was in the interests of the company. The issue is as to the director's state of mind: see *Regentcrest Plc v Cohen [2001] 2 BCLC 80* at 120, per Jonathan Parker J. Counsel said it follows that a director can act unreasonably and mistakenly, and will not be liable for a breach of his fiduciary duty to the company, so long as he was honest in his mistaken belief. They cited the decision of Mr Jonathan Crow, sitting as a deputy High Court judge, in *Extrasure Travel Insurance Ltd v Scattergood [2003] 1 BCLC 598*, at [89], who said that fiduciary duties are concerned with concepts of honesty and loyalty, not with competence. They further said that risk is an inherent part of any commercial activity and, as

> Popplewell J observed in *Madoff v Raven*, "Corporate management often requires the exercise of judgment on which opinions may legitimately differ, and requires some give and take....". The submission was that, on an analysis of them, most of the heads of claim were pursued in relation to this duty and the onus of establishing that the director did not act in the best interests of the company was upon the Club: *The Bell Group Ltd v Westpac Banking Corporation [2008] WASC 239* at [4596]."

29. And at [51] the Judge offered his own analysis:

> "(2) Although the duty under section 172 is expressed in subjective terms and not so as to impose an objective standard of managerial competence (which is covered by the separate duty under section 174) that does not mean that the court will not be prepared to doubt the director's honesty and professed support for the company's best interests where substantial detriment has resulted from his act or omission: see *Regentcrest* at [120]. The fact that his actions have caused harm to the company, and may objectively be said to have been unreasonable, might support the conclusion that in fact his alleged belief that he was acting to promote the interests of the company was not one honestly held at the time. (3) The legal burden of establishing a breach of that duty (under section 172) is upon the party asserting the breach and, allowing for any shift in the evidential burden, it is not for the director to vindicate his own position: see *Charles Forte Investments v Amanda [1964] Ch 240, 260-1*. However, where his decision is one that no reasonable director could have considered to be in the best interests of the company then reliance upon his own suggested contrary belief will not avoid a finding of breach: compare *Re Southern Counties Fresh Foods Ltd [2008] EWHC 2810 (Ch)*, [53], per Warren J."

30. And finally at [52]:

> "Counsel recognised that the authorities upon which they had relied supported these further observations. Mr Sims QC correctly observed that the second and third did not detract from the fundamentally subjective nature of the duty under section 172 and really served to highlight the point that it is an evidential question as to whether or not a director who has caused loss to the company, or who appears to have acted irrationally, can nevertheless defend his actions on the basis that he acted in accordance with it."

31. I do not believe that there can be much doubt that the approach of HHJ Russen QC is soundly based as to the law in this area. I am indebted to Mr Collingwood, and also to Mr Hogan with him, for the Note on the relevant authorities that they submitted to me subsequent to the close of the trial. Having considered that note I see nothing inconsistent with the view of the law explained in *Fairford.* If this were a case where on the evidence, it could be said that Mr Goyal had had no thought to the interests of Invenio when he took the decisions complained of, the door would be open to the reasoning in *Charterbridge*, that I referred to in my own recent judgment in ***Bouchier v Booth; Re Tiuta International Limited*** [2023] EWHC 3195 (Ch) at [**46**]. In that event, and as counsel have submitted, the test would have shifted to an objective one, that is to say, whether an intelligent and honest man in the position of a director of the

company concerned could, in the circumstances, have reasonably believed that the transaction was for the benefit of the company.

32. Section 174 of the Companies Act 2006, requires that a director must display the care, skill and diligence that would be exercised by a reasonably diligent person with both (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to that company and (b) the general knowledge, skill and experience that the director has. As to the application of this provision, I have the benefit of guidance from the Court of Appeal, in *Brumder v Motornet Services & Repairs Ltd [2013] EWCA Civ 195*. In his judgment at [**46**], Beatson LJ said this:

> "The definition in section 174(2) of the 2006 Act builds on the formulation in section 214(4) of the Insolvency Act 1986 which Hoffmann LJ stated in *In re D'Jan of London Ltd* accurately stated the common law duty. It is in two parts. The first part, in section 174(2)(a), is that a director must exercise the care, skill and diligence that would be exercised by a reasonably diligent person with "the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company". This objective test sets the floor. The second part of the definition, in section 174(2)(b), will displace it where the particular director under consideration has greater knowledge, skill and experience than may reasonably be expected."

33. Unless authorised by his fellow directors, pursuant to section 175 of the Companies Act 2006, Mr Goyal also had a strict duty to avoid any situation in which he could reasonably be regarded as having had, or could have had, a direct or indirect interest, where that interest conflicted, or possibly may have conflicted, with the interests of the company. The Act makes specific reference to instances of exploitation of property, information or opportunity, whether or not the company could itself benefit from the property, information or opportunity.

34. I agree with Mr Collingwood, and it seems to be a well-accepted principle that the question in any situation is whether a reasonable person looking at the facts would think that there was a reasonably sensible possibility of conflict: see *Bhullar v Bhullar* [2003] 2 BCLC 241. I also consider it right to follow the position taken by the Deputy Judge in *Richmond Pharmacology Ltd v Chester Overseas Ltd [2014] EWHC 2692* at [**70**] – [**72**], who expressed the view that the test of whether there is a breach of the duty is

objective and does not depend on any lack of honesty or knowledge of the breach by a director.

35. It is worthwhile noting that section175 (6), addresses the manner of authorisation by fellow directors: it provides that,

> The authorisation is effective only if—
>
> (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and
>
> (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

36. In deciding this case, I am called upon to express a view as to the meaning of a clause in the Articles. Mr Collingwood invites me to approach the construction of the Articles as I would any other contract, relying upon the now well-known principles of interpretation referred to recently by Snowden LJ, in a case in which he himself appeared: see *DnaNudge Ltd v Ventura Capital GP Ltd [2023] EWCA Civ 1142*. This decision is valuable to me not only for the reminder of how the court should approach the task of construction and the important role to be played by the iterative aspects of the process, but also because the learned judge referred to a first instance decision of his own where he had been able to express a view, which I shall be glad to follow, as to how the interpretation process should be applied to Articles of Association. The Judge said this:

> "I ventured a summary of the resultant approach in *Re Euro Accessories Limited* [2021] EWHC 47 (Ch) at [**34**] in a passage that was adopted by the Judge and not disputed by the parties on this appeal,
>
> > 'The result is that the process of interpretation to arrive at the true meaning of a provision in a company's articles of association must concentrate on the natural and ordinary meaning of the words used, when viewed in light of the scheme and purpose of the articles in general, any extrinsic facts about the company or its membership that would reasonably be ascertainable by any reader of the company's constitution and public filings at Companies House, and commercial common sense.'"

37. The final area of law that I must turn to in my review of the legal framework relevant to my decision in this case, is the law of Employment. This is because, as I have already outlined, it is relevant to the Claimants' case, an important facet of which is that the behaviour of the Defendants justified summary dismissal.

38. At Clause 16.1 of his Service Agreement with IBSHL, entered into by Mr Goyal on 5 March 2019, it was provided that it was open to IBSHL to terminate Mr Goyal's employment at any time by summary notice, on certain stipulated grounds. The submissions made to me by the Claimants relied upon the summary dismissal right as result of Mr Goyal being found guilty of any of, gross misconduct or, after warning, wilful neglect of his duties under the Service Agreement, or refusing to carry out the

reasonable and proper instructions of IBSHL or ceasing to perform his duties to an acceptable standard.

39. In seeking some guidance as to the meaning of gross misconduct, Mr Collingwood helpfully referred me to the decision of Marcus Smith J, in *Signia Wealth Ltd v Duariac-Stoebe* [2018] EWHC 1040 (Ch). In that case, the learned judge, as I do here, had to consider what effect to give to a bad leaver mechanic in the Articles of a company; he also had to consider principles in relation to constructive dismissal which do not concern me. When grappling with the question as to whether Signia had the right to summarily dismiss Ms Dauriac, Marcus Smith J, took the trouble at [**520**] to set out what he considered were general principles of employment law. Insofar as relevant to me, I have set these out below:

> "(1) Relations between an employer and an employee are governed by the contract of employment that subsists between the employer and the employee plus a significant statutory overlay. However, the right summarily to dismiss an employee (on the part of an employer) and the right of an employee to treat him- or herself as constructively dismissed are both, in essence, contractual.
>
> ….
>
> (7) A good test for whether summary dismissal is justifiable was stated in *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 1 WLR 698, as follows:
>
> > "…whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service…One act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract or one of its essential conditions; and for that reason, therefore, I think you find…that the disobedience must at least have the quality that it is "wilful"; it does (in other words) connote a deliberate flouting of the essential contractual conditions…"

40. In the context of an assertion that the submission of wrongful expenses claims, by Ms Duariac, justified summary termination of an express term of the Service Agreement which amongst other things required proof of an act of gross misconduct, at [**552**], Marcus Smith J, went on to say this:

> "It is well established that financial impropriety (and, indeed, other forms of impropriety or misconduct) does not need to constitute fraud or dishonesty in order to constitute gross misconduct: *Adesokan v. Sainsbury's Supermarkets [2017] EWCA Civ 22* . In Adesokan, Elias L.J. (following the decision in *Neary v. Dean of Westminster [1999] IRLR 288*) stated:
>
> > "…the focus is on the damage to the relationship between the parties. Dishonesty and other deliberate actions which poison the relationship will

> obviously fall into the gross misconduct category, but so in an appropriate case can an act of gross negligence…"

553. Elias L.J. went on to consider what type of dishonesty or action might amount to poisoning the relationship between employer and employee: this was conduct which "had the effect of undermining the trust and confidence in the employment relationship" (at [26]) and which "was a serious breach of the standards expected of [the employee]" (at [29]).

554. In *Sinclair v. Neighbour [1967] 2 QB 279* , which Neary followed, the test was couched in terms of whether the conduct was:

> " …of such a grave and weighty character as to amount to a breach of the confidential relationship between master and servant…" (per Davies L.J. at 289)
>
> and
>
> " …inconsistent, in a grave way – incompatible – with the employment in which he had been engaged as a manager…" (per Sellers L.J. at 287).

41. And at [**555**] *et seq*, the Judge dealt with the fact specific enquiry, which is necessary in the context of the particular contract of employment:

> "The test involves a fact-specific inquiry in the context of the particular contract of employment concerned. It is necessary to take account of the nuances of the relationship between the employer and employee in question when determining whether the relevant conduct breached the trust and confidence in that relationship."

42. Reflecting upon these short passages, I should first say that I accept the proposition that financial impropriety and other forms of impropriety or misconduct do not need to amount to fraud or dishonesty in order to constitute gross misconduct. I will not seek to hold the Claimants to those thresholds. I will look to evidence of the damage to the relationship between the parties, precisely because it is to my mind, as seems to me it appeared to Elias LJ, that establishing gross misconduct flows from conduct which has the effect of undermining the trust and confidence in the employment relationship.

43. It is also clear to me that in seeking to determine whether the Claimants had the right to summarily dismiss Mr Goyal under clause 16.1 of the Service Agreement, I must conduct a fact-specific inquiry, as Marcus Smith J did, and as he reasoned, take account of the nuances of the relationship between the employer and employee in question. Those nuances have particular relevance to this case as will be seen when I explain my view of the evidence given as to the nature of Mr Goyal's relationship with the company which he founded and felt a special attachment to. It would also not be right to ignore in this context the evidence as to the manner in which the management of Invenio was over the relevant period, conducted by a small and close group of executives.

The Witnesses

44. I heard from three witnesses in support of the Claimants' case; I also heard evidence from Mr and Mrs Goyal. The first witness was Mr Geoffrey Neville. He had been chairman of Invenio from March 2019 to July 2023. In his witness statement he addressed each of the five grounds in turn.

45. As to the loan to AA, his view was that such loans to employees were justified but that it would not have been usual for a company loan to have been repaid to a director's personal account; in any event, it should have been repaid to the company. In cross-examination he was prepared to accept that if PB had been aware of the loan to AA then it would have been an authorised loan. His difficulty with the loan however was clear: there had been no proper documentation of it, as there ought to have been, and there was in his words "confusion" regarding the repayments made, the further advances after repayment and the movements through the personal bank account of Mr Goyal. So far as Mr Neville was concerned, the confusion had not been removed.

46. As to the Mauritius retreat, Mr Neville's input was limited. He had not ever attended a company retreat. There was no travel policy prior to his arrival in 2019, but in any case, he was surprised that the junior, though important, employee Mrs Goyal had travelled to the Mauritius retreat at the company's expense.

47. Turning to the credit card expenses, Mr Neville had nothing really to say about the alleged improper purchases; he had no idea what had been purchased or for whom. As to Mrs Goyal travelling to India at the company's expense, in cross-examination he recalled that despite his written witness statement evidence to the contrary, he had in fact discussed a particular India trip with Mr Goyal. He had agreed with the notion of the trip being undertaken. He could also see that it could have made sense for Mrs Goyal to travel to India to see the wife of Alok Meta, but that had not been discussed at the time. Moreover, these matters ought to have been discussed with and approved by the CEO, and not by the Chairman.

48. Mr Neville had nothing to add on the subject of the Fiji FRCS hardware claim.

AB

49. The next witness I heard from was AB. As with the evidence of PB to whose evidence I shall refer shortly, I developed serious concerns regarding the facts and matters related to the court by AB. Not only was his evidence often unclear and faltering, on numerous occasions, as a result of what I have to say was able and effective cross-examination on the part of Mr Goyal, he quite simply changed his story from what had been a clear position taken in his two witness statements. Having said this, I do recognise that AB was candid and apologetic when he realised his mistakes. Time and again he fairly and with apparent honesty, accepted that he had been mistaken in what he had said in his witness statements. The result of all this was a need on my part, to approach the

evidence of AB with due caution; I also take the view that what I heard before me is to be preferred to anything contained in the pre-prepared witness statements.

50. AB had been COO, and latterly CEO, of the Invenio business since 2013; he left some five months prior to the trial. On the subject of approval of relocation expenses, that had been a matter for PB and not for him. Had the expenses been agreed by the board in the guise of Mr Goyal and PB, then the expenses would have been approved. Similarly, AB had little direct knowledge of the Mauritian Rupees loan to AA. His chief concern was the lack of any documentation.

51. As to the existence of a formal company travel policy, AB's evidence was to say the least uncertain. When pressed, he thought that there was a travel policy in writing but was at pains to stress that he was not the best person to give evidence of the point.

52. Moving onto the family attendance at the Mauritius retreat, AB accepted that he had replied "yes", when Mr Goyal had informed him of his intention to also bring his wife and daughter. Whilst AB did not consider his yes reply to amount to a formal approval, the assumption was that the cost would be covered by the company. Suffice it to say that this is not the impression given by the witness statement evidence of AB, which for these purposes I propose to disregard as being in my judgment, and in light of the evidence I heard from AB, fundamentally unreliable. By way of example, in his statement AB claimed that he had not been asked about the attendance of family members at the Mauritius retreat and nor did he provide any approval; so far as he was concerned, their attendance was inappropriate, and he had been unaware how expenses would be claimed. This evidence puts a very different construction on matters and was not how I heard AB present what had happened.

53. As to the HSBC card expenses, it was AB's evidence (aside from correcting yet another mistake as to whether he had in fact approved an expense claim from Mr Goyal), that any IT equipment for use by employees in the UK should have been procured through the company IT team in India. This practice he accepted was possibly not followed in the UK.

54. As to the treatment of the FRCS hardware procurement in the books of Invenio, AB had little to add. He could not recall any helpful evidence and explained that he had not been involved in the real detail of the transactions.

PB

55. PB's evidence in chief was in the form of two witness statements. I formed the view that PB was an honest witness, despite the self-evident inconsistencies in the evidence he gave to the court, and his previously prepared written statement evidence. Quite how he could provide witness statement evidence that was so obviously at odds with his clear recollection related before me, on oath, is hard to fathom.

56. In his first statement, PB confirmed that he had been Managing Director of Invenio from May 2008 until December 2017. He accepted that there was an informal policy of loans to employees; he also accepted that Mr Goyal had told him about the loan to AA, and that he approved it. Although he claimed to be unaware of any terms of the loan or documentation, he was surprised to hear that the loan might have been repaid

to Mr Goyal rather than the company. PB accepted that loans to employees did not usually attract interest and often would not have been documented if only £20-30,000. In cross-examination, PB told of his practice of giving gratuities to employees with no expectation of repayment.

57. In his second statement, PB stuck to the line that he had a limited recollection of the loan discussions and arrangements. He was categorical that he had no memory of the suggestion that responsibility for repayment of the loan to AA would be assumed by Mr Goyal. In his evidence before me, PB changed his story; now he could recall Mr Goyal explaining to him that the loan was to be routed through him and that he did not object. A decision relating to a loan under £40,000 was in his view not significant. In re-examination, PB reiterated that he had said, yes, the loan could be routed through Mr Goyal provided it was repaid. The loan itself had to be made; AA was "worth his weight in gold" and that he "would not hesitate" to make the advance. I have to say that where there was an inconsistency, I preferred the evidence I heard given in court.

58. Moving onto the relocation costs expenses claim, PB considered £9,000 as reasonable. AA was needed to cover a $24m contract and so making expenses payments to him was "certainly reasonable" and he would have paid the amounts "any day".

59. On the FRCS claim, in his second statement, PB explained that he had signed the relevant contract but beyond that, he had no recollection. The hardware procurement that was at the heart of the allegation against Mr Goyal, had followed some two years later by which time PB no longer had any involvement. When asked however about how the gross revenue might be treated in the books of Invenio in the UK, he was willing to accept that the gross amount, not merely the margin to be earned by Invenio, would be reflected in the books of Invenio. This he said happened when SAP licences were sold to customers; the gross amount was recognised by Invenio. This was not a practice designed to artificially inflate the sales.

60. In his first statement, PB dealt with his recollection of events surrounding the Mauritius retreat. He knew that Mr Goyal had taken his family to "at least one or two events". He had not contested this and had not discussed with Mr Goyal whether Mrs Goyal could also attend company events; but he did not expect that Invenio would meet the expenses of attending family members. The position might have been different for family members attending a company function local to them. At all events, he could not understand why Mr Goyal's daughter had attended a company event, and would not have expected the company to meet the costs for Mrs Goyal and her daughter to attend an event in Mauritius.

Mr Goyal

61. At this point in the trial, Mr Goyal moved from the advocates row into the witness box. He was cross-examined at length by Mr Collingwood on his two witness statements. It was plain to me that with the assistance of his wife and daughter, Mr Goyal had prepared thoroughly for the trial. On the whole he had a well thought out position prepared on each aspect of the case. What was obvious to me, was that he tried hard to follow that path wherever he could. He nevertheless struck me as a decent and honest individual, aware of mistakes he had made in, at times, trying too hard to promote the success of an undertaking that was clearly the central and main part of his life. This

point was perhaps best illustrated by Mrs Goyal, who in giving evidence, posited that had her husband been given the choice between her and Invenio, she was in no doubt that she would not have been his selection. I thus approached his evidence in the knowledge that Mr Goyal had a well prepared "line to take", but on the whole viewing him as a credible and honest witness. As will be seen, Mr Goyal demonstrated a willingness to accept his failings where he himself could see that he had fallen short.

62. Another feature of Mr Goyal's cross-examination was his determination to see each question put to him as an opportunity to craft a submission helpful to his case. In no small measure due to the patience of Mr Collingwood, and as result of some encouragement from the court, Mr Goyal did manage to offer clear evidence on each of the allegations forming part of the case made at trial by the Claimants. It is to that evidence that I will now turn.

63. Touching first on the nature of the Invenio business and how it was managed, Mr Goyal explained in his first witness statement that:

> "lnvenio, in very brief terms, provides both SAP consultancy and SAP product delivery as a single offering. Our focus on specific industry solutions made lnvenio distinct in the SAP market. SAP itself refers to the software developed by the German software company SAP SE and lnvenio would advise on and implement its deployment to specific business processes. Those business processes could range from warehouse management to state tax and revenue collection. One of lnvenio's biggest and most complex projects was for the Saudi General Authority of Zakat and Tax (referred to as GAZT), when Saudi Arabia replaced their tax collection system and later also introduced VAT on the new SAP system.
>
> One of the projects that helped drive lnvenio's growth was a project for the government of Mauritius to develop SAP Tax & Revenue Management (TRM) based tax systems for their federal tax authority. That opportunity came about almost by mistake as we engaged with the tax authority thinking they were looking for another SAP-TRM shared acronym solution which stands for Treasury & Risk Management but once we had completed it successfully it helped make lnvenio's name in SAP Tax & Revenue Management consultancy, and we were offered another distressed project in Maldives by SAP Singapore. This was followed by lnvenio winning the Saudi Arabian GAZT project and many more in the following years.
>
> lnvenio was run by hands-on directors who wore multiple hats to keep the company nimble and agile. A lot of board level decisions were taken through discussions standing across the table in the office or on calls. These aspects of running the business, where decisions could be taken quickly, helped us grow the business rapidly and win business against much bigger and more established players. The focus of the business was growth and dealing with the challenges of rapid growth especially attracting good talent and retaining them even when there were poaching efforts from competitors. Starting from scratch in 2006, the company was valued at £68 million in 2019, all through organic growth and zero debt."

64. Moving onto his role at Invenio, in cross-examination, Mr Goyal accepted that he had an especially close relationship with the company which he had founded in 2006; he

saw it as his baby; the company was his family. Everyone connected with the business was his friend. It was in this context that he explained his interaction with AA, whom he began to respect highly due to his contribution to the delivery of successful Invenio projects. It was the company ethos, Mr Goyal explained, to ensure that employees "stood by us and went above and beyond the call of duty". If such employees needed help, then it would be offered. But Invenio was not a bank; if the company was unable to arrange a loan, or if it was considered inappropriate, then Mr Goyal would arrange the advance himself.

The loan to AA

65. Mr Goyal went on to explain the circumstances surrounding the loan to AA. As it turned out during the course of the trial, the reasons for and circumstances surrounding the making of the loan, became somewhat unimportant. Mr Goyal accepted that he had arranged for Invenio to make an advance to AA of some £40,000. On Mr Goyal's case, he discussed the making of the advance with PB and I find that he probably did. I here rely upon the evidence of PB given to me. PB twice appeared to confirm that he had discussed the loan and it being "routed" back through Mr Goyal. He expressed himself to be otherwise than an accounting expert and had been happy to leave these matters to Mr Goyal, provided that it was a loan and that it was repaid to Invenio. Mr Goyal also claimed that he discussed with PB that the right to receive repayment of the loan from AA would be assigned to him, whilst at the same time, he would assume the liability to repay the outstanding amount to Invenio. It was at this point that Mr Goyal, in a frank exchange with Mr Collingwood, accepted that he had not conducted himself as he ought to have. In his words, this was "the missing link", by which he meant that had there been such an arrangement in respect of the AA loan, there was a complete absence of any confirming documentation. The matter was further confused when Mr Goyal appeared to suggest that he had taken over full responsibility for the loan albeit that he had not ever explained this to PB. When giving evidence, he was willing to agree that this was "odd".

66. According to Mr Goyal, although not corroborated by PB himself, he had also agreed with PB that the loan would be repaid only when he, Mr Goyal, had received payment in full from AA, but beyond this little was discussed. When pressed about matters such as the tenor of the loan, the full terms for its repayment, what would happen if there was a default, or indeed what a default might be, Mr Goyal had little to say. So far as he was concerned, he had done his best to help an employee whose services were crucial to his Invenio business. He did not want the loan appearing in the books as a loan to an employee on account of its size, but then neither was he willing to see it treated as a loan to a director, which Mr Goyal agreed should have been subject to an interest obligation.

67. It was accepted by Mr Goyal, that AA had made a number of repayments direct to him, but that none of the funds had been passed onto Invenio. He also accepted that monies repaid were then drawn down again by AA, and transferred back to him by Mr Goyal. This had been because AA wrote explaining that he needed the money. Invenio was told nothing of this. So far as Mr Goyal was concerned, and as he told me, "the record

of what was outstanding was on my conscience." He had sought to explain the position in his first witness statement thus:

> "It has never been my intention to retain any funds as a result of the loan to Mr Awootar. The position for me was meant to be entirely neutral. I was only involved because the loan was not repaid in full as agreed, that is within the financial year it was made. The solution was to remove it as the loan to an employee from lnvenio's books, which I believed was in the interests of the company. I accept that it appears not to have been entered onto my current account at lnvenio, reflecting the change. However, this does not mean I would not have repaid the loan itself. There was a loan between myself and lnvenio and a loan between me and Mr Awootar, with my loan from lnvenio to be repaid once Mr Awootar had settled his loan from me. Mr Awootar has not yet repaid the full loan to me. I have previously asked, through my solicitors, whether lnvenio has spoken with Mr Awootar about this matter, but they have not responded to that request or provided any details of any discussions they had with him, if they have spoken with him."

68. As to how the original transfer from Invenio to AA was dealt with, as chief financial officer of the company, Mr Goyal saw to it that an entry was made in the Invenio books recording the payment as "subcontractor charge". This was, he said, because all expenses relating to employees such as AA were in the manner of subcontractor payments. An audit was due, he explained, and "we had to account for it." So far as Mr Goyal was concerned the word "loan" could not be used because of a fear that other employees would themselves ask for similar advances.

The treatment of the FRCS Invoice

69. Mr Goyal's evidence in relation to the FRCS was at heart straightforward. He accepted that Invenio's earnings from the contract would only be the margin; he accepted that the full value of the contract was not the value of the sale by Invenio as it would only receive the margin, whilst the local company supplying the hardware would receive the payment for that hardware direct from FRCS. The point that Mr Goyal stressed in his evidence was that he was perfectly entitled to record the full sale value in the books of Invenio because that was the amount of the contract value. It was that full contract sum that Invenio was contractually responsible for albeit that the hardware component was to be supplied and delivered locally by a sub-contractor that would invoice the client direct and be paid by that client. As he said in cross-examination, "I was obliged to the gross figure as an accounting entry. I had to show the gross revenue. Elsewhere in the accounts, the position of the sub-contracting company would be reflected. So if someone looked only at the revenue, they would only see half the picture. The revenue has to sit with the party who won the contract. This was normal accounting practice." I have to say that I gained a similar impression from PB; it was clear to me that he too thought that the gross amount would be recorded in the books of Invenio.

70. When it was put to him that the gross value was recorded incorrectly and solely with the aim of inflating the value of Invenio sales prior to a proposed sale of the business, Mr Goyal rejected the suggestion without reservation. How would he have benefited,

he asked in reply; moreover the accounts have been audited since and no issue taken by those auditors.

71. Mr Goyal was challenged about invoices that appeared inconsistent with the transaction as he accepted it had developed as a result of the direct supply of hardware. There can be no doubt that Mr Goyal was unsure of his ground; the explanations offered as to the confused nature of the invoicing between the various companies involved did not serve to satisfy me that I had arrived at a proper understanding of what had taken place. I did however arrive at a clear view that the invoicing history was not relevant to the real issue between the parties which was in my judgment the question of why the gross amount of the contract value had been recorded in the accounts of Invenio.

Travel and flight expenses

72. The cross-examination of Mr Goyal moved on to the subject of the expenses claimed on the HSBC credit card. His position remained firm: the costs incurred in flying his wife and daughter to Mauritius, as well as the costs of a private villa at a resort hotel near to the Invenio retreat hotel, were proper and approved. In his opinion, AB ought to have made it clear to him if the trip was not approved. It was obvious that if the family were to travel to the retreat and take part in it, then Invenio would cover the cost. Pausing here, I must record that I am prepared, not without some residual concern, to overlook the curious assertion in Mr Goyal's defence that what was clear was a luxury private villa in a hotel resort was a "bed and breakfast apartment". It is not altogether easy, in the light of the evidence I heard from both Mr and Mrs Goyal on the subject, to reconcile this averment with a desire to make an honest case. As to the costs involved, Mr Goyal nevertheless offered clear and convincing evidence that the flight costs were kept to a minimum; they were economy class "hopping flights" that ensured the overall cost was kept to a minimum. He rejected out of hand, and again I have no reason to doubt him, that there were leisure-time stop-overs in holiday destinations such as the Seychelles.

73. Mr Goyal accepted that there were not Invenio events involving his family, across the full length of his stay in Mauritius; it was nevertheless important that the Invenio staff saw his family, and that his wife and daughter were given greater exposure to the "Invenio family". This was part and parcel of creating the Invenio culture that was in Mr Goyal's view, so important to the success of the business. I have to say that I am entirely persuaded that this indeed is how Mr Goyal viewed the Mauritius trip. I think that AB knew well that Mr Goyal saw things in this way and probably did not want to express a discordant opinion even if he harboured some doubts. Whilst it is pleaded that Mrs Goyal did not attend any events at the retreat, I am willing to accept Mr Goyal's evidence that she did participate, inter alia, in the Island tour prior to the formal commencement of the retreat.

74. The same underlying approach carried over to the return flights routed through India, as well as the internal flights. Though I confess to having been troubled by Mrs Goyal's evidence that part of the purpose was to show her daughter what she could achieve in life, I did not however see that as Mr Goyal's predominant aim. Whether it was indeed as Mr Goyal claimed that his wife, standing in for a lady that could not attend, would cut the ribbon for a new office opening following an Invenio custom that the first and

last employee would have that honour, I was persuaded by Mr Goyal that he felt strongly that there was a real Invenio-related purpose to his wife being seen by the employees or clients of the business in India. The trip to India was not a holiday as was suggested; in my judgment, however the time might have been spent, the reason for the trip occurring, in the mind of Mr Goyal at any rate, and the cost being incurred, was to advance the commercial and corporate interests of Invenio. It might have been that Mrs Goyal was not entirely or exclusively engaged on Invenio business whilst she was in India, but to my mind that is little to the point. On the evidence that I heard, I did not form the view that the visit to India was in the manner of a family leisure trip dressed-up to give the impression that it was somehow all with Invenio in mind.

75. But this interpretation of events only goes so far; there are seven sets of flight expenses which, so far as Mr Collingwood is concerned, do not admit of any reasonable explanation. There was much evidence given before me as to the existence of a travel policy. It was hard for me to discern whether there was or not. The witnesses were vague as to whether one existed, and, if it did, whether it was at any stage in writing: I do not however think that anything turns on this part of the Claimants' case as it was presented to me.

76. I have dealt with the flight expenses of Ms Goyal to Mauritius and then back to London. The case in the defence in respect of the other expenses numbered 4, 9, 10, 11, 12, 14 and 15 in the PoC, is that Mrs Goyal was attending Invenio events in India. In one instance, she was there to meet the wife of an important employee. I am prepared to accept that this meeting took place and that it was important for Invenio. I am not so inclined to accept that all of these trips were necessary for the promotion of the commercial success of Invenio; nor can I entirely ignore the fact that, as Mr Collingwood pointed out, these were trips to India. The evidence in regard to the attendance of a number of corporate events in Mumbai was in my judgment weak to the extent that it was there at all. By way of example, Mr Goyal's witness statement at 55.4 records his inability to properly recall the purpose of the 2017 flights for Mrs Goyal to travel to Mumbai: "in all likelihood", it was suggested, they were in respect of an Invenio retreat.

Apple products – expense claims

77. It was also alleged by the Claimants that Mr Goyal improperly charged expenses to his company credit card in respect of a Christmas Eve purchase of an iPhone, and the purchase in September 2017 of an Apple MacBook computer together with a "telephone, headphones and adaptor". Mr Goyal was pressed hard by Mr Collingwood about the first iPhone purchase, given the self-evident curious timing of the acquisition by Mr Goyal of an iPhone for use by an Invenio employee. He was also pressed about how it was that additional Apple products including two laptop computers were purchased by him rather than through the IT team at Invenio. His evidence was that the UK did not have such a team. At any rate his evidence was that if the products were for Mrs Goyal, they would have been delivered to his home. This was the case for both laptops as one was for Mrs Goyal's sister Vandana, who also shared the family home and also worked for Invenio. The student discount that had been applied did not in Mr Goyal's view demonstrate anything other than the fact that he would not shy

away from using a discount code available to him for any purchase in order to save Invenio money.

78. Mrs Goyal in her evidence before me, also followed this line. She said the last purchase was indeed for her as she wanted to try out an Apple product. It was not a successful trial and in due course she handed the machine back to an IT team visiting the UK, and the computer "was wiped". The related applications were also for her use, for Invenio business. On no account were any products purchased for family use; any suggestion that products were bought for her daughter was emphatically denied.

79. On the face of it, this evidence seemed plausible. The difficulty I have with it all is that none of this was pleaded. The barest assertion, true though it might be, is set out, that is to say that the computers and related products were purchased "for the use of an Invenio employee…". At paragraphs 55.5 to 55.7 of his first witness statement, Mr Goyal makes no mention whatsoever of the involvement of Vandana or his wife. The impression given is that this was a purchase made on behalf of the company to supply equipment into the business. It is unlikely in my judgment, that Mr Goyal would have described these purchases for his wife or Vandana as being "a laptop purchased for an employee at Invenio". I have to accept that in her first witness statement, Mrs Goyal makes reference to the rose gold MacBook, which she explained had been purchased for her. No mention is made of the other Apple products, or the laptop supposedly purchased for her sister's business use. It does seem to me inherently peculiar that only these IT products were purchased in this way for Invenio employees. I also take the view that had the case I heard developed in cross-examination been the true position, it would have been set out with much greater particularity in the Defence or in the witness statements: it was not.

The AA Expense claims

80. A further allegation levelled at Mr Goyal by the Claimants, is founded upon his approach to the scrutiny of expense claims submitted to Invenio by AA. The background to this claim is the desire of Invenio to secure the relocation of AA and his family from Saudi Arabia to Fiji, in order that he could fulfil the lead function in the delivery of the major FRCS tax collection platform. As has already been touched upon in this judgement, Mr Goyal, and his management colleagues, viewed AA in the manner of a business-critical employee. As part of the discussion to see AA relocate, Mr Goyal explained in his first statement that an advance of £10,000 would be made to AA, to cover his expenses of moving, recognising that not everything that comprised AA's household in Saudi Arabia was susceptible to relocation. Valuable belongings or perishable kitchen items, would have to be left behind and re-purchased in Fiji. The notion of an advance to cover relocation expenses, was discussed with PB.

81. Mr Collingwood's case on this part of the claim was put to Mr Goyal. The loan was a device though which to channel a further payment to AA. It was for that reason, Mr Goyal was otherwise than punctilious in his approach to the review of the expense claims submitted by AA. Mr Goyal dismissed those suggestions; he would not accept that his "signing off" of everyday consumables was indicative of a lax approach to expense assessment or indeed suggestive of any other purpose or intention. The truth was rather more prosaic. If AA needed to replace his shampoo or cashew nuts, or even

replace his Sky television subscription, then those were costs which fell broadly within the definition of relocation expenses given the purpose that Invenio had in mind, which was to incentivise a vitally important employee on a contract that was of major commercial significance. The plain impression I was left with from the cross-examination, was that Mr Goyal considered that if a discretion had to be exercised, it would have been exercised in favour of allowing an expense as the intention was to make the move from Saudi Arabia to Fiji easy for AA. Against this backdrop, he firmly denied the allegation put to him that he had acted in bad faith.

82. I was invited to infer bad faith, from the language of an email from Mr Goyal to AA in which AA was asked whether he had any additional expenses to claim. This was, on the Claimants' case, necessary as Mr Goyal was seeking to "hit the target" of the £10,000 loan amount, such that it would be repayable. I confess to some difficulty in drawing the inference suggested, given the evidence I heard.

Mrs Goyal

83. The final witness I heard from was Mrs Goyal, who was described by Mr Collingwood in his closing as a generally reliable witness. I formed a similar view although with the reservation that at times it became clear to me that she was cautiously following a well-rehearsed position as to the facts. This was especially so in regard to her evidence touching upon the Mauritius retreat and the travel to and around India. The evidence of Mrs Goyal, who is both a Chartered Accountant and a Company Secretary, was set out in two witness statements, which confirmed her shareholding in Invenio, a company established by her husband in 2006. At the outset her shareholding had been 25% but increased when the other founding member left the business. In cross-examination, Mrs Goyal explained her role at Invenio. Her responsibilities included initiating payments that had to be made by the business; she would not make the payment herself, but merely set it up on a bank platform so that it could be made when subsequently authorised by a relevant director. The movements of the money or the amounts, were not her concern, although she did see the bank statements.

84. As I explained earlier in this judgment, the two principal matters that I am concerned with in respect of Mrs Goyal, are the AA loan repayments and the advance to Brothers' Housing Estate Limited. When the loan to AA was made, Mrs Goyal explained that to her, the transfer was just an ordinary payment for her to set up. The reasons behind it were not a matter for her; her job was to initiate the payment. She did however know that there was a loan being advanced to AA and she knew the payment was going to his account. As to the assumption by her husband of liability for the repayment of the loan, Mrs Goyal had little recollection. She was not sure but felt that he must have told her if he was taking on a burden as that is what a husband should do. Nor did she think it strange or suspicious that Mr Goyal was retaining the loan repayments. So far as she was concerned, it was all bound up in her husband helping an employee. It was also not her role to question payments; that was a matter for the other directors. At all events it was not her job to keep track of loans. Thus, she had no idea what was owing, one party to the other, because it was never her job to keep track of such matters. Complying with instructions from Mr Goyal to return a repayment instalment to AA

excited no special concern or thought in her mind; her job was to initiate payments when told to do so.

85. Mrs Goyal was similarly sanguine about the December 2015 email message to her from Mr Goyal in which a loan repayment instalment was accompanied by a "Happy Christmas" greeting. There was a similar message referencing Diwali. These messages did not signify any personal benefit to her or her husband, being merely seasonal greetings sent perhaps from an overseas business trip. Money was not important to her, being as she is, a "family-oriented" person.

86. Moving on to the Brothers' Housing loan, Mrs Goyal agreed that a loan had been advanced by Invenio to a company established by her and her sister, to which I will refer as Brothers. There had been a Loan Agreement in December 2013 for an amount of £1.24m, albeit that £600,000 had been advanced previously. In her view, her husband must have secured the necessary approval for the loan to be made. Everyone in the Invenio senior management team knew about the loan, including PB, AB and Mr Neville. In due course a fresh arrangement was entered into, which provided for the loan to be repaid by 2020. In Mrs Goyal's mind, it was important to note that PB had at no time asked for repayment of the loan, yet he had been entitled to do so. Yes there had, perhaps surprisingly, been no requirement to pay interest, but the Invenio board had expressly agreed to this.

87. In 2020 the Covid pandemic struck. This affected the business of Brothers. The loan could not be repaid as expected. The loan was however repaid in full in 2021, together with interest, but not before a winding-up petition had been presented to the Court. It was just that time was needed to repay, explained Mrs Goyal.

88. Mrs Goyal was also cross-examined on the circumstances surrounding the Mauritius retreat. In a convincing passage of evidence, pointing to the close working relationship between the Invenio directors, she explained that "PB would never say no." If she asked him whether she could attend a retreat, "he would say, "why are you asking, you are more than welcome". In her opinion, if an approval was sought and granted, then it was to be expected that the company was covering the expenses.

89. Mrs Goyal remembered seeing both AB and PB at the retreat; both were friendly to her. Her attendance was consonant with the family ethos underpinning the Invenio business. Not only that, Mrs Goyal considered herself "beyond an employee; she knew the problems of the individual employees". She "had an idea what the employees were looking for".

90. Whilst Mrs Goyal accepted that along with her daughter, she and her husband had stayed in a private villa at a hotel on Mauritius, everything had been transparent. Her flights out had been economy class, the villa configuration permitted the family to cook its vegetarian food for itself. As it was connected to a big office opening, Mr Goyal had considered it important that she was there. A similar principle applied to the attendance of her daughter. She was asked to "mingle with the employees" and help

demonstrate the family culture. So no, it had not been in the manner of a family holiday.

91. The evidence given in regard to the flights to and in India, was in a similar vein. Approval of another director had been sought by Mr Goyal and was given; her travel was transparent and well-known; it had been undertaken at modest cost as Mr Goyal was against Business class travel if that could be avoided; and her attendance at office openings or employee meetings had been important and very much in the interests of Invenio. This was especially so in the case of the employee, Alok, that Mrs Goyal had been personally instrumental in persuading to stay with Invenio. Absent the trip to India, this would not have been possible.

Discussion

92. Dealing first with the loan to AA, Mr Goyal accepts he made the loan. The circumstances of its payment and the transfer of funds are unimportant. Mr Goyal says that he discussed it with PB and it seems clear that PB said the loan should be made; PB probably also, at some point, gave some indication that the repayments could be routed through Mr Goyal. But it is another thing altogether in my judgment that it was not properly documented. Moreover, if the burden of it was to be novated to Mr Goyal as he said it was, then all the more crucial that it was documented, and the arrangement approved by Invenio following a degree of due process. It is trite that a company must keep proper records of its transactions, certainly substantive financial dealings of this nature. It need hardly be said that if the repayments were to go to Mr Goyal personally, and not repaid to Invenio until repaid in full, then a fortiori, the arrangement ought to have been properly recorded in the books of Invenio.

93. Mr Goyal frankly accepted that it was a mistake on his part not to have set down in writing the details of novation; he referred to it as "the missing link". He accepted that he now owes the full amount outstanding to Invenio but seemed vague as to whether an obligation to deliver up the repayments already received had crystallised. At best, this is because Mr Goyal did not really know what the terms of the transaction were; in the alternative, he was obfuscating over his dealings that he knew were not honestly concluded for the benefit of the company. At one stage Mr Goyal attempted to characterise the loan as a loan to a director, but that only led to confusion on his part as to the obligation to charge interest. Interest was not charged or paid. The explanation given for this was that loans to employees typically did not attract interest. In my judgment the evidence was confused and lacked credibility. To my mind it did not matter whether the loan was agreed to be repaid in lump sum instalments or by way of regular £1,000 instalments; nothing was documented and whatever was agreed was not and is not clear to Invenio: it should have been. A director of a company cannot act in this way and then expect to come to this court and be heard to say that the duties owed in good faith to promote the success of the company for all its members, and to act with reasonable skill and diligence, have been faithfully discharged. Despite his protestations that he was at all times acting for the good of Invenio, I suspect that Mr Goyal realised that on this head of claim he was in serious difficulty and had no real answer to the charge. Indeed, it was somewhat to his credit that he did not seek to

evade what became a rather obvious conclusion as he answered questions in cross-examination and then later developed his submissions in closing argument.

94. Save for the obvious corollary, it does not to my mind seem to be necessary to go much further on this head of claim. A clear breach of duty is established. It seems to me to fall squarely within the pleaded case at paragraph 31, of the PoC *et seq*. What flows from it in the case of a director given the responsibility for the financial affairs of the undertaking is a further matter that deserves consideration in this case. Would it of itself justify summary dismissal? In my judgment the answer is rather obvious and in the affirmative. It must be kept in mind that the supposed loan repayments were being made into the finance director's personal bank account. There can be no excuse or acceptable reason for a finance director to have behaved in this way. How can the financial affairs of the undertaking be entrusted to someone who enters into such a transaction but in any event, fails to record it properly or at all? The answer is that there could be no trust. Applying the tests cited by Elias LJ in *Adesokan*, I do see this behaviour viewed as a whole, as inconsistent in a grave way and incompatible with the employment in which Mr Goyal had been engaged as a manager. I do not see how it could be seen as otherwise than a serious breach of the standards expected of the employee. For these reasons, in my judgment, the company would be entirely justified as seeing the matter as a repudiation of the relationship embodied in Mr Goyal's service contract with Invenio.

95. I will now deal with the claim that arises from the relocation of AA from Saudi Arabia to Fiji, where he was to work on a new project which Invenio had secured with the FRCS. It is, as has been seen, Invenio's case that Mr Goyal, in breach of his duties, caused and/or allowed Invenio to discharge £11,931 of AA's relocation expenses when there was no business rationale for Invenio to cover those costs and where Mr Goyal had no authority to do so.

96. There can be no doubt that AA was a highly-prized consultant in the employ of Invenio. It was not gainsaid before me that he was crucial to the delivery of a number of highly lucrative contracts. The decision to indemnify AA for his costs of relocating to Fiji from Saudi Arabia was known about by PB. There was no complaint made about the decision to reimburse expenses, *per se*. The issue raised was in respect of Mr Goyal's lax oversight; he should have checked the till receipts more carefully. Had he done so, he would have realised that he was paying for everyday grocery items and consumables that should not have properly featured in a reimbursement claim.

97. Mr Goyal met this claim head on; he had wanted to make life easy for his most valuable consultant; he was not about to enter into as might be said in the vernacular of New York, the "nickel and diming" of AA as to his supermarket receipts. It was not for him to challenge whether, as it was argued, the split pea purchase was justified as a replacement for a bag of pulses left abandoned in a pantry in Saudi Arabia. What was in the interests of Invenio was to see a content and happy AA, following a doubtless testing relocation from Saudi to Fiji. On this I have little difficulty in agreeing with Mr Goyal. This question fell well within his band of judgment as a director of the undertaking. I am not about to substitute the court's view on the matter. I am also

entirely satisfied that in respect of this alleged failing, the duties under sections 172 and 174 of the 2006 Act were properly and fully discharged by Mr Goyal.

98. A significant amount of time in the trial was taken up with an examination of the circumstances surrounding the travel to, and attendance at, an Invenio retreat in Mauritius in 2018 by Mrs Goyal and Ms Vini Goyal (Mr and Mrs Goyal's daughter) at Invenio's expense. The Claimants' say that Mr Goyal, in breach of his duties, caused and/or allowed Invenio to cover those costs when there was no proper commercial rationale for either Mrs Goyal or Ms Goyal's attendance and there was no precedent for spouses or children of senior management to accompany Invenio executives/senior management to overseas events. It was not really an issue of whether there was a travel policy or not; in reality, so far as I could see at any rate, the claim was that it was wrong because there was no benefit to the company and Mr Goyal ought to have known that.

99. And was it necessary for the Goyal family to take up residence in a private villa in a luxury hotel? This was not the hotel where the retreat was being held. The choice of accommodation certainly surprised AB, but not it seems to the extent that he felt it necessary to raise the issue with his fellow director. Was it necessary for the family to arrive four days prior to the commencement of the retreat? Mr Goyal argued that it was because there were other Invenio-related activities that the family could participate in.

100. On the return trip, rather than flying directly back to the UK, the opportunity was taken for a trip to India. Again, Mr Goyal was clear that this was entirely for the benefit of Invenio; his wife attended office openings and other Invenio-related business. All of this was an effective use of the trip; the family had to return to the UK and doing so by means of Economy class flights combining a visit to the important Invenio sites in India was a perfectly valid business decision. It was in the best interests of Invenio.

101. As I have indicated, I am immensely troubled by this ground of claim; however, balancing the evidence, I arrive at the conclusion that the decision was one for Mr Goyal and not one for the court to second guess. It is Mr Goyal's view of what was important for the success of the undertaking that must be taken into account. He had been at the heart of the business since its inception; his view of the culture and what imbued the business with a successful culture is ultimately what is decisive to this controversy. Although her role was managing payments, I accept the evidence from the Defendants that Mrs Goyal was nevertheless well-known throughout the business; I accept that there can be more to a successfully global business than "pounds, shillings and pence". Mr Goyal's evidence as to "culture", by which it might be meant instilling in employees a sense of belonging to something worthwhile that goes beyond the mere employment function, is central to this finding.

102. Having weighed the evidence, it seems to me that Mr Goyal did believe that having his wife and daughter with him at the Invenio retreat in Mauritius was in the interests of the undertaking. He believed, and it is not for me to substitute my own opinion, that the commercial interests of Invenio would be served by encouraging a family atmosphere and a culture of belonging. The way he sought to achieve that was by encouraging senior executives to bring family to company events. The Mauritius event was self-evidently different; it was a long way for his wife and daughter to travel – but

they did so on an economy flight, otherwise than direct; they did involve themselves in the Invenio event. The fact that they might have arrived three or four days early, to my mind takes the matter no further. What is important is that AB was asked to approve the attendance and he did. In my view Mr Goyal was entitled to assume that the costs were also approved. To put that another way, I am not, in all the circumstances, prepared to say that it was a breach of duty for him to have arrived at that assumption.

103. The decision to take separate accommodation may lay Mr Goyal open to criticism but was it a breach of a duty? I think not; in any event I cannot entirely ignore the evidence of Mrs Goyal that by having a kitchen, the family was able to cook its own vegetarian food. The travel by economy flight to Mauritius, then India and back to Britain, is also a factor in weigh in the scales. Crucially, it was not hidden. To my mind, travelling back through India and attending Invenio related events there falls to be treated in the same way. I do not however, as I will explain shortly, take this view in regard to the other trips to India.

104. It makes sense for me to now deal with each of the claims that arise from the use of the Invenio HSBC credit card. These claims arise from Mr Goyal charging, or allowing to be charged, 15 transactions totalling £8,648.14 to his corporate HSBC card between December 2014 and May 2019. It was the Claimant's case that there was no commercial rationale or purpose for any of those charges, and that Mr Goyal failed to provide any proper explanation for them, such that Mr Goyal acted in breach of the duties he owed to Invenio in making those charges or allowing them to be incurred.

105. Of the 15 transactions set out in a table in the PoC, nine were concerned with flight costs. I can deal quickly with transactions two and three. These were said to be flights to Bangalore (£301.16) and a flight that Mr Goyal concedes was for his brother (£119.85), wrongly charged to the credit card. I do not believe that the Claimants have discharged the obligation upon them to prove that the first flight was not as Mr Goyal has claimed. He says it was an IT related visit. If Mr Goyal accepts that the second flight charge was in error, then so far as I am concerned that is the end of the matter. Mistakes of this nature are made; they do not of themselves establish a breach of duty if the error is accepted. In light of the contentious nature of the relationship of late between Mr Goyal and the Claimants, I am not going to hold it against him that the amount involved has not yet been repaid. Given the amounts involved, I am not persuaded that these charges evidence any breach of duty, but my primary finding is that I do not find the allegations proved on the evidence.

106. The transactions numbered four, five, nine and 11 in the PoC table to which I have referred, also relate to travel costs. I accept that so far as the Defence is concerned, it was not pleaded that these costs were approved by AB. In cross-examination, Mr Goyal steadfastly held to the line that AB must have approved the flight costs and that he also knew that his wife and daughter were travelling with him. I did not get this impression at all from AB, nor did I get the sense of this continual seeking and granting of approvals from the evidence of PB. No evidence was put before the court of the numerous Invenio events in India that supposedly justified the attendance of Mrs Goyal. I also note here the position taken by Mrs Goyal in her witness statement regarding approvals sought by her from PB. Her evidence before me seemed to be uncertain on the point and suggested that in fact Mr Goyal had been responsible for

seeking the approval. Without more, including any contemporaneous evidence of approvals or Invenio events, it is difficult to arrive at the view that there was any commercial justification for Mrs Goyal to accompany her husband on these trips. I take full account of the case made in regard to the culture of Invenio and I strain to give every latitude to the entrepreneur, founder director in this regard, but ultimately there has to be a boundary. In my judgment, this is where it is reached.

107. Transactions 10 and 12 appear to me to be even more problematic. The costs were in respect of flights from London to Mumbai in January and September of 2018. Not only was Mrs Goyal a traveller, but so was her daughter, Vini. I did not hear any evidence pointing to a justification for travel of this nature as being for the benefit of Invenio, beyond the company culture explanation to which I have adverted, and which in my judgment falls a long way short of providing a valid explanation for the cost being incurred. The September flight was of course the return from the Mauritius retreat in regard to which I make no adverse finding.

108. The admittedly modest flight costs featuring in transactions 14 and 15 from May 2019, relate to Mrs Goyal's travel to Jaipur and also Ahmedabad. I heard a variety of reasons for these visits from both Mr and Mrs Goyal. I did not however see any document or hear from PB or AB providing any justification or approval for Mrs Goyal's travel. It must again be remembered that Mrs Goyal was a junior employee performing a modest function setting up payment transactions on a part-time basis. She was not by any test at the core of the company. I am not persuaded by Mr Goyal's claim that his wife needed to accompany him to an office event or opening, or whatever was indeed the reason for the travel to Hyderabad. And whilst the travel to Ahmedabad to see "Alok" and his wife might have been helpful, absent a management discussion and approval, and I saw no credible evidence of any, arranging the travel of Mrs Goyal from the UK to India cannot have been justified. I should observe here that Mr Neville in cross-examination did recall discussing the need to travel to see Alok Mehta. But as he was quick to point out, a discussion with the Chairman of the company was a very different thing from seeking and obtaining the correct management approval from the CEO, AB. I do not accept that a discussion with Mr Neville constituted the approval that Mr Goyal now claims that it was.

109. I have not found reaching a conclusion on the case surrounding the admitted purchase of the Apple products at all easy. I see each of the arguments raised by the Claimants. There are inconsistencies in the versions of events related by Mr and Mrs Goyal in witness statements and evidence. It is not easy to reconcile their evidence with the details recorded in the fixed asset register; nor is it an obvious mode of behaviour for a lady who was not given to Apple products, to persevere with a MacBook for two years and then decide that it was not for her. The use of the student discount code as well as the evidence of age and probable needs of Mrs Goyal's daughter also is something that points to the use of the equipment by the Goyal family rather than Invenio. Buying an iPhone on Christmas Eve has a peculiar aspect to it. Mr Collingwood invites me to draw the obvious inference as to the reason for the

purchase at that juncture: why he asked would Mr Goyal take that step for the benefit of an Invenio employee at the time he did (just after lunch) on the day that he did?

110. Mr Neville had no idea who had made the iPhone purchase, all he could tell me was that if they were for family members then the company should not have paid. But he did not really know what had been purchased and for whom.

111. Against this, Mr and Mrs Goyal gave firm and unequivocal evidence on oath before me that these purchases were on no account for their own personal benefit. The laptops were for Mrs Goyal and likely as not, her sister Vandana who also worked for Invenio. Mr Goyal was equally clear that the iPhone was bought for an Invenio employee. At all events, faced with drawing an inference which arises out of no single piece of individually strong evidence, as against directly contradictory evidence tested before me in cross-examination, I find myself, with more than a little feeling of unease, driven to the conclusion that I cannot find the Claimants' case proved on the evidence in respect of the claim based upon the purchase of Apple products.

112. Despite this finding in respect of the Apple products, it seems to me that the Claimants must, for the reasons that I have given, succeed in the charge against Mr Goyal so far as the travel costs are concerned. Once again, having regard to his position of responsibility within the undertaking, acting in this manner and incurring costs for his family without any eye on due process, cannot be over-looked. Mr Goyal was after all the Finance Director; process, approvals and proper record-keeping, ought to have been the very essence of so much of what he did.

113. Moving on to the issue which turns on the accounting treatment of the sale to the FRCS. This is at heart a straightforward claim. As Mr Collingwood put it in his closing submissions, once the election had been made by the FRCS to procure the hardware through a direct supply from the local supplier, it could never have been right to show the gross amount of the sale value in the books of Invenio. This is the sting of the allegation. The reason for it can be found, Mr Collingwood submits, in the desire of Mr Goyal to inflate the revenue of the business as a sale was in the prospect. It mattered little that the cost in terms of the local supplier would also be reflected because what was in sight was the high value of the principal sale. But in any case, he argued, on the evidence it could be seen that there was no payment into Invenio of the gross amount and no payment out to the local supplier.

114. Mr Collingwood was also keen to persuade me that the convoluted invoicing history with which Mr Goyal so clearly struggled when cross-examined, was indicative of an element of bad faith. Mr Goyal was responsible for creating invoices that did not truly reflect the transaction that he knew had taken place. As I indicated earlier, I was unable to draw anything helpful from the evidence surrounding the invoices passing between the parties or indeed the invoices that might have been created but not in fact remitted. To my mind, the Claimants' case turns on whether it was justified or not for Mr Goyal to record the gross contract sale value in the Invenio accounts. This was the modified case, that is to say, not the case originally pleaded, made by the Claimants at trial.

115. The response to this way of putting the case was to my mind a simple proposition. As has been seen, Mr Goyal did not challenge the fact that the gross value of the sale

had been recorded in the books of Invenio. He was he said obliged to show the full contract sale price in the accounts. I did not hear from any accounting or audit expert as to what is the proper treatment of such a sale. I have no way of knowing whether it is indeed the proper approach to reflect the full contract price in the records and accounts of the business responsible for delivering upon that contract. Mr Goyal told me that whoever had the contractual responsibility had to record the full contract price. Any dealings with subcontractors and the like which had the effect of reducing the overall revenue position in the accounts, would have been made elsewhere. As Mr Goyal put it, "if someone looked only at the revenue, they would only see half the picture". In his view, had there been a mistake here, the auditors would have picked it up.

116. It seems to me that this is a controversy that I am, on the evidence I heard, unable to resolve in favour of the Claimants. It is not possible for me to say with any certainty what the accounting treatment ought to have been. What I can say is that I am not persuaded, without more, that I can hold against Mr Goyal and his position on how the gross value of the sale should have been treated in the books of Invenio. It might well be that only the net position should have been shown, but that is not something, absent expert evidence on the point, that I can arrive at a view on. It follows that I am not prepared to find for the Claimants on this this aspect of the case.

Mrs Goyal

117. What then of the case against Mrs Goyal? Should she have reported the fact that her husband appeared to be receiving company money direct from AA? Was she responsible for or did she keep track of the loan to AA and its repayment? Ought she to have reported that money was coming in but not going over to Invenio? In my judgment none of these questions can, on the evidence I heard, be answered in the affirmative. I just cannot see that these matters fell within Mrs Goyal's sphere of responsibility. Her junior position and minor administrative role was not in question; indeed, it was a foundation of the complaints made regarding her travel to overseas Invenio events. It must be noted that PB also thought that the loan repayments could be properly routed through Mr Goyal and subsequently paid on to Invenio. On her case, and it seems to me that I have no good grounds for finding against her on this point, she had no knowledge of the wider loan arrangements and no basis for forming the view that there was something to report to the other directors. The fact that Mrs Goyal saw the movements on the Invenio bank accounts, a point relied upon by Mr Collingwood, in my judgment takes the argument no further. Nor do I agree with the submission that being a Chartered Accountant, Mrs Goyal ought to have somehow appreciated that the transaction surrounding the loan repayments by AA, including the repayment back to him, were somehow suspicious and this she ought to have gone directly to PB to confirm the arrangement. Mrs Goyal's role was merely functional and administrative; in my assessment of the evidence, her role would never extend to arriving at or challenging a view on the commercial validity of a transaction. The matter did not on its face at any rate, savour of fraud, theft or financial impropriety. I am prepared to hold that it did not appear that way to Mrs Goyal. Accordingly, I do not see grounds for asserting a conflict of interest, nor do I, in this instance, find

evidence of serious misconduct or any repudiation of the contract of employment, justifying summary dismissal.

118. Although, as I have explained, I do not consider the matter to have been pleaded against her, for completeness I should say that in light of my finding in respect of the Mauritius retreat, there was nothing arising out of the facts of the attendance at that Invenio retreat that could be held against Mrs Goyal.

119. I must now deal with the allegations turning on the loan to Brothers. In his second statement, PB explained that the advance to Brothers was granted in two tranches, the second of which was properly approved. He raised issue over the first, which was an amount transferred "by [Mr Goyal] himself and did not inform the board or anyone". As pointed out by Mr Collingwood, this evidence was not challenged. Nor was it challenged that PB's evidence was that he had little option but to approve the transaction after the event. The Claimant went on to allege against Mrs Goyal that she knew or ought to have known that there was no proper approval for the first tranche of the loan. The difficulty is that there is no evidential basis for this submission. It cannot be said that just because Mr Goyal knew something, *ipso facto*, so did Mrs Goyal. It is also the agreed position, as has been seen, that the second tranche of the loan was properly approved. It is hard to see therefore on what basis Mrs Goyal could, at that point, have felt that there was something in regard to which she was labouring under an unacceptable conflict of interest.

120. But the Claimants also say that she did not do enough to ensure repayment of the loan; Invenio was starved of this valuable liquidity for a substantial period, all to the detriment of Invenio as Mrs Goyal ought to have known. But how was that made plain to Mrs Goyal? Where is the evidence of the repayment terms which were breached? The court was told of a winding-up petition which it was said was necessary to compel repayment. The loan was repaid in full. At no point was it made clear to Mrs Goyal, on the evidence I heard, that Invenio considered the fact of the outstanding loan inconsistent with her duties as a junior, part-time employee. I do not see how the mere fact of the outstanding loan, or to put it another way, the failure to procure its earlier repayment, could be grounds for alleging serious misconduct against such a junior employee. The terms of loan were a commercial matter for Invenio to agree in the "properly approved" and documented loan. Evidence was also given that the loan had the benefit of security by way of charge over property. There may have been demand and the demand was not met with repayment. To my mind however that does not without more establish a conflict of interest, or alternatively misconduct, on the part of the junior employee who had an interest in the borrower company. In all of these circumstances I am unwilling to hold that there was any obvious conflict of interest or that the facts establish serious misconduct. It is appropriate to ask the question supposing the fact of a failure to make loan repayments did give rise to a conflict of interests with Mrs Goyal's administrative role with Invenio, what course should she have taken? Ought she to have resigned her junior position? If the company in which she had an interest simply could not repay, or repay on time, what impact did that have

on her employment? In my judgment these enquires reveal the weakness of the Claimants' submission.

Declaration - Bad Leaver

121. I must now deal with the important question of the declaratory relief sought in regard to the Bad Leaver provisions of the Articles. It seems to me that the construction of the clause itself is relatively straightforward. I suspect that Mr Collingwood saw this too and I gained this impression in my exchanges with him when he introduced the argument before me. I am fortified in this belief when I see his Skeleton Argument which places substantial reliance upon the second limb of the clause which enquires as to the circumstances for the termination of the employment or appointment. Mr Collingwood goes on, prudently if I may say so, to expend no little effort in an alternative case in the event that the court does not find for him on his interpretation of the meaning of the Bad Leaver clause.

122. I regret to say that I am not persuaded by Mr Collingwood's submissions on the meaning of words in the first limb of the Bad Leaver clause. It makes express and clear reference to a Leaver whose reason for ceasing employment is due to circumstances that would permit summary dismissal. To my mind the meaning of the words is clear. If I am to give the words their natural and ordinary meaning, and that meaning is plain and obvious in the circumstances, and it is not by any means an onerous task for me to do so, then I do not have to embark upon any further enquiry. In such a case, I do not have to enquire into the commercial common sense or apply any other aid to construction. To my mind the intention of the parties, constructed objectively, is perfectly plain from the words used and the natural and ordinary meaning they would have had to parties involved in agreeing to the Articles given the scheme and purpose of the Articles in general.

123. In my judgment I must ask what was the reason for the dismissal. I can well see that Mr Goyal was a Leaver whose reason for ceasing employment was the circumstances cited by Invenio in paragraph 15 of the PoC: that is after all the Claimants' pleaded case. That in my judgment is the correct approach; it is the direct application of the words in the clause.

124. It can be seen that I have found that Mr Goyal's conduct did justify censure to the extent that on the grounds that I have set out, Invenio would have been justified in summarily dismissing him: but none of those circumstances was a ground relied upon by Invenio as being a reason for Mr Goyal ceasing employment or an appointment.

125. As I have indicated however that is not the end of the matter so far as the Claimants are concerned. An alternative case was developed before me. The essence of it was that as a director of each of Invenio and IBSHL, Mr Goyal owed each company a duty to disclose his own wrongdoing to its respective board. He also owed IBSHL a like contractual duty under his service agreement. It is argued that Mr Goyal acted in breach of duty in failing to disclose his wrongdoing under the various heads to Invenio and/or IBSHL. It is submitted that it was in the interests of each company for them to be so informed. Had he disclosed his wrongdoing, then such matters would have constituted circumstances upon which Claimants could rely (in the context of designation as Bad Leaver) by way of entitlement to summarily dismiss Mr Goyal and/or terminate his

appointments. The Claimants would then have been entitled to designate Mr Goyal as a Bad Leaver.

126. This was an issue that came before the Court of Appeal in *Keystone Healthcare Ltd v Parr* [2019] EWCA Civ 1246. In that case a director of a company had (unknown to the company) diverted some £128k of company money to his personal account. Giving full value for the director's shares, a holding company purchased the shares in the company. The court at first instance held that the defendant had been in breach of duty in failing to disclose his wrongdoing and that the bad leaver provisions would have been engaged had he done so. The result was that the holding company acquired his shares at a fair price less a 50% discount. The Court of Appeal held that the company was entitled to disgorgement of the unauthorised profit made by the defendant upon the sale of his shares at full value rather than with the discount. The relevant point for me is contained in the judgment of Lewison LJ. At [**17**], citing Arden LJ, Lewison LJ said this:

> "In *Murad* at [57] Arden LJ cited with approval the following passage from the judgment of Morritt LJ in *United Pan-Europe Communications NV v Deutsche Bank AG* [2000] 2 BCLC 461:
>
> > 'If there is a fiduciary duty of loyalty and if the conduct complained of falls within the scope of that fiduciary duty …then I see no justification for any further requirement that the profit shall have been obtained by the fiduciary `by virtue of his position'. Such a condition suggests an element of causation which neither principle nor the authorities require. Likewise it is not in doubt that the object of the equitable remedies of an account or the imposition of a constructive trust is to ensure that the defaulting fiduciary does not retain the profit; it is not to compensate the beneficiary for any loss. Accordingly comparison with the remedy in damages is unhelpful.'"

127. Pausing here to observe that if equity responds to a defaulting fiduciary with the equitable remedies of account or the imposition of a constructive trust, it cannot be controversial to hold that this court ought to be able to consider the grant of injunctive relief in an appropriate case.

128. The following passages in the judgment of Lewison LJ, are relied upon by Mr Collingwood and it seems to me, with good reason. Whilst the central controversy in that case as to whether the Holding company was in a position to bring a claim for the disgorgement of the unauthorised profit made by the director as a result of his concealment of his breach of duty owed to the company is not of direct relevance to me, what is, is the treatment of the concealment of the breach of duty. At [**18]** the learned Lord Justice continued thus:

> "Jonathan Parker LJ made the same point at [110], contrasting a claim for equitable compensation with one for disgorgement of an unauthorised profit. I do not, therefore, accept Mr Mason's argument that the breach of fiduciary duty must be a cause of the profit. There must, of course, be a sufficient degree of connection between the breach of fiduciary duty and the receipt of the secret profit. In Murad Jonathan Parker LJ said at [112] that the fiduciary is liable to account "only for profits which he has made within the scope and ambit of the duty which conflicts

> or may conflict with his personal interest". In *CMS Dolphin Ltd v Simonet* [2001] 2 BCLC 704, 732 Lawrence Collins J said that there must be "some reasonable connection between the breach of duty and the profits for which the fiduciary is accountable." In *Ultraframe (UK) Ltd v Fielding* [2005] EWHC 1638 (Ch), [2007] WTLR 835 at [1588] I said that there must be a "reasonable relationship" between the breach of duty and the profit for which an account is ordered.
>
> [19] Mr Mason sought to suggest that if Mr Parr had disclosed his wrongdoing, neither Keystone nor Mr and Mrs Ward would have triggered the bad leaver provisions; or at any rate that they would not have acquired his shares at the 50 per cent discount. This submission faces two difficulties: one legal and the other factual. As Arden LJ explained in *Murad* at [76]: "For policy reasons, the courts decline to investigate hypothetical situations as to what would have happened if the fiduciary had performed his duty."
>
> [20] In the same case, Jonathan Parker LJ cited a number of authorities to the same effect, including the following passage from the judgment of Mummery LJ in *Gwembe Valley Development Co Ltd v Koshy* [2004] BCLC 131: "In considering whether the director should account for unauthorised profits, what would have happened, if the required disclosure had been made, is irrelevant."
>
> [21]. The factual difficulty is that, on my reading of the judgment, the judge found at [149] that if Mr Parr had disclosed his wrongdoing he would have been removed as a director and also as a shareholder under the bad leaver provisions, which would have entitled Keystone to acquire his shares. The judge recorded at [146] that it was not suggested that Keystone would have been disabled from acquiring those shares.
>
> [22] It was for these reasons that the judge held at [150] that there was a "sufficient nexus" between the breach of fiduciary duty and the enhanced price that Mr Parr received for his shares. In my judgment he was entitled so to hold.
>
> [23] Mr Mason argued that there was no evidence to suggest that the value of Mr Parr's shares was enhanced by his breach of duty. It may well be the case that the intrinsic value of the shares was unaffected by the breach (although since the effect of the fraud must have been to reduce Keystone's profitability that is in itself doubtful). But that misses the point. Whatever was the value of Mr Parr's shares, he was only entitled to receive half of that value under the terms of the articles of association and the shareholders' agreement. His concealment of his breach of duty (which was itself a breach of duty) led to his receipt of twice as much as he was entitled to. In my judgment, that is a sufficient connection between the breach and the profit to bring the equitable principle into play."

129. It can therefore be seen that there must be a "reasonable relationship" between the breach of duty and the profit in respect of which the remedy is ordered. I have little difficulty here finding the necessary connection between Mr Goyal's self-evident breach of fiduciary duty, in this instance being the duty to disclose his wrongdoing, and what would be the receipt of a profit that would accrue to him as a consequence of that

breach if he is able to transfer his shares without the operation of the Bad Leaver provision.

130. That there is such a duty upon directors, in my judgment cannot be doubted following the decision of the Court of Appeal in *Item Software UK Ltd v Fassini* [2004] EWCA Civ 1244. The fundamental duty owed by a director as a fiduciary is to act in good faith in the best interests of the company. That duty includes a requirement to disclose his own misconduct. If I was in any doubt as to the imposition of such a duty, I am entirely satisfied that it is the correct approach in circumstances where the failure to disclose was on the part of the finance director of the company, in respect of matters having a financial impact upon the company. It need hardly be said that is essential to the stewardship of the undertaking that the finance director can be relied upon to act with honesty and integrity in relation to expenditure and liabilities. These were the very issues bound up in the treatment of the AA loan and its repayment, and also the costs incurred on the Invenio HSBC credit card.

131. It is plainly of central importance to this analysis and the granting of any relief, to consider any finding I might make as to what would have been the position had Mr Goyal acted in a manner consistent with the duty, as I find was placed upon him, to disclose to Invenio the wrongdoing in respect of the AA Loan and the inappropriate HSBC credit card charges. In my judgment had these matters been disclosed to Invenio at the relevant time, they would inevitably have been counted amongst the grounds for dismissal. Had that been the case, there would have been no question as to the application of the Bad Leaver provision in the IBSHL Articles; the test would have been satisfied.

132. What then was the case pleaded by the Claimants? At paragraphs 64 and 65 of the PoC, it is alleged that as a separate and distinct breach of duty, Mr Goyal failed to disclose the earlier particularised misfeasance; the misfeasance included the two matters in respect of which I have found against Mr Goyal. As a consequence of the breaches of fiduciary duty, the Claimants seek an account. They also sought "further or other relief". Recognising that effect is yet to be given to the Bad Leaver provision but in any case, no shares have yet been sold and paid for, the Claimants accept that Mr Goyal has not benefited from his breach. There is nothing to take an account of. What they ask me to do is prevent Mr Goyal from being able to profit from his breach of duty by restraining him by way of permanent injunction, from being heard to say that he was otherwise than a Bad Leaver.

133. At the commencement of the trial, I allowed an application made by Mr Collingwood to amend the PoC so as to make it clear that injunctive relief was being asked for. The Claimants had not given up their position that they were entitled to such relief through the further or other relief gateway, but I agreed with Mr Collingwood, and Mr Goyal had no substantive objection, that having the matter clear from the outset of the trial made good sense and allowed Mr Goyal to have clear sight of the case he faced.

134. In the circumstances that I have explained, I find myself in agreement with the Claimants that relief ought to be granted to prevent Mr Goyal benefitting from his breach of duty. As I have made clear, had he acted in accordance with the duty he

owed to the company to disclose his wrongdoing, there is no doubt in my mind that those facts and matters would have been relied upon as grounds for his summary dismissal from IBSHL. Having established that fact, the right would accrue to IBSHL to hold Mr Goyal a Bad Leaver and transfer the number of shares at the price permitted by the Bad Leaver provision in its Articles. It would in my judgment be an affront to the court if he were now permitted to act as if he were otherwise than a Bad Leaver. It follows that I am prepared to grant the final injunction sought by the Claimants.

135. I must now turn to the position of Mrs Goyal. I have found that there are no facts established as would have justified her summary dismissal. I do not agree that the grounds set out in paragraph 18 of the PoC were such as to permit Invenio to take such a course. It follows that so far as the Articles of IBSHL are concerned, Mrs Goyal was not and is not a Bad Leaver. I do however accept that pursuant to those Articles, Mrs Goyal is a Privileged Relation. That is because she is the spouse of a member, that is to say Mr Goyal.

136. It was not challenged before me that the definition of Leaver's Shares in the Articles of IBSHL includes, in relation to a Leaver, and Mr Goyal is a Leaver, all shares held by that Leaver and his Privileged Relations. It follows, and I accept the Claimants' arguments on this point, that the shares in IBSHL are Leaver's Shares. It also seems to me that it must follow, as Mr Collingwood has submitted, that upon the application of Article 9.1.1, where an Employee becomes a Bad Leaver, the transfer notice that follows must also be in respect of shares held by a Privileged Relation.

137. The Defendants submit that Mrs Goyal subscribed for her shares independently of Mr Goyal; in no sense did she acquire them *qua* Privileged Relation; she was a shareholder in her own right. It does not seem to me that this argument responds to the difficulty. For one thing, it is inconsistent on its face with the Articles. Be that as it may, the Defendants must also accept the fact that the case put by the Claimants as to the contents and effect of these Articles, as I have recited and adopted, was admitted in the Defence (see paragraphs 57 and 63). I am for these reasons satisfied that the Claimants must succeed on the proposition that they have advanced, with the conclusion, for this purpose at any rate, pleaded at paragraph 73 of the PoC.

Conclusions

138. For the reasons that I have given, the Claimants must have the Injunctive relief that they seek as against Mr Goyal and insofar as necessary, Mrs Goyal. I will also make the declarations sought by the Claimants as set out in clause 5, of the prayer for relief.

139. It does not seem to me that the Claimants are in any particular need of an Account but if that is still required, I will make that order. Costs must follow the event although I understand that certain costs orders were made during the course of the action to which attention must be given. I also understand that certain aspects of the case as originally pleaded were not pursued; it might be that the costs associated with that issue can be addressed on detailed assessment thus obviating the need for a consequentials hearing.

140. With these comments in mind, I will await a draft order for approval from counsel which I expect will be agreed with the Defendants. If there is the need for further

directions from me, I shall see to it that a consequentials hearing is listed so soon as is convenient for the parties.