



Neutral Citation Number: [2025] EWHC 1802 (Ch)

Case No: BL-2023-000519

**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<sup>nd</sup> July 2025

**Before:**

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

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**Between:**

**(1) CHARLES CLAIRE LLP**  
**(2) LYNX GOLF LIMITED**

**Claimants**

**- and -**

**(1) KEVIN HAROLD WOOLGAR**

**Defendant**

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**Sam Goodman, Nick Zweck and Charles Connor** (instructed by **Peters & Peters Solicitors LLP**) for the **Claimant**

the **Defendant** in person

Hearing dates: 6,7,8,9,12,13, &15 May 2025

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## **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<sup>nd</sup> July 2025.

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

*Introduction*

1. This is a case which came to trial in this court because the Claimants say that their one-time trusted commercial representative, the Defendant, was taking a secret commission on the invoices he submitted to them for the golf-related products, the supply of which he was arranging for them from China. He should not have taken any commission on goods he supplied from China; his only remuneration should have been a per diem fee, payable under the terms of a Consultancy Agreement (the CA) with the First Claimant (the FC).
2. The FC's case was that it relied upon the Defendant, Mr Woolgar, to identify manufacturers of golfing products in China, negotiate the best price and then submit the pricing for agreement. Once agreed, the FC would pay the required amount, which ought to have been nothing other than the price payable to the factory for the manufacture of the goods, without the addition of any amount for the benefit of Mr Woolgar. Mr Woolgar says that in every instance he passed on the factory price to the FC; at no stage did he add any commission or margin for himself or anyone else.
3. It was also the case that Mr Woolgar assisted the FC with the design and development of new golf-related products, to be sold under their well-known "Lynx" brand. One such product was a new "Ai" branded, junior range. Mr Woolgar says that he developed this idea himself, outside the four corners of the CA; he saw no reason why he could not register the trade-mark for the Ai logo and so he did. It was part of the FCs case before me that Mr Woolgar had no right to the trade-mark and that registration of it had been carried out in bad faith.
4. Not only did Mr Woolgar hold to the view that he had performed his obligations under the CA with scrupulous honesty, without any notion of amounts being added to invoices proffered by him to the FC, he was also aggrieved on account of the failure of the FC to pay in full the amounts due to him under the agreement which was the successor, on like terms, to the CA. This was not the only sum he claimed; on his case, the FC had agreed to pay him a fixed amount on each Ai branded club that they purchased through him. He has not received the amounts due.

*The trial and the evidence*

5. At this trial, which was argued out over just short of two weeks, the Claimants were represented by Mr Goodman, Mr Zweck and Mr Connor of counsel. Mr Zweck's involvement was confined to the matters concerning the trade-mark issue. Mr Woolgar represented himself, though I should add that he was most ably assisted by two McKenzie Friends, one of whom was his son. As I mentioned in court, I was indebted to Counsel for their skeleton argument and written closing submissions; the similar documents that I received from Mr Woolgar were, if I may be permitted to say so in the context of a litigant in person, particularly well-written and of no little assistance to me. Mr Woolgar was also assisted by his son when giving his evidence inasmuch as I permitted him, in the absence of any opposition from Mr Goodman, to put a series of question to Mr Woolgar by way of re-examination. Mr Woolgar junior performed his task with care and precision, and in accordance with the guidance I had offered him as to the boundaries for his re-examination.
6. I heard from three witnesses: Mr Elford and his wife Ms Zinser on behalf of the Claimants, and then from Mr Woolgar. There was further agreed evidence from a

lawyer as to the law in relation to establishing a company in Taiwan; as the trial developed it became clear that little if anything turned on this evidence.

7. I found both Mr Elford and Ms Zinser to be reasonably straightforward, credible witnesses. They answered the questions put to them by Mr Woolgar in what seemed to me to be an honest and open manner. I regret to say that as will become clear in this judgment, I did not, in regard to the secret commission case at any rate, form the same view of the evidence given to the court by Mr Woolgar.

*The first issue – Secret Commission*

8. The principal claim of the Claimants was that Mr Woolgar was benefiting from a commission arising on the sale of goods to them by Chinese manufacturers, to which he had no right. How did this come about? It was common ground that in 2011, the FC and Mr Woolgar began a business relationship based around the Lynx brand of golfing products. Mr Elford explained that together with his wife Ms Zinser, he had taken on the right to sell Lynx golf clubs in the UK. Having a desire for greater control of the business, and again with the assistance of Mr Woolgar, Mr Elford acquired, the trade-mark rights to Lynx Golf in the UK.
9. The business itself, which was operated through the FC, involved acquiring Lynx clubs and related apparel from suppliers in China. Again it was common ground that this was a world well-known to Mr Woolgar. It was Mr Woolgar who would arrange the supply of the Lynx equipment which the FC, stewarded by Mr Elford and Ms Zinser, would then sell into the UK market. But Mr Woolgar did more than simply arrange for the supply of Lynx branded golf clubs from China. As Mr Elford explained in his witness statement [26]:

“At the same time, though, Kevin was coming up with new design ideas for Lynx (for example, it was around this time that he came up with the idea for the Predator and Crystal club ranges that we still sell to this day) and offering to visit China to liaise with manufacturers.

[27] Kevin immediately became an important part of our business, as we had anticipated when we decided to take on the Lynx brand. He was the only person in the business with experience designing and manufacturing products, and the business relied on him completely for this expertise.”

10. Mr Woolgar accepted that his role was to “source” golf products and oversee design work. The contractual arrangements also evolved and in October 2012, the FC entered into the CA with a company solely owned and controlled by Mr Woolgar, Atop Pro Golf Inc Limited (AUK). The CA took the form of a letter agreement, that is to say, the terms of the agreement were set out in a letter from Mr Elford for and on behalf of the FC, to Mr Woolgar at AUK. The letter contained a signature block at the end which anticipated Mr Woolgar signing on behalf of AUK.
11. The letter began, “I am writing to confirm the terms of our agreement concerning the provision of the consultancy services Atop Limited will provide to [the FC].... Subject

to paragraph 2.1, it is envisaged that you will be the consultant carrying out the services on behalf of [AUK].”

12. The CA continued:

“1. TERM Atop has been providing services to us from 1st July 2012 and will continue to do so unless and until this agreement is terminated by either party giving to the other not less than 6 (six) weeks' prior written notice or as otherwise provided in this letter.

13. Having defined Mr Woolgar as the Consultant, the CA continued:

“2. DUTIES

2.2 Atop shall use its best endeavours and shall ensure that any Consultant shall use his or her best endeavours to promote the interests of the Company and any other company in its group and carry out the following services (Services) for the Company:

(a) Source appropriate products from the People’s Republic of China, South Korea and such other territories as is agreed from time to time for the Company to promote and sell;

(b) Promote and facilitate international sales of our products in such territories as the parties agree from time to time; and

(c) Promote awareness of the Company in the same territories.

(d) Provide design and development expertise, concepts, drawings and ideas to assist with the development of products.

2. The Company does not expect the Consultant to devote any fixed amount of hours to providing the Services.... We do however expect that you will spend approximately 75% of your time in providing the Services.

2.5 Atop has no authority (and shall not hold itself out as having authority) to bind the Company, unless we have specifically permitted this in writing in advance.

2.6 Any sales or services generated by Atop and any invoices for goods or services obtained by Atop on our behalf, must be invoiced directly to the Company. We will not accept any payments through you personally or through any Consultant or company other than Charles Claire LLP other than where expressly agree beforehand.

## FEES AND EXPENSES

3.1 The Company will pay Atop a fee of £200 per day exclusive of any VAT payable. Atop shall submit invoices to the Company on a monthly basis setting

out the hours that the Consultant has worked for the Company during the preceding month and any VAT payable (if applicable). The Company will pay such invoices in accordance with its usual payment terms.

3.3 The Company shall reimburse those expenses agreed in advance as necessary for the proper performance of the Services within 14 days of receipt of an invoice and all relevant receipts. Claims for expenses that are not supported or unable to be supported by valid receipts shall be reimbursed at our discretion.”

14. It can thus be seen, and this was not controversial before me, that AUK was expected to provide the Services to the FC, and that this would be done through Mr Woolgar. It was Mr Woolgar who would “source appropriate products” from China, South Korea and otherwise as agreed, so that the FC could promote and sell those products; it was Mr Woolgar who would “provide design and development expertise, concepts, drawings and ideas” for the development of new Lynx golfing products. As Mr Woolgar put it in his evidence [12]:

“I clarify that my role involved sourcing high-quality components from multiple reputable factories to create complete, customised golf products. As a consultant, I ensured each part of the final product met high standards, sometimes requiring different components from specialised manufacturers, such as shafts, grips, heads, and golf bags. My role was solely to coordinate and oversee the procurement of high quality parts that were then assembled by factories or intermediaries before shipment to Lynx, following industry standards and in line with our consultancy agreement.”

15. Similarly uncontroversial was the notion that AUK would deliver the Services in return for the daily fee of £200.
16. This then was the crux of the dispute. Mr Woolgar was adamant in his witness statement and in his evidence before me in cross-examination, that so far as he was concerned neither AUK nor he himself personally, had benefitted from the supply of the Services under the CA beyond the daily fee and expenses to which he was entitled. There were certainly no hidden commissions or fees involved in any of the supply transactions that AUK or he were responsible for.
17. What then was Mr Elford’s understanding of how the invoicing of the factory prices would operate? In his witness statement he said this:

“[28] I do not recall exact instances given many of the conversations happened many years ago, but I remember Kevin saying to us continually throughout our working relationship that: (a) He was getting the best price for us, and the great thing about dealing with him (as opposed to others) was that we were not paying any premium or surcharge. He told us that the prices he put on his invoices were the prices the factory charged. (b) The money we paid to him was passed on directly to the factories.

[29] We (and particularly Stephanie) were concerned that we were not receiving invoices from factories directly, so I recall we asked Kevin about this on many occasions. As explained further at paragraph 42, below, Kevin would brush this

off by saying that it was impossible for us to deal directly with the factories because we did not speak Chinese. He would tell us that the prices on his invoices were the exact same as the prices the factory was charging, so I was prepared to accept the situation.”

18. It is important to now look at how AUK did arrange the supply of goods to the FC. Despite the myriad issues and heated disagreement over whether documents had been properly disclosed or identified in the pre-trial preparation process, over which a not insignificant amount of time at trial was taken up and to which I shall be obliged to return, the supply process was, on Mr Woolgar’s evidence at any rate, straightforward. If Mr Woolgar had it in mind to recommend to Mr Elford the supply of Lynx golf equipment, he would identify a supplier in China and negotiate a purchase price. In undertaking this arrangement he would work in tandem with his long-standing business associate in China, Ms Jennifer Wu; she operated through a company with a name almost the same as Mr Woolgar’s corporate vehicle; the company name was Atop Pro Golf Inc. Atop Pro Golf Inc was referred to throughout the trial as Atop Far East (AFE).
19. When asked about his relationship with AFE, Mr Woolgar explained that he was not a director, a shareholder nor an employee of AFE. It was an independent arm’s length business. In his witness statement he said this at [29]:

“Throughout my engagement with Charles Claire LLP and Lynx Golf, I maintained consistent and accurate invoicing practices that reflected the costs associated with product sourcing, manufacturing, and logistical support. Proforma invoices provided to Lynx included only the negotiated costs, with adjustments made solely to company names and bank information as needed. These invoices were issued in accordance with our consultancy agreement to simplify financial transactions for Lynx Golf. My relationship with A Top Far East, a trusted supplier I had worked with for over 30 years, was similarly professional and independent. A Top Far East operated independently as a longstanding supplier to many UK golf companies, including Northern Golf, Sub-70 Golf, Richard Hemming, and SkyMax Golf.”
20. The peculiarity of the similar corporate names of what were suggested to be wholly independent undertakings was, so far as Mr Woolgar was concerned, nothing significant. When he had resolved to begin a business supplying golf equipment and knowing of AFE, he decided to piggy-back on the good name and reputation of AFE. When I asked him about this, Mr Woolgar explained that AFE was not unhappy as he would be trying to “sell goods that they had”.
21. Asked about the connection between the two companies, Mr Woolgar’s evidence was that was “purely a business-type buyer, seller”. He made clear that:

“Sometimes we would embark on something, they would ring me up or contact me from time to time and they had, in the very, very early days, they would contact me to say, “Look, I’ve got some clearance this, I’ve got some clearance that.” I would try and shift it, before the relationship sort of further developed into what it sort of was in the latter years where they would take me out there and take me to factories. I would use some of my factories to take them to introduce them, they

would do the vice versa. Jennifer was very helpful, particularly with her sister, with the golf bags: that really helped. So it was just a relationship that developed into her taking me to factories where I could see new products, I could see more products, I could see a lot of branded products. I saw all the top brands. And it was a relationship that just developed from there, I guess.”

*The AFE and the AUK Invoices*

22. Mr Woolgar dealt with his working relationship with AFE, and how it affected the way in which the Services were supplied to AUK under the CA. It was important to understand how AUK invoiced the FC for the goods. It must be recalled that clause 2.6 of the CA required AUK to ensure that any invoice for goods be “obtained by [AUK] on our behalf.
23. So far as Mr Woolgar was concerned the process had been transparent and well-understood by the Claimants; he would negotiate the price for the golf equipment with a supplier, and that price would then appear on an invoice that AFE would send to AUK. Mr Woolgar would then amend the AFE invoice to create a new document which he would submit to the FC; the AFE name would be replaced with the AUK name on the document now entitled a “Pro Forma Invoice”, to which was added his bank details for payment; the final stage in the process would see Mr Woolgar remit the necessary funds to AFE in order to settle its invoice, allowing AFE to make payment in China to the suppliers of the relevant goods.
24. An important overlay to the process was added by Mr Woolgar’s evidence that following submission of the proforma invoice, only if the Claimants agreed with the price and said that they would pay, would the transaction proceed. If they then paid the deposit to his account, would Mr Woolgar send the deposit to AFE, who in turn would send it to the suppliers. In due course the balance of the full amount was paid to Mr Woolgar; he would then send that to the AFE who would pay it to the suppliers. This evidence was entirely consistent with the various emails from AFE to Mr Woolgar pressing for payment so that the amounts due to Suppliers could be settled. There were on several occasions complaints made about the delay in settling payments to suppliers.
25. It was through this invoicing process that the Claimants say that Mr Woolgar paid to himself substantial secret commissions. The amounts wrongfully taken varied from 5% - 75% of the invoiced amounts. Mr Goodman submitted to me that he did not need to make a case as to whether the impugned amounts that had been taken by Mr Woolgar at that stage were paid into a British bank account, or whether the commission was part of the value remitted to China to settle the accounts rendered by AFE. So far as he was concerned, it was sufficient to demonstrate on the evidence taken as a whole, the probability of a secret commission, it being of little consequence whether it resulted in funds reposing in China or the United Kingdom for the benefit of Mr Woolgar.
26. Mr Woolgar’s evidence on the issue was this. There was “no difference in the price shown in an AFE invoice and the amount negotiated by me with a Factory. The factory

sent the invoice to AFE. I did not know of that invoice. But the AFE invoice [to me] contained the same price I had negotiated with the Factory.”

27. When asked why he did not create his own invoice as AUK to be sent to the FC, Mr Woolgar replied that “I was lazy with paperwork. The document became my company document. I was not changing their document. I made my document from their document. Their document remained the same. I don’t have a recollection whether AFE gave me permission to make changes to their invoice documents. After 17 years, I can’t recall.”
28. It must be noted that Mr Woolgar described the AUK invoice to the FC as a “Pro Forma invoice”, which he asserted was “not a legal document”. In his opinion, there “was never a proper invoice raised behind this document. It was a securing document to get the product sorted and on a boat in China. This never became a GBP invoice and never went through AUK accounts.”
29. As the bank account on the AUK invoice was Mr Woolgar’s own personal account, he was asked why payments were not made to AUK’s account. Mr Woolgar related that AFE had complained about the time taken to transfer funds to them from Lloyds Bank, which so far as Mr Woolgar knew “did not have international arm and the money had to go through New York.” Another bank, Commercial Bank, would not open an AUK account, but would open an account for Mr Woolgar. This, on his evidence, permitted the same day transfer of funds to AFE.

*Mr Woolgar and AFE/Jennifer Wu*

30. It is now necessary to examine the evidence of the wider role of AFE beyond the mere provision of an invoice for goods already identified by Mr Woolgar and for which the price had been fixed by him. This was Mr Woolgar’s account:

“Jennifer would take me to the factories. Two to three factory visits in a day; two to three or five to six, trips a year. She did the translating. Not out of the goodness of her heart, but not paid by me, no. I thought she would have been paid, but by whom was not my concern. She took me where I wanted to go and I was able to negotiate the right price, so I was happy. It was not necessarily the factory as she might have been taking me to a factory but purchasing for herself or someone else. I did not pay her. So long as I was getting what I needed then I was happy.”
31. Mr Woolgar explained that AFE would sometimes introduce him to a factory and would take him there. As an example, Mr Woolgar cited that on a Sunday, Jennifer from AFE had taken him to lunch with a lady responsible for a zip factory for golf bags. Over lunch, he learned it was Jennifer’s sister. He was able to understand which zips were being purchased by other buyers. By means of this relationship, he was able to



benefit from “all sorts of help. I am interested in the product and then I need to find the right price.”

32. When pressed as to why all of this effort might be undertaken by AFE, so far as could be understood, without any payment, Mr Woolgar replied that it was,

“not something I thought about. Nobody works for free but how they get something out of it I don’t know. I did not think about it for me for 30 years that I have been using them. I negotiated a price. If I thought it was acceptable it was a piece of paper and I went to the FC and said this is the price and did they want to buy it. It was not my choice as to whether they bought it. Incredible as it might be I did not think about it.”

33. Carrying on, Mr Woolgar explained his view that he:

“was never that interested in what AFE did, as they did get me to the factory and I negotiated the price, and if I was happy with that price then that is the price that came to me and I cleared that price. If it was acceptable – sometimes they [FC] would say a bit high and I would try to negotiate, but then the price I could get was the price accepted. I did not take any secret commission.”

34. In cross examination, Mr Woolgar developed his evidence as to the involvement of AFE in the provision by him of the Services to the Claimants. He explained that he considered AFE as a factory:

“They have a facility over there. I can recall a product line, a gift set for Argos purchased by the Claimants. A glove, ball and spike, a few items, all sourced from five factories and all taken to the AFE facility and repackaged and sent out as one invoice. This was fully explained to Ms Zinser at the time.”

35. For the purchase of goods that had a variety of suppliers in China, Mr Woolgar recalled that he paid one invoice to AFE, and this resulted in a reduction in the international payment fees. AFE then split the payments up and paid the various suppliers. His evidence was that:

“..the majority of the time, AFE received the payment and then paid the people and yes, split up the amounts and paid who needed to be paid – yes without payment and I cannot explain why. I don’t consider what they got out of it I agree nobody works for free.”

36. It also became clear that Mr Woolgar’s relationship with AFE extended to the sharing of a flat in China. An email message of 14 January 2017 from Jennifer Wu to Mr Woolgar, was put to him by Mr Goodman. The messages had the title “ payment for apartment ( your part )”. It read:

“Good Morning, I believe you have a wonderful holidays in Italy. Can you let me know when will you effect payment to Peggy ? As she charged the Internets for one day RMB10.-, if you have money in hand, can you wire it ASAP to reduce the

Interest rate. I had wired some to her already and try to reduce the interests. Please advice. Rgds/Jennifer”

37. Mr Woolgar, reluctantly, and somewhat uncomfortably it appeared to me, in due course conceded to Mr Goodman that he had indeed contributed to the general upkeep of an apartment. He did have a bedroom; he left clothes there; but he did not have an interest in it, he merely paid towards the upkeep of it. He contributed to charges but he claimed, “I have no idea how much I contributed”. A February 2019 email message from Jennifer with the title “our flat”, was also put to Mr Woolgar. This message read:

“Don’t let Patrick to visit our flat in future if he asks, as if he knows more information about A TOP GOLF CHINA, he will know how to beat us, I know Taiwanese and Chinese more than you, do not reveal any info about our team to them, we don’t have people in our flat when we are back to our own countries, but he can say to Mario/Lynx and you that he has factory in China, he even print a name card for you and me is factory’s name and address...etc., in other words, he is trading company himself but he tells Mario he has factory in China. You don’t need to try any item from him this is what I thought, once you buy one item from him, you can know he will get more chance to deal with Lynx thru Mario lol. I am very sure he has ability to do so, I know Taiwanese and Chinese more than you. Rgds/Jennifer”

38. Choosing his words carefully, Mr Woolgar made clear that “I have never owned a property in China. If Jennifer has rented a flat then it is her flat.” Mr Woolgar admitted that he would have meetings in the apartment with representatives from factories and manufacturers. Jennifer would also arrange meetings there. He did have a set of keys to the flat, but if he “stayed out later for whatever reason I had a key to get back in.”
39. In light of Mr Woolgar’s evidence that the apartment in China was merely a property to which he made contributions and had no real interest in, it was put to him that it seemed somewhat surprising that he would write to Jennifer indicating that he would change the locks to the flat. The relevant email from Mr Woolgar to Jennifer was in July 2017. This was the exchange:

“I will change locks on visit ok we will have plenty keys then ok”

“Hi Kevin, Can you bring 2-3 catalogues for me ? I will send one to Lynx Korea. Keep one in China, Keep one in Taiwan, Alex took my one to work in his office for sales meeting. RE: Rena. As you know my friends (two) will come to stay in flat here on 12th July for pleasure here in few days, her son has a stand of Taiwan products trade show in Hwai Zhou town, I must give two of them Key of flat, because we are not in flat during day time ! so I asked Anna to ring Rena to send back the Key for my friend to use it, Rena answered Anna that she still wants to have keys to bring back her stuffs ! There are nothing here except few bottle wine- Gin..etc. Rgds/Jennifer”

40. Whilst Mr Woolgar was adamant, again being careful with his words, that he did not rent the flat in his name and that he merely stayed there and “made a contribution to rent or internet or light – it was just a contribution I just paid some small money” it was

again difficult to reconcile an exchange between Mr Woolgar and Jennifer which had the subject title “GBP75,000 – apartment”. The message read:

“I am starting to check with our local bank here to find a way to apply a loan from them on half of GBP37,500.-, do you work on it as well ? As Peggy can’t extend it, we have to sort it out ourselves, in the mean time, I will check with Peggy now by email and copy you for the exact balance we should pay for it by end of March, 2017. Rgds/Jennifer”

41. In another message from 2014, Jennifer again touches on the subject of the apartment.

“Anna told me last week, you and Rena was finished ! I was surprised to hear it till last week, however I knew very well she won’t marry you for sure, because your last trip, she called many times to his boy friend from your apartment, I heard it, when you –Rena-accessories maker were in foot massage area last trip, she had many conversations with her boy friend, but I can’t tell you, it’s not my style, I know Western people are easy to trust Chinese girls, I saw many Taiwanese men who are 70 years old, he hold a young baby in hand in China... what’s a strange picture is ? This is why I sent you email to tell you I can have a bate with you, she won’t marry you without having the apartment, it’s only materials, not true love ! Hope you can re-born and have a fresh year in 2014 ! Rgds/Jennifer”

42. Despite the plain reference to “your apartment”, Mr Woolgar dismissed this message as merely Jennifer telling him that his relationship had not involved “true love and that unless I had property in China she was not going to marry me.” This did not seem to me to address the essence of the enquiry.

43. The nature of the connection between Mr Woolgar and AFE was adverted to in another message from Jennifer Wu sent on Christmas Day 2017. This message read:

“Nick made an advertisement on Lynx Junior in wechat, if you can check it thru your Chinese mobile, it will be good for reference. I hope it won’t cause problem to Lynx UK. I must notice you first.

By the way, I cancelled my flight to USA, Nick will go there himself at his own cost, can you make sure to pass one entrance ticket for him when he contacts with you in Orlando ?

I told Nick that you and me won’t involve with China market, he runs himself, but all of us including you will help him, I think this is the best way, as you and me are very tight in cash flow really.

RE: Lynx UK repeat order on golf bags.

Please make sure to revise prices on ea. bag to Lynx golf, so we can work together with some profits to keep company moving forward 2018.

Wishing you have a pleasant holidays today.  
Rgds/Jennifer”

44. It is hard to read this message without coming away with the clear impression, buttressed by the form and content of the other messages to which I have referred, that there was a business connection between Mr Woolgar and Jennifer Wu. Why otherwise would there have been reference to “you and me are very tight in cash flow really” and perhaps most telling, “Please make sure to revise prices on ea. bag to Lynx golf, so we can work together with some profits to keep company moving forward 2018.” Mr Woolgar was however resolute in his evidence, and in this he never wavered, that any reference to “our company” was simply Ms Wu talking about her own undertaking and not a reference to anything jointly operated or owned. A reference in another message to Ms Wu “praying for our company” was again a reference to her own company although he could not be sure as the name of the company had not been mentioned in the message. I have to say that I found this evidence difficult to follow and harder to accept. I was similarly unimpressed with Mr Woolgar’s attempt to explain away the Christmas 2017 message as nothing other than Ms Wu pressing him to adopt greater efficiencies in the way he managed the separate cash flows.
45. It also seemed to be clear, despite Mr Woolgar’s protestations to the contrary, that he was giving clients and business contacts the impression that the AFE premises in Tangxia, was his office in China. In a March 2019 message concerning a Rangefinder, Mr Woolgar wrote:
- “Hi Mia,
- I am back in china from 22nd until 1st
- Can you please arrange a time to visit my office in Tangxia during the week beginning 25th. I will inform Jane and Jennifer to book you in. Please can you arrange to bring all samples for checking and also bring samples that I can take back to UK. I will of course pay for these on the day.
- Best regards  
Kevin”

46. Mr Woolgar sought to explain this way: “I said come to the office but it was not my office, it was a term used to arrange a meeting and bring samples”. That did not seem very likely to me.
47. This evidence became even more challenging for Mr Woolgar when he was asked to comment on a message from March 2016, written to what appeared to be a potential customer in respect of a “fur brief”:

“Hi Gary

Please see an intitial [sic] requirement. This is a first to see and make sure the quality is acceptable for us and of course the price. We would require regular orders and also some custom pieces.

I would also like to further know what other items you are able to supply, lead times etc.

We have our own offices based in Tangxia and own qc staff in china and taiwan and have been working in china for over 20 years so have good references and history.

I look forward to meeting you later this week.

Very best regards

Kevin Woolgar”

48. Mr Woolgar here conceded, in so many words, that he had been guilty of what might be described in common vernacular as a fib, that is to say a small unimportant or harmless lie. This was his explanation of his apparent representation that he had his own office and staff in TangXia: “in this instance yes, I was trying to by fur from Gary, I needed a way in to this factory and yes in this instance, I said I have offices here as he needed reassurance that I was not just someone who would buy a few gillets.” This exchange, and Mr Woolgar’s admission, did nothing to assist in building any general picture for me of Mr Woolgar’s tendency to veracity.

*Was a commission added by Mr Woolgar or AFE?*

49. As I have already made clear, the simple tenet of the case developed before me by Mr Goodman was that Mr Woolgar was adding an additional amount to the invoices which he was submitting to the Claimants. This was a secret commission. Whilst Mr Goodman could point to countless invoices submitted by AUK to the Claimants, he did not, save for certain exceptional items, have the invoices passing between AFE and AUK; nor did he have any record of the costs claimed by the factories from AFE or for that matter from AUK, to the extent it ever was the case that the invoicing was direct to Mr Woolgar. This, submitted Mr Goodman, was quite simply because Mr Woolgar had deliberately destroyed the evidence. It was in his submission frankly incredible

that all the emails that Mr Woolgar received with attached invoices from AFE were not longer available.

50. Mr Woolgar's simple reply was that there was nothing sinister in the unavailability of the relevant materials. It had been his practice to ensure computer hygiene through periodic permanent deletion of emails. Despite the change in his evidence such that before me, Mr Woolgar agreed that most of his communication with AFE had been by way of email and not telephone, as had previously been his case, little was now available by way of documentation passing between AFE, the factories and AUK. He had deleted his emails and after 30 days on his BT system, the email was no longer available. As he had printed off a hard copy of the relevant email, he felt he no longer needed to preserve the original message; that message was serving to "clog up his system". The deletion was all part of "regular maintenance". Because emails with attachments took up more space, those were the messages that he chose to delete, this being the explanation for the continuing existence of some 10,000 or so other emails from the same period. It had been making the computer slow, claimed Mr Woolgar albeit that he accepted the data had not been stored "locally" on his computer. He attributed the issues to his BT system.
51. Asked why he had not procured the missing messages or invoices from Ms Wu at AFE, Mr Woolgar explained that she had now disappeared. He had not thought to ask her previously. So far as I am concerned, this evidence had a rather unfortunate untruthful aspect if not an altogether contrived appearance. I was far from persuaded by it.
52. Turning to the invoices remitted to the Claimants by Mr Woolgar, it is helpful to look at an email message sent by Ms Wu to Mr Woolgar in September 2011. It must be kept in mind that this was over a year prior to the execution of the CA. In this message Ms Wu talks about the payment for a Lynx stand bag and cart bags order:
- "Hi Kevin,
- This order's on board date is 5th Sep., it will arrive UK around end of Sep., can you please apply Steve to effect payment for 70% balance payment ? Please send the Invoice of your prices to apply for the payment. ( DON'T send him wrong price on Invoice, please ! )
- Rgds/Jennifer"
53. To which Mr Woolgar replied:
- "Hi Jennifer
- Can you please get Jane to send me Atop invoice for this shipment and I will re do to steve
- BR Kevin"
54. It is hard to ignore the fact that so far as Ms Wu was concerned, there were two sets of prices: one price would be wrong. Mr Woolgar was being asked to send *his* prices, whatever they were. It was important to Ms Wu at least that the wrong price was not

applied to the invoice to presumably, Mr Steve Elford. For his part, Mr Woolgar thought that this could have been an outstanding order for JJB Sports, but, and despite the reference to “Steve”, he could not be sure; JJB was another customer that Mr Woolgar was supplying with golf equipment. I shall return to the evidence of supply to JJB Sports shortly.

55. In February 2012, AFE wrote to Mr Woolgar in regard to a quotation for caps with a Lynx logo, in these terms:

“Hi Kevin,

Attached please find the quotation for the Caps with Lynx logo. Please be kindly noted these.

1). The prices are based on Ex Works (factory's NET prices)

2). Please add US\$400 LCL shipping charge as well as ATOP's margin to it while quoting to customer.

BR,

Jane”

56. To which message, Mr Woolgar promptly replied

“hi jane

can you check if scon quote and send sample on new pvd model and send sample and spec sheet”

57. There was no issue taken with the suggestion of adding an ATOP, presumably AUK or AFE, margin to the quotation to the Customer – Lynx. Faced with this clear and incontrovertible evidence of a margin being sought by AFE that would be added by Mr Woolgar to what would become a new, higher price for the FC, Mr Woolgar’s evidence before me was that:

“this is an AFE margin – yes she asked for it on this occasion – in this instance I will agree with you there was 2/3% margin on this item – I can’t honestly say if this was the only case of a margin as I did not negotiate the price with the factory,

but no commission was added from my side. Potentially I was aware as they added 2/3 %. No I did not tell the FC.”

58. An exchange of email messages from April 2012, this time concerning the supply of golf bags to the FC was also put to Mr Woolgar. The first message, from Ms Wu, was this:

“Hi Kevin,

Please find the following prices from George, the price \$39.65/per two pcs are without color box.

Please confirm order ASAP to catch the peak season in UK.”

59. To which Mr Woolgar replied: “please make pf invoice for 45\$ and for 250 bags and I will forward to steve and get deposit”. When asked to account for the price differential between \$39.65 in the Jennifer Wu email of 13 April and the invoice value of \$45, Mr Woolgar experienced some obvious difficulty. His answer was, “I am not sure on that one – there will be valid reason but I cannot honestly answer it might be the boxing. I cannot give you an answer why because I don’t know the answer. I can’t give you a yes or no without knowing the breakdown”. As Mr Goodman pointed out, there was no reference anywhere in the email exchange to “boxing” for the goods, and any additional price that might be justified by its addition to what was being supplied. It seemed to me that this was as clear an instance as could be put forward of Mr Woolgar manipulating the price being put to the FC. He was changing the price that had been offered by the factory, despite his case that this was something that he had not ever done. There is in my judgment no logical or evidential reason to hold otherwise. In any event, on a balance of probabilities, that is what I find was happening.

60. Once again in May 2012, Mr Woolgar was negotiating the price of “Lynx Colour Boxes” for supply to the FC. Following a series of emails with AFE and presumably a supplier at Admiral, Mr Woolgar decided to proceed to put a price for the supply of the equipment to the FC. He explained the next step in the process in a reply to AFE, thus:

“Hi Jennifer

Can you please ask jane to make alicia pf into atop pf invoice and make sure I can adjust prices today so I can send to steve for deposits

Thanks

Kevin”

61. Once again Mr Woolgar did not find it at all easy to offer an explanation for what appeared to be him making arrangements to adjust the prices on an AUK invoice to the FC. Why would he need to adjust the prices if, as was his evidence throughout the trial,



he always simply passed on the factory price he had received without any change? Mr Woolgar offered this:

“I can’t explain unless it is to do with a difference on the colour boxes.”

This did not appear to be any satisfactory explanation to me.

62. Now moving on to January 2013, the same practice can be observed in an email from Mr Woolgar to AFE:

“I need the progoal invoice on to atop headed paper and i will change the prices here so please make sure is a read/write file, also do NOT put the slazenger on as this is not for lynx”

63. Not being for the Claimants, on this occasion Mr Woolgar readily accepted that here was an instance where he was indeed changing the price on an invoice to a customer.

64. That there was a price, different from the factory price, that was passed on to customers such as the Claimants was, so far as Mr Goodman was concerned supported by another message from Mr Woolgar to Ms Wu in May 2014. This read: “can you please ring grace now and find out 'our' price on big adjustable driver urgent for today”. Why the reference to “our price” was Mr Goodman’s question. It is a question to which I did not hear a satisfactory response from Mr Woolgar.

65. It is important to look at what Mr Woolgar said about this evidence. It was this:

“I was never that interested in what AFE did as they did get me to factory and I negotiated the price and if I was happy with that price then that is the price that came to me and I offered that price. If it was acceptable – sometimes they would say a bit high and I would try to negotiate, but then the price I could get was the price accepted. I did not take any secret commission.”

66. He did however accept in an early exchange with Mr Goodman, that prior to his business supplying the Claimants, he had previously been engaged in a business with Ms Wu buying golf equipment and then selling it to other customers. No there had not been a commission charged by Ms Wu, but “yes, there was a margin. It was not a

commission. Yes I did that with AFE – Jennifer negotiated favourable terms and I gave her some margin and small commission for what she did. This was my product.”

67. Turning back to the supply of equipment from China to JJB Sports, in April 2010 Mr Woolgar received a message from Ms Wu in these terms:

“Hi Kevin,

I sent you a price list from Gavin in last year, I think the price \$4.95 and 5.95 is correct. Gavin sent us two P.I., one is for you to pass it to JJB, another one is for you ATOP to keep it in your office.

Rgds/Jennifer”

68. This yet again appeared to confirm the practice engaged in by Mr Woolgar of creating two separate invoices each with a different price. In April 2011, Mr Gavin Lee of FGM wrote to Mr Woolgar about a pending order.

“Hi Kevin,

Please refer to attachment for our PI # 14643, 14910 - 14913 for shipment information of your new orders. Kindly take note that you have confirm the order quantity for 6/15. 7/15 and 8/15. However, the shipment for Panthera Pure on 9/15 will still have inland trucking charge if you want to ship this item alone.

If you confirm to ship with other items, we will remove the inland trucking charge.  
D/23/1 Disco ID 203508-1

Kindly advise.”

69. On 2 April, Mr Woolgar picked the matter up with AFE: “This is what I received so is why I questioned. Its made out to JJB at OUR prices, is this correct?” To which message, Ms Wu replied: “You should ask Gavin to type the lower prices Invoice to be made out to ATOP from this year, because this is what he used to type since the 1st time till now. He can offer us two different P.I., one is bill to Jjb, ANOTHER one is bill to ATOP, so there is no confusion.” Being content with the reply, Mr Woolgar’s response was a simple, yes.

70. When I asked what was meant by the reference to lower prices, Mr Woolgar offered the explanation that it was a reference to different products at different price points. That did not seem to me what was meant by the clear words used in the message exchange which appeared to point firmly to Ms Wu and Mr Woolgar having their own prices which applied to each of them and their business. AUK/AFE were receiving goods at a lower price than was being charged to the ultimate buyer.

71. That Ms Wu was adding a margin to the goods she supplied and that Mr Woolgar knew perfectly well that was her way of doing business with him, was put beyond all doubt as a result of an email sent to Mr Woolgar by Ms Wu in August 2011:

“Hi Kevin,

Please find quotation of cap. Please note the prices are based on FOR not FOB CHINA, not including custom charge and inland freight...etc. The prices to be embroidery, they can't do print logo if your quantities are less than 20,000pcs.

Please add 3% or 5% and our margin additionally from the prices we quoted you on custom charges & inland freight charge...etc.

Rgds/Jennifer”

72. Demonstrating how in the sales to JJB Sports, the invoices submitted were changed by Mr Woolgar to reflect different prices from those of the factory suppliers, a message from him in March 2012 to Ms Wu explains:

“Hi Jennifer

yes to 50 carts no logo black.

I remember asking you for a list in XL of all products and our prices so I can forward to JJB but i can change the prices. I need by return now as jjb have pressed me and they will do orders this week. Can you please send list in xl so I can adjust asap today if possible.

List should be latest prices to us and should include all yu shen bags, gavin balls towels, caps, scooter box kits put down as 110\$ and 81\$ they are sell prices.”

*The evidence of two invoices*

73. Although there was generally a lack of documentary evidence available of the prices charged to Mr Woolgar by AFE, on account of his admitted deletion of such documents and otherwise his supposed inability to locate copies, a number of relevant documents were unearthed by the Claimants and these were systematically put to Mr Woolgar in cross examination. Once such document was what might be viewed as a standard “pro forma” invoice from AUK to Lynx Golf Ltd, albeit that the address on the document purporting to be that of AUK, was the Tangxia Town premises of AFE. The so-called pro-forma invoice, cited a price of fifty US cents for a quantity of 500 four-iron covers; the same price was charged for a selection of golf iron clubs through to a sand wedge where 2,000 items were on offer. The invoice date was 26 December 2020. The point that caught the attention of Mr Goodman was that in an email exchange of the same date, it was clear that the price being offered by AFE was only 45 cents, or 35 cents for junior clubs. Mr Woolgar’s evidence was that the difference was “potentially” explained by a “printing charge”, though none is mentioned in the email exchange, nor anywhere else that Mr Woolgar could point to.
74. A January 2013 invoice from AFE to the FC was of interest because Mr Woolgar’s email address is indorsed adjacent to the Taipei address given for AFE. It is also of interest because the 10,000 Hippo branded golf bags being supplied are priced at US\$4.60, whereas for this quantity the price negotiated with the factory was US\$4.18. This is confirmed by an email to Mr Woolgar from Ms Wu sent towards the end of October 2012. Mr Woolgar’s response before me was this “was not his invoice – they

negotiate with the factory and it is their invoice that they send to me.” When asked why he sent it on to the FC, Mr Woolgar had no answer other than he sometimes made mistakes – he had put his details on it without properly checking the pricing. He could not take responsibility for the odd invoice that was not checked by him and sent on to the FC.

75. When asked about a golf driver being supplied at \$24.50 which had an invoiced price of \$81.55, Mr Woolgar was compelled to assert that the price from the factory was wrong because no titanium driver could be supplied at that price: “it was not possible.” He could not say if he had noticed the incorrect pricing at the time.
76. Numerous further examples of price differentials arising from such AFE invoices or factory invoices that the Claimants had managed to gain sight of, were put to Mr Woolgar by Mr Goodman. A strong case was also made to me that I should infer from the behaviour of Mr Woolgar in deleting invoices, that the missing documents would have revealed yet further clear instances of a price difference between that charged by the factory and the price proffered to the Claimants. Although I would be prepared to draw that inference, I am in any event perfectly able to arrive at the conclusions that I am about to recite without having done so.
77. At the conclusion of his cross-examination, I asked Mr Woolgar whether it remained his evidence that despite all of the obvious effort on the part of AFE that he had related, he had not seen any means by which AFE was being paid. This was his answer:
- “As I say, and I've said before, your Honour, whatever she did and did with her side of her business was her side, and that's it. Where we did have a small joint venture from time to time then we did something together, but it was not [...] her profits were her side, my salary or consultancy was my side. She always complained to me, she always wanted more business. She complained to me when orders did go there. She complained that the payments were always slow and— but it was just what I saw as[—] she was moaning a lot about the payments.”
78. Whatever was the account that I received from Mr Woolgar of his relationship with AFE and Ms Wu, I am entirely satisfied that it was not a full and truthful version. When reflecting upon his evidence about his lack of knowledge of commissions being added by AFE, Mr Woolgar commented that “incredible though it might be, I did not think about.” In my judgment it is incredible and I do not believe it.

### *Conclusions on the evidence*

79. Taking all of the facts and matters that I have referred to into account, I have no reservation whatsoever in coming to the following conclusions: Mr Woolgar and Ms Wu were very close business colleagues for a decade or more. They worked closely together on the supply of golf equipment. Mr Woolgar had a keen interest in and full knowledge of the commercial aspects of Ms Wu's contribution to their joint-venture. I have no hesitation in rejecting Mr Woolgar's evidence that he knew not of how Ms

Wu and AFE benefitted from, or were remunerated for, the substantial effort that they were applying to bring about the supply of golf equipment to the Claimants.

80. I also have little difficulty in arriving at the view that their *modus operandi* as regards the approach to invoicing the Claimants, changed little from the manner in which a margin or commission was added to invoices submitted by Mr Woolgar to JJB Sports. It follows that I am quite prepared to hold that Mr Woolgar did benefit from amounts, of which the Claimants were unaware, added by him to the value of invoices, remitted to the Claimants by AUK. These amounts were over and above the amounts which Mr Woolgar knew were being charged by the factories and other suppliers from which he procured goods and equipment on behalf of the Claimants.
81. In my judgment Mr Woolgar knew perfectly well, and accepted, that in return for his endeavours on behalf of the FC, he was entitled to receive the fee provided for under clause 3.1 of the CA. He also knew that the effect of clause 2.6 of the CA was that invoices from the factories or suppliers ought to have been passed directly to the FC. The pro-forma system developed by Mr Woolgar, by which he assured the FC that the price being charged was only that charged by the factory, gave him no right to add any amount as an additional charge to the amount required by that factory. Contrary to the impression that Mr Woolgar gave to the FC, he ensured that the supposed factory price appearing in proforma invoices submitted by him to the Claimants, was augmented by a sum for his benefit, added either to an invoice sent directly by AFE or by virtue of an AUK proforma invoice manipulated by him to increase the price.

*The Claimants' case on the law*

82. In relation to the allegation that Mr Woolgar benefitted from secret commissions, in argument Mr Goodman first put his case in the law of deceit. In the Re-Re-Amended Particulars of Claim (the **PoC**), having first defined the representations relied upon at paragraphs 12 and 13, the case was pleaded in this way, at [36] *et seq*:

“The Claimants paid each of the sums identified on the Product Invoices in reliance on the Express Representations and the Implied Representations. As specifically to the Express Representations, these were continuing representations which continued to operate at the time of payment of each of the Product Invoices.

[37] Each of the Express Representations and the Implied Representations was false when made:

- (1) As to the Express and Implied Factory Price Representations, Mr Woolgar was not charging the Claimants the very same price that the relevant factory was

charging, as in fact he was also charging the Claimants an amount which reflected the Secret Commissions.

- (2) As to the Express Use of Funds Representations, Mr Woolgar would not be passing the Claimants' monies directly on to the relevant factories as in fact he would be retaining and/or paying the Secret Commissions.
- (3) As to the Implied Atop Representation, Atop Far East was not a genuine company which formed part of Mr Woolgar's Atop business, as in fact it did not exist at all.

[38] Mr Woolgar knew that each of the Express Representations and the Implied Representations were false when made and false when relied upon by the Claimants.

[39] Mr Woolgar intended that the Claimants would rely upon each of the Express Representations and Implied Representations when paying the sums identified on the Product Invoices.

83. The representations relied upon were set out in the PoC at [12]:

“Accordingly, during a subsequent conversation in around August 2011 (“the 2011 Conversation”), Mr Elford and Ms Zinser challenged Mr Woolgar as to why it was necessary for Charles Claire to receive invoices from, and make payment to, Atop UK (as opposed to the factory directly). Mr Woolgar explained that the Claimants would have difficulties in making international payments and that it would therefore be easier for him to handle payments for them. In the same conversation, Mr Woolgar expressly stated to Mr Elford and Ms Zinser the following (“the Express Oral Representations”):

- (1) That the prices contained on invoices sent by him would be the very same prices that were being charged by the relevant factory (“the **Express Oral Factory Price Representation**”).
- (2) That he would be transferring the monies paid by the Claimants directly to the relevant factory/ies (“the **Express Oral Use of Funds Representation**”).”

84. In support of the argument made on the claim in deceit, my attention was invited to the decision of Jacobs J, in *G.I. Global Investment Ltd & Ors v XYERS UK Limited & Ors* [2025] EWHC 740 (Comm). At [969], the judge dealt with the legal principles underpinning a claim in deceit. He explained the basic requirements in this way:

“I was referred by the parties to a number of authorities concerning the law of deceit, but ultimately there was no real dispute as to the legal principles. The following is substantially based upon my summary of the principles in *Vald. Nielsen Holdings and Ors v Baldorino* [2019] EWHC 1926 (Comm) at paras [130] – [159], which was one of the cases to which I was referred.

*The basic requirements*

[970] The tort of deceit requires the claimant to show that: (i) the defendant made a false representation to the claimant; (ii) the defendant knew the representation to be false, or had no belief in its truth, or was reckless as to whether it was true or false; (iii) the defendant intended the claimant to rely on the representation; (iv) the claimant did rely on the representations; and (v) as a result the claimants have suffered loss and damage.”

85. Adopting the approach of Jacobs J, Mr Goodman submits to me that there can be no doubt that Mr Woolgar made the Express Oral Factory Price Representation and also the Express Oral Use of Funds Representation, upon both of which he relies. Given the evidence of Mr Woolgar that I have set out in this judgment, it will come as no surprise that so far as I am concerned, the Claimants are indeed entitled to set up these representations. It was very much part of Mr Woolgar’s explanation to me of what happened, that he did make it clear to the Claimants that the price they would pay for the golf equipment supplied was nothing other than the price being charged by the factories or suppliers. Moreover, the money received by him would be used to settle the debts owing to those very same factories or suppliers for the goods received and described in the pro forma invoices for the creation of which, he had been responsible.
86. Turning to the second of the requirements outlined by Jacobs J, in *G.I. Global*, it is contended on behalf of the Claimants that if it was the case that Mr Woolgar was benefitting from additional amounts added to the invoices that he was presenting to the Claimants, then it must follow that he knew his representations otherwise were false. Once again, I have no difficulty with this submission. I reach this view in light of the findings that I have made as to Mr Woolgar’s deliberate scheme which involved invoices particularising amounts for golf equipment that Mr Woolgar knew very well were not the amounts that the factory or supplier had demanded or would charge.
87. In my judgement, on the evidence as I have assessed it, this was not a case of mere recklessness, such that it could be said that Mr Woolgar was merely careless as to whether his representations were true or false. In my judgment Mr Woolgar knew very well that different prices were being charged to the Claimants; the imposition of the increased amount came about because he created the relevant invoice or permitted, with full knowledge, an invoice with an inflated price to be generated by AFE.
88. The Claimants accept that they must establish, on the usual basis, that Mr Woolgar intended the FC to rely on the representation. On this requirement my attention was again invited to the helpful explanation recently given by Jacobs J, in *G.I. Global*. The learned judge said this at [992]:

“Actionable fraud involves an intention on the part of the representor to induce the representee to act as he did.

[993] The nature of this requirement was considered by the Court of Appeal in *Goose*, and subsequently *Mead v Babington* [2007] EWCA Civ 518 (“Mead”). Where a fraudulent misrepresentation has knowingly been made, there is a rebuttable presumption that the representor intended the representee to act in reliance on the representation: *Goose* at para [47]. It is not necessary for the representor to intend to induce the specific action taken by the representee in

reliance on the misrepresentation: see *Goose* at para [48], where the Court of Appeal held that the “the more normal formulation is that the representor should intend to deceive the representee, with intent, that is to say, that it shall be acted upon by him.” In *Mead*, Longmore LJ applied *Goose*, holding that there “was no requirement that the representation had to be intended to be acted on in the manner in which damage resulted to the claimant. It was not the specific action of the claimant which had to be intended: it was only necessary that there should be an intention that the representation should be acted on...””

89. It seems to me that in this case, the Claimants have the benefit of the presumption that Jacobs J, pointed to. I say this having answered the question was a fraudulent misrepresentation knowingly made, in the affirmative.
90. The Claimants also recognise that it is for them to establish that they were induced to enter into the transactions complained of, and to pay the prices that they did by reason of the representations; however, I accept that they have the benefit of a presumption of fact that such a fraudulent misrepresentation was intended to cause the representee to enter a contract complained of: the inference will be very difficult to rebut (see *BV Nederlandse Industrie Van Eiprodukten v Rembrandt Enterprises* [2019] EWCA Civ 596 at [43]). My understanding of the approach of Longmore LJ at [45] in *BV Nederlandse* is that the presumption sits alongside the test that I must apply in reckoning whether the representation caused the Claimants to enter in the relevant transactions, that is to say, was the representation actively present in his mind (per Bowen LJ in *Edgington v Fitzmaurice* (1885) 29 Ch D 459, 483). It is not necessary to weigh the effect of the representation, provided always that it was of some significance.
91. I have no doubt at all that Ms Zinser and Mr Elford had the belief that the prices being paid by the Claimants reflected the prices being paid to the factories without any additional amount. As Mr Elford explained in his witness statement at [28]:

“I do not recall exact instances given many of the conversations happened many years ago, but I remember Kevin saying to us continually throughout our working relationship that:

- (a) He was getting the best price for us, and the great thing about dealing with him (as opposed to others) was that we were not paying any premium or surcharge. He told us that the prices he put on his invoices were the prices the factory charged.
- (b) The money we paid to him was passed on directly to the factories.

[29] We (and particularly Stephanie) were concerned that we were not receiving invoices from factories directly, so I recall we asked Kevin about this on many occasions. As explained further at paragraph 42, below, Kevin would brush this off by saying that it was impossible for us to deal directly with the factories because we did not speak Chinese. He would tell us that the prices on his invoices were the exact same as the prices the factory was charging, so I was prepared to accept the situation.”



92. In my judgment what weighed on the minds of Ms Zinser and Mr Elford was that the prices being paid were factory only prices, absent any addition; it was this belief that induced them to enter into the transactions with AUK and AFE, arranged by Mr Woolgar, for the supply of golf equipment. The Claimants must therefore succeed on the claim brought in deceit. The Claimants ask for damages to compensate them for their losses. As to the method of assessment of those losses, I shall return later in this judgment.

*An Express Purpose Trust*

93. Moving on from the claim in deceit, the Claimants also ask the court to provide a remedy to them by the application of the principles arising out of the well-known case of *Barclays Bank Ltd v Quistclose Investments Ltd* [170] A.C. 567. It was from this decision that the principle was established that where one person advances a sum to another on the clear understanding that the sum is only to be applied for a purpose stated, a trust may arise. The beneficial interest in the sum of money is reserved to the person who advanced it. It is an essential feature of a so-called *Quistclose* trust that the intention of the party advancing moneys must be to restrict the use of the funds by the receiving party such that the moneys must not be used for any purpose other than that stipulated. It ought to be clear to the receiver of the fund that if the purpose cannot be achieved, that is to say, the moneys cannot be applied precisely as stipulated, then the funds should be returned. In these instances, legal title may well have been passed to the receiver of the funds, but the receiver does not acquire the whole of the beneficial interest. To that extent a resulting trust arises (see Lord Millet's explanation in *Twinsectra v Yardley* [2002] 2 A.C. 164).
94. It is the Claimants' case before me that Mr Woolgar knew perfectly well that he was receiving moneys from them, for the express purpose of paying the factories the amount due on their purchase of golfing equipment. The money was needed to settle the claims of the factories for payment of the price due. The Claimants were acquiring the goods so that they could sell them as part of their ordinary business activity; it was essential that the factories received the funds due to them. It was also clear to Mr Woolgar that money was being passed to him to meet these liabilities, for which he was the payment medium, and for no other purpose. The moneys could not be used to pay an amount as a benefit to him or to AFE. To do so would have been to act in breach of the terms of the trust. Mr Woolgar only had a limited right to the moneys passed to him by the Claimants; he had to use it for the purpose for which he had received it; if he did not, or could not fulfil that purpose, he was obliged to return the moneys to Claimants who still had the beneficial right to it.
95. There can be no room for doubt that Mr Woolgar accepted that he received the funds paid over by the Claimants in order to pay the factories. He knew that the funds were not to be used for any other purpose. His evidence to me was that this was the only purpose to which the funds were put; however, I have found otherwise. In my judgment a *Quistclose* trust did arise in respect of the moneys paid to Mr Woolgar in settlement of the AUK, or alternatively AFE, invoice submitted to them; to the extent that any of the funds were used to make payments otherwise than to the factories or suppliers of

golf equipment as particularised on each relevant invoice, such funds were paid away in breach of trust.

96. In the circumstances it seems to me that the Claimants are entitled to equitable compensation for breach of trust. Insofar as the Claimants wish to pursue proprietary remedies I am prepared to hear submissions from them at a further hearing.

#### *Agency*

97. I must now address the case put by the Claimants in the law of Agency. Their case is that Mr Woolgar was their agent when he dealt with the factories and suppliers of golf equipment. Despite the CA expressly providing that AUK would not become a “sales agent, agent or partner” of the FC, it was argued that in fact an agency relationship developed, and if it did, I should find for the existence of an agency despite the express prohibition on such a relationship coming into existence (see *National Trust V Birden* [2009] EWHC Ch 2023 and *Garnac v Faure and Fairclough* [1968] AC 1130, 1137, per Lord Pearson).

98. My starting point on this aspect of the Claimants’ case is the well-known definition of the relationship of agency set out at beginning of *Bowstead & Reynolds on Agency* 23<sup>rd</sup> Edn.:

“Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent. Any person other than the principal and the agent may be referred to as a third party.”

99. In light of the evidence that I heard, it seems to me that the Claimants face a rather fundamental difficulty; Mr Woolgar made it clear that at no stage did he act so as to affect the legal relations of the Claimants. Putting to one side clause 2.5 of the CA which stipulated that AUK had no authority to bind the FC unless agreed in writing, it is essential to look at the evidence of what actually happened. It is clear that Ms Zinser did remind Mr Woolgar that pursuant to clause 2.6, any invoices for goods supplied must be “invoiced directly to the company”. If this had been followed in practice, it would have suggested that Mr Woolgar had negotiated a contract with the supplier on behalf of the FC as a disclosed principal; the supplier would have been contracting with the FC under an agreement negotiated on its behalf by its agent Mr Woolgar. But what did happen? Mr Woolgar declined to arrange for any direct invoicing; he made it clear that he had to be responsible for the contracting, for a variety of reasons. Whilst her evidence, as I understood it, was that Ms Zinser was never altogether happy with this ongoing arrangement, it was in fact what happened. It was the pro forma invoicing arrangement that was implemented and followed by Mr Woolgar.
100. It thus seems to me that the factories and suppliers contracted with AFE. The Claimants knew that there was no contract with them; that is why they did not receive an invoice “directly”. The Claimants were well aware that Mr Woolgar would be contracting with the factories; their obligation was to settle the price set out in the AUK pro forma

invoice. As to the status of the AUK pro forma invoice, Mr Woolgar had the view that it was a form of booking document; once the quantities and prices described in the pro forma had been agreed by the Claimants, he would then proceed to confirm an order to AFE, who would in turn enter in a binding supply arrangement with the factory or supplier. In my judgment this arrangement, which does not to me seem inconsistent with how the Claimants set out their case at paragraph 20 of the PoC, did not amount to Mr Woolgar acting as the agent for the Claimants. He did nothing that would lead to a legal relationship between the Claimants and the factories, whether in the law of contract or otherwise. The factories may well have known that the goods were destined for the Claimants, though more probably they just knew of “Lynx”, but they at no stage entered into a contract with the Claimants procured by Mr Woolgar acting as agent. In my judgment Mr Woolgar knew and understood that AFE was acting as the buyer in China. It was assuming the obligation to pay. If the amount due on a pro forma was not paid, then AFE would carry the risk.

101. It is argued that Mr Woolgar contracted with the factories as agent for an undisclosed principal. The difficulty the Claimants have is not with this well-established principle, but with the facts as I have found them to be. Mr Woolgar simply did not contract with the factories on this basis. In my judgment, AFE contracted with the factories as principal, with full risk to make payment for the goods supplied, and with no right of recourse to the Claimants under a relationship of agency.

102. As part of this analysis, it is important to also recognise the invoicing party and the bank accounts to which payments were to be made by the Claimants. The Claimants explain the position in this way at paragraph 23 of the PoC:

“In terms of the invoicing entity: USD 8,167,389.44 and GBP 30,026.10 was invoiced by Atop UK, USD 198,982.35 was invoiced in the name of Atop Far East, and USD 319,004.00 was invoiced by Mr Woolgar personally. However, in terms of the recipient entity: USD 533,633.25 and GBP 30,026.10 was paid by the Claimants to Atop UK (“the Atop UK Product Payments”); USD 94,825.75 was paid by the Claimants to accounts in the name of Atop Far East (“the Atop Far East Product Payments”) and USD 8,056,916.79 was paid by the Claimants to Mr Woolgar (“the Woolgar Product Payments”) (collectively, “the Product Payments”).”

103. The fact that the Claimants received invoices for goods supplied, variously from each of AUK, AFE and Mr Woolgar does not alter the conclusion that I have arrived at. AFE did not enter into the factory contracts as agent for the Claimants; it did so as principal, albeit relying on the onward sale to the Claimants arranged by Mr Woolgar.
104. Mr Woolgar argued that he lacked authority to bind the Claimants as at no point had the Claimants agreed that he could enter into contracts on their behalf or otherwise bind them legally. He seemed to suggest that his role was “limited to sourcing and facilitating orders which the Claimants then confirmed”, as if he somehow disappeared from the transaction once he had brought an acceptable price to the Claimants. But that is not what happened. Once the price was agreed, Mr Woolgar saw to it that a binding contract was entered into with the relevant factory though not by the Claimants as disclosed or undisclosed principal. As he said later in his evidence to me, “I was

responsible to pay the factory for the orders”. It was little to the point that Mr Woolgar may not have placed an order with a factory until he knew that the Claimants wanted to purchase the relevant goods; it was immaterial that he would not have placed an order until the Claimants, who with complete freedom of choice, decided to proceed. It was not that element of control that was the badge of agency.

105. In the circumstances I do not find that Mr Woolgar was acting as the agent for the Claimants. It follows that I do not find that Mr Woolgar owed the fiduciary duties as alleged by the Claimants. Accordingly the claim made in the law of agency must fail.

*Breach of Contract*

106. The Claimants also bring a claim for the breach of a contract that they say arose between the Claimants and Mr Woolgar upon the dissolution of AUK on 27 October 2020. It is asserted that this new contract which arose, was an implied contract. The Claimants say that it contained a term, implied as matter of necessity or in order as a matter of business efficacy, that Mr Woolgar would pay over to factories or suppliers all funds passed to him by the Claimants for the purpose of purchasing golf clubs and related equipment. It is also argued that this new implied contract must have been between Mr Woolgar and the second Claimant (the SC) because from 2019, that was the vehicle for the Lynx golf trading business as it was operated by Mr Elford and Ms Zinser.
107. It was common ground before me that no written notice to terminate the CA was ever served. I agree with the Claimants that:
- a. once the CA had been terminated, either in early 2020 as was their case, or earlier in the year as suggested by Mr Woolgar, it did not apply to the services provided by Mr Woolgar to the Claimants; and
  - b. the CA cannot have applied to the services which AUK provided to the SC, because the SC was never a signatory to the CA.
108. Although it may have been Mr Woolgar’s position that the CA came to an end earlier in 2020, he did not press that case with any conviction. For the want of any better evidence, I will proceed on the basis that the date of dissolution of AUK was the relevant date.
109. The Claimants contend that a term must be implied into an implied contract, whether as a matter of necessity or business efficacy, that Mr Woolgar would transfer all sums paid by the Claimants to him personally on account of purchases to the relevant factory. Mr Woolgar resists the notion that any such term is to be implied.
110. In *Standard Chartered Plc v Guaranty Nominees Limited* [2024] EWHC 2605 (Comm), the Chancellor, sitting with Foxton J, summarised the law on the principles relied upon by the Claimants:

“The implication of terms

[42]. Both parties accepted that the relevant test is that set out in *Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72, [2016] AC 742:

- i) An implied term must either be necessary to give business efficacy to the contract, meaning that the contract would lack commercial or practical coherence without the term ([17] and [21]) or be so obvious that it goes without saying ([16]).
- ii) The term to be applied must be capable of clear expression ([18]), not contradict any express terms of the contract ([28]); and be reasonable and equitable, although a term which meets the previous requirements will almost certainly be reasonable and equitable ([21]).”

111. It is difficult to understand the evidence given by Mr Woolgar as in any way contrary to the proposition that the clause contended for the Claimants was a requirement of the new contract that arose and covered the continued dealings between Mr Woolgar and the Claimants subsequent to the cessation of the CA. Indeed Mr Woolgar would not himself have suggested that, as was rhetorically posited by the Claimants, he was free to take the money transferred by the Claimants in order to purchase products and then do what he liked with it. He understood that the agreement he was bound by required him to pay to the factories the money given to him by the Claimants. His evidence was that this is what he did. In responding to a question from Mr Goodman, Mr Woolgar explained that:

“Generally things carried on as they were. We did not discuss it but I was under impression that nothing really changed, the invoice changed, the remuneration changed, but I was doing everything that the CA said I should be doing.”

112. The case argued by the Claimants did not go so far as to assert an express contract, made orally. As I have indicated, the claim was predicated on an implied contract. It seems to me axiomatic that in order to succeed in establishing an express contract, clear, direct communication of the terms, either orally or in writing are required. The parties involved must explicitly state their agreement and the conditions, leaving little to no room for interpretation. An implied contract on the other hand is formed based on the actions, conduct, or circumstances of the parties involved, rather than explicit words; such contracts are inferred from the behaviour that suggests a mutual agreement. As I understood him, that is how Mr Goodman put the case before me; he invited me to look at how the parties conducted themselves following the expiration of the CA.

113. In *Baird Textile Holdings Limited v Marks & Spencer plc* [2001] EWCA Civ 274, Mance LJ, set out the law as he saw it in regard to implied contracts at [59] *et seq*;

“The Vice-Chancellor has set out paragraph 12(1) and (2) of the judgment below, in which Morison J summarised the relevant legal principles as he saw them. For a contract to come into existence, there must be both (a) an agreement on essentials with sufficient certainty to be enforceable and (b) an intention to create legal relations.

[60] Both requirements are normally judged objectively. Absence of the former may involve or be explained by the latter. But this is not always so. A sufficiently certain agreement may be reached, but there may be either expressly (i.e. by express agreement) or impliedly (e.g. in some family situations) no intention to create legal relations.

[61] An intention to create legal relations is normally presumed in the case of an express or apparent agreement satisfying the first requirement: see *Chitty on Contracts* (28<sup>th</sup> Ed.) Vol. 1 para.2-146. It is otherwise, when the case is that an implied contract falls to be inferred from parties' conduct: *Chitty*, para.2-147. It is then for the party asserting such a contract to show the necessity for implying it. As Morison J said in his paragraph 12(1), if the parties would or might have acted as they did without any such contract, there is no necessity to imply any contract. It is merely putting the same point another way to say that no intention to make any such contract will then be inferred.

[62] That the test of any such implication is necessity is, in my view, clear, both on the authority of *The Aramis* [1989] 1 Ll.R. 213, *Blackpool and Fylde Aero Club Ltd. v. Blackpool B.C.* [1990] 1 WLR 1195, *The Hannah Blumenthal* [1983] AC 854 and *The Gudermes* [1993] 1 Ll.R. 311 cited by the Vice-Chancellor, and also a matter of consistency. It could not be right to adopt a test of necessity when implying terms into a contract and a more relaxed test when implying a contract – which must itself have terms.

[63] Here it is sought by the claimant to argue in reverse. First, the issue of intention to create legal relations is addressed and it is suggested that the judge gave only one reason (based on paragraph 9.28 of the claim) for negating any such intention. Then, having sought to show that reason as ill-founded, it is argued that the only barrier to an enforceable contract is "essentially one of interpretation" and of giving effect to an intention on the part of the parties to contract.

114. This view of the law has found subsequent support in the Court of Appeal: see *West Bromwich Albion v El-Safty* [2006] EWCA Civ 1299, per Rix LJ. It is the approach that I will follow.
115. In the circumstances I have no difficulty in finding that as a necessity, a contract arose between the Claimants and Mr Woolgar following the demise of the CA. It can be inferred from the conduct of the parties. It does not seem to me to be of any great consequence that the Claimants plead the agreement as having been an "agency" contract: see the PoC at [44]. In my judgment it was an implied contract having the terms that I shall now deal with.
116. In my judgment the term (or terms), contended for by the Claimants was part of this new implied contract, that is to say Mr Woolgar was obliged to pay over to factories or suppliers all funds passed to him by the Claimants for the purpose of purchasing golf clubs and related equipment; it was also an obligation imposed by the new contract that Mr Woolgar would not manipulate the invoicing arrangement so as to add amounts to the sums payable by the Claimants, which amounts being for his sole benefit. On the evidence that I heard, such terms clearly reflect the actions and behaviour of the parties.

To the extent necessary, I find the terms implied so as to give business efficacy to the agreement.

117. It was, say the Claimants, a breach of the new implied contract for Mr Woolgar to have use the monies that they gave to him for a purpose other than to settle invoices for golf equipment proffered by factories and suppliers, absent any additional amount for his own benefit: I agree. I hold that Mr Woolgar did breach the new contract and that therefore the enquiry must shift to the consequences. The Claimants go on to say that they have suffered loss and damage. They seek as like amount as is sought in the law of deceit arising out of the so called secret commissions from which Mr Woolgar benefitted; in addition, they seek recovery of an amount paid for goods which they did not receive, staff and management time losses and losses for business disruption. I will return to the subject of assessment of losses, later in this judgment.

### *Negligence*

118. Redress is also sought by the Claimants in the law of tort; a claim is brought in negligence. It is asserted that Mr Woolgar owed a duty to them both during the currency of the CA and afterwards personally. It is said that he breached the duty he owed by reason of the facts and matters that I have already recounted in this judgment, essentially the wrongful taking of secret commissions. They go on to argue that reasonably foreseeable damage caused by the breach of duty has been suffered.
119. In seeking to establish the existence of the necessary duty of care, my attention has been invited to the decision of the Judicial Committee of the Privy Council in *Royal Bank of Scotland International Ltd v JP SPC 4* [2022] UKPC 18, and in particular to the law as it relates to the assumption of responsibility. The essence of the principle was recited by Lords Briggs and Hamblen, with whom the other judges agreed, drawing from the speech of Lord Morris of Borth-y-Gest in *Hedley Byrne v Heller & Partners Ltd* [1964] AC 465, with which Lord Hodson agreed, at pp 502-503:

“My Lords, I consider that it follows and that it should now be regarded as settled that if someone possessed of a special skill undertakes, quite irrespective of contract, to apply that skill for the assistance of another person who relies upon such skill, a duty of care will arise. The fact that the service is to be given by means of or by the instrumentality of words can make no difference. Furthermore, if in a sphere in which a person is so placed that others could reasonably rely upon his judgment or his skill or upon his ability to make careful inquiry, a person takes it upon himself to give information or advice to, or allows his information or advice to be passed on to, another person who, as he knows or should know, will place reliance upon it, then a duty of care will arise.”

120. It is clear that in this case Mr Woolgar did profess to have special skill. He represented to the Claimants that he was expert in all things attendant upon the supply of golf-related equipment from China. He asked the Claimants to reply upon him to identify the goods that they should purchase and the price that they should pay for it. This indeed was Mr Woolgar’s case: see for example his Witness Statement at [4]:

“I have been actively involved in the golf industry since 1978. Over my career, I have developed a deep understanding of golf product design, manufacturing, and

international sourcing, particularly with Far East manufacturers. Leveraging this expertise, I founded Atop Pro Golf Inc Ltd (“Atop UK”) in 2010 to provide sourcing and consultancy services within the golf equipment sector.”

121. Also at [10]:

“As a consultant, my role included sourcing, price negotiation, research and development, and oversight of product design and quality.”

122. And at [11]:

“I clarify that my role involved sourcing high-quality components from multiple reputable factories to create complete, customised golf products. As a consultant, I ensured each part of the final product met high standards, sometimes requiring different components from specialised manufacturers, such as shafts, grips, heads, and golf bags. My role was solely to coordinate and oversee the procurement of high quality parts that were then assembled by factories or intermediaries before shipment to Lynx, following industry standards and in line with our consultancy agreement.”

123. In *Royal Bank of Scotland*, Lords Briggs and Hamblen added this guidance, at [63], *et seq*:

“As Lord Steyn explained in *Williams v Natural Life* at p 835G-H, the objective nature of the test means that it will generally be important to focus on exchanges which cross the line between the defendant and the claimant (or the group of persons of which the claimant is an identifiable member):

“The touchstone of liability is not the state of mind of the defendant. An objective test means that the primary focus must be on things said or done by the defendant or on his behalf in dealings with the plaintiff. Obviously, the impact of what a defendant says or does must be judged in the light of the relevant contextual scene. Subject to this qualification the primary focus must be on exchanges (in which term I include statements and conduct) which cross the line between the defendant and the plaintiff.”

[64] An examination of the case law indicates (see Clerk and Lindsell on Torts, 23rd ed (2021), paras 7-113 to 7-137) that the factors which have been of particular relevance in determining whether there is an assumption of responsibility in relation to a task or service undertaken include: (i) the purpose of the task or service and whether it is for the benefit of the claimant; (ii) the defendant’s knowledge and whether it is or ought to be known that the claimant will be relying on the defendant’s performance of the task or service with reasonable care; and (iii) the reasonableness of the claimant’s reliance on the performance of the task or service by the defendant with reasonable care.”

124. Applying these factors to the evidence in this case leads me to the clear view that Mr Woolgar did indeed assume responsibility in regard to the service for which he was engaged by the Claimants; he knew very well that the Claimants were relying, totally, on the manner of his performance of the duties that he had willingly assumed; it was in



addition, in my judgment entirely reasonable for the Claimants to rely upon Mr Woolgar to carry out the tasks assigned to him with reasonable skill and care. In all the circumstances, and his express pleaded denial notwithstanding, on the evidence that I heard from him, I doubt that Mr Woolgar would himself have any difficulty with the foregoing. I am also afraid that I do not read anything in the judgment of HHJ Bird, sitting as a Judge of the High Court, in *Gibson v TSE Malta LP* [2024] EWHC 2900 (Comm), relied upon by Mr Woolgar as supporting the proposition that a tortious analysis is misconceived where a contractual claim is possible, as inconsistent with the approach I have taken.

125. Although in my judgment the matter is settled by, as I have shown, taking the approach of Lord Morris in *Hedley Byrne*, as to the existence of a duty, it is perhaps helpful to apply, as did HHJ Bird in *Gibson*, the three-fold test of foreseeability of damage, proximity, and the requirement that it is fair and just to impose a duty (see *Caparo Industries plc v Dickman* [1990] 2 AC 605). I accept that given the relationship between the parties as I have recounted it in this judgment, the first of the tests, that is to say foreseeability, is established. The relationship between the Claimants and Mr Woolgar was in my view sufficiently proximate that it would be appropriate to impose a duty of care; it also my view that in all the circumstances it is fair and reasonable to impose a duty of care.
126. The Claimants allege that their wholly foreseeable loss arising from Mr Woolgar's breach of duty, is the value of the tax levied by HMRC on the amount that is the difference between the pro forma invoices he submitted to them and the invoice amounts, absent the secret commissions, that ought to have been passed to them for payment. The loss arises as a result of HMRC seeking to charge tax on the pro forma invoice values. This tax amount should not have arisen, say the Claimants; they should have acquired the golf equipment to which the invoices relate, for the lower, net, "factory only" prices. In addition the Claimants again seek the costs resulting from the HMRC investigation and the value of lost staff time for the benefit of the business. In my judgment these costs do appear to have been reasonably foreseeable.

### *The Counter Claims*

127. At paragraph 77 *et seq.*, of his Re-Amended Defence and Counterclaim (the CC), Mr Woolgar sets out his case for breach of an oral agreement and for recovery of amounts due thereunder. His CC pleads that:

"Pursuant to the terms of the Oral Agreement, which the Defendant entered into personally with Lynx Golf in December 2019 / January 2020, he is entitled to a fee of £64,000 per annum.

[78] In breach of the Oral Agreement:

- (1) Lynx Golf has failed to pay the Defendant's invoices for the months of October 2021 £7,082, November 2021 £6,474, February 2022 £3,320,

March 2022 £6,180 and April 2022 £6,970.80 for services provided;  
B/5/23

- (2) Lynx Golf has failed to complete the payments due under invoices 10748a in the sum of 95,375 USD, 10781a in the sum of £916.30 (linked to 10762a) and 10758a in the sum of 4,476.50 USD. As a result of which the defendant has incurred further costs of importation fees, duties, vat and storage costs to be assessed;
- (3) In March 2022 Lynx Golf agreed with the Defendant to purchase Ai products under invoice 10778a for the sum of 444,815 USD, for Predator products under invoice 10777a for the sum of 261,655 USD and for Predator and Crystal head covers under invoice 10779a at a cost of 19,425 USD. Lynx Golf failed to pay the deposit but the Defendant placed the order based on their assurance that they would pay. The Claimant subsequently refused to pay any sums under the invoices to the Defendant and the Defendant is liable to pay sums for these products and/or is required to pay such sums to protect his business interests with the factories. Lynx Golf has subsequently paid some sums to Progoal using an intermediary Pure Select International.

[79] The quantification of these sums is not possible prior to disclosure but the Defendant estimates the sum to be in excess of £200,000.00.”

128. The Claimants deny that any services were provided as would justify the payment of the invoices particularised at paragraph 78 (2); further they say that no evidence has been advanced as would substantiate the claim.
129. In his witness statement, Mr Woolgar says this:

“Unpaid Consultancy Invoices

[62] I provided sourcing, design, and advisory services to Lynx Golf. Despite fulfilling my obligations, Lynx Golf has failed to settle the following invoices for services rendered:

- a) October 2021: £7,082 (KW0037)
- b) November 2021: £6,474 (KW0038)
- c) February 2022: £3,320 (KW0039)
- d) March 2022: £6,180 (KW0040)
- e) April 2022: £6,970.80 (KW0041)

These invoices remain unpaid, causing me financial loss and necessitating further actions to recover these funds. It is notable that Lynx Golf did pay the December 2021 and January 2022 invoices.

[63] In addition to consultancy fees, Lynx Golf failed to complete payments on the following product-related invoices:

- a. Invoice 10748A: \$95,375 USD - Golf Balls Order (KW0042)
- b. Freight Charges for Order 10748A - £6,906.30 (KW0043)
- c. Duty & VAT Charges for Order 10748A - £17,553.76 (KW0044)
- d. Invoice 10781A: £916.30 - Freight Charges for VT Irons (KW0045)
- e. Invoice 10758A: \$4,476.50 USD - Parallax Irons Order (KW0046)
- f. Freight Charges for Order 10758A: £875.00 (KW0047)
- g. Duty & VAT Charges for Order 10758A: £1,721.00 (KW0048)

As a direct consequence, I incurred additional costs for importation fees, import duties and storage fees which are yet to be reimbursed. Storage fees alone being at least £12,000.

[64] In March 2022, Lynx Golf placed substantial orders, including:

- a. AI products (Invoice 10778A for \$444,815 USD) (KW0049)
- b. Predator products (Invoice 10777A for \$261,655 USD) (KW0050)
- c. Predator and Crystal head covers (Invoice 10779A for \$19,425 USD) (KW0051)

These orders were placed based on Lynx Golf's assurances but were not paid for. Consequently, I am liable to settle these amounts with suppliers to maintain my business relationships.

[65] Following the discovery of alleged fraud in February 2022, Lynx Golf continued to place substantial orders for goods (KW0052) yet only paid the outstanding balance on select invoices up to and including March 2022 (KW0053). Their ongoing assurances, followed by their refusal to make payments, not only contradicted their stated position but also caused significant financial damage to my business. I have 19 B/13/19 First Witness Statement of Kevin Woolgar Date: 12 February 2025 Claim No: BL-2023-000519 reviewed an email disclosed in these proceedings (KW0054) in which Mark Wilson of Lynx states: "*We sent a purchase order to Kevin for Lynx Ai junior clubs, Crystal clubs, etc*". This aligns with my recollection of

the order processes I facilitated for Lynx during that time, and it supports my understanding that Lynx had indeed placed these orders.”

130. Mr Woolgar told the court about the terms of the oral agreement that he believed took effect when the CA was no longer in force. He answered questions about the amount payable to him; his clear evidence was that £64,000 was due annually but invoiced by him on a monthly basis. He explained that 75% of his time was to be devoted to the Lynx business but that in fact he spent considerably more time working for it. It was to him signal, that both the December 2021 and January 2022 invoices had been paid.
131. The evidence of Ms Zinser on this point was vague. There clearly reached a point when together with Elford, she was highly suspicious of Mr Woolgar and the amounts he had been charging for products. By March, the evidence appears to reveal an unwillingness on the part of the SC to place any further orders; that much is plain from the exchanges between Mr Woolgar and Becky at Lynx. Mr Woolgar was still pressing Becky to place the large order on 29 March. She was still engaging with him but avoiding confirming the order.
132. In the skeleton argument for trial, Mr Goodman asserted at (54), that it was the discovery of duplicate invoices suggesting that there was a factory price and a higher price being charged by Mr Woolgar to the SC, that triggered an investigation by his clients which led in April-May 2022, to further discrepant price lists being unearthed.
133. In resisting the payment of these invoices for services rendered under the agreement that replaced the CA, the SC points to the terms of that agreement. It argues that the effect of clause 3.1 was not only to require Mr Woolgar to particularise the work carried out but to restrict payment to amounts that corresponded to the work actually done. The relevant provision relied upon is this:
- “Atop shall submit invoices to the Company on a monthly basis setting out the hours that the Consultant has worked for the Company during the preceding month and any VAT payable (if applicable).”
134. My assessment of all of this is that the agreement under which Mr Woolgar was working, had not been terminated by the point in time that Mr Woolgar rendered his last invoice. No issue had been taken with the invoices. At [24] of the Defence to the Counterclaim, the Claimants’ admit that:
- “...until the Claimants discovered the Duplicate Invoices they did not raise a concern in relation to them.”
135. At all events, Mr Woolgar’s evidence satisfied me, on a balance of probabilities that he was truly engaged working for the SC during the relevant periods. The real question for decision, as Mr Goodman appeared to accept, is whether the agreement contained the same term as clause 3.1 of the CA and whether it required him to justify each amount claimed by reference to specific items of work carried out. Accepting for one moment that the term did apply, did it have that effect? In seeking to give meaning to that term, I am, by way of an objective test, concerned to identify the intention of the parties by reference to what a reasonable person at the time, having all the background knowledge

which would have been available to the parties, would have understood the language of the term to mean: see *Wood v Capita Insurance Services* [2017] UKSC 24.

136. In my judgment, Mr Woolgar was entitled to submit the invoices on a monthly basis and was entitled to payment thereupon. He ought to have set out the hours worked but that was not a condition to payment under the contract; that was a requirement for the form of the invoice. In my judgment the amount due to Mr Woolgar under the agreement was due and payable on a monthly basis. To this extent Mr Woolgar must succeed on his counterclaim.
137. At [78] 2, of his CC, Mr Woolgar claims in respect of three of the invoices he referred to in his evidence:
- “Lynx Golf has failed to complete the payments due under invoices 10748a in the sum of 95,375 USD, 10781a in the sum of £916.30 (linked to 10762a) and 10758a in the sum of 4,476.50 USD. As a result of which the defendant has incurred further costs of importation fees, duties, vat and storage costs to be assessed”
138. So far as I am concerned these are the invoices and amounts that Mr Woolgar is entitled to pursue in these proceedings. What was his basis for doing so? He told the court that he had placed orders with factories because the SC had placed the relevant order with him: “the Claimant knows that the orders were placed and took delivery of a lot of the product direct from the factory.”
139. As to the invoice claim for \$95,375, this appears to relate to an order for golf balls originally placed in July 2021 but revised in February 2022. The total price was US\$136,250. Mr Woolgar’s invoice sets out that a deposit was paid of US\$16,965, leaving a remaining deposit to be paid of US\$23,910 and a balance to be paid before shipment of US\$95,375. It is that latter value that is his claim in these proceedings.
140. The SC argues that Mr Woolgar is not entitled to be paid following the mere delivery by him to them of a pro-forma invoice. Why should such a document give rise to an obligation to pay anything, it is said. But I do not think that that is quite the point. Mr Woolgar does not seek payment of debt due on an unpaid invoice; he claims damages for breach of the agreement to which I have already referred.
141. In cross-examination, Mr Goodman spent time exploring whether an order in March 2022 had in fact been placed. I was shown a series of email exchanges involving Becky on behalf of the SC. There can be no doubt that the order that was the subject of the exchanges with Becky was not placed. Mr Woolgar was, albeit after a degree of pressing that should not have been necessary, compelled to accept this obvious fact.
142. As has already been seen, invoices for goods to be supplied to the Claimants ought to have been “invoiced directly” to the Claimants. This is what the CA provided: but it is not what happened. The Claimants knew that the factory invoices were going to AFE or to Mr Woolgar; they identified the amounts to pay by reference to the pro forma invoices submitted to them by Mr Woolgar. It was on this basis that they paid deposits that commenced the manufacture or shipping process; it was on this basis that they knew what balance was due. I have found that Mr Woolgar acted as principal and not as the agent of the Claimants. The question then arises as to whether it was a term of

the contract that arose after the demise of the CA, that the SCs were obliged to make balancing payments to Mr Woolgar in instances where they had confirmed an order and taken the step of making a deposit payment. Once again taking an objective approach to assessing what was the intention of the parties in entering into this commercial arrangement it seems to me that having signalled to Mr Woolgar that an order would be proceeded with, the SC understood that it would have an obligation to pay the agreed price due, and to pay it to Mr Woolgar. If this was not an express term of the oral agreement that they had entered into then in my judgment applying the tests that I have already set out earlier in this judgment, such a term is certainly to be implied so as to give business efficacy to the contract. It also seems to me that had the notional officious bystander been asked the question, the response would have been that of course in such circumstances, the SC would be obliged to pass the balancing payment to Mr Woolgar who the SC would have doubtless been well aware had assumed a like obligation.

143. It follows that in my judgment it would be a breach of the agreement that followed on from the CA, not to make payment of the balancing payments due. I am satisfied that on his evidence, and on the balance of probabilities, orders were placed for the three invoices pleaded by Mr Woolgar and that those were as he claimed, agreed to by the SC. I take into account here the fact that on invoice 10748a, the deposit was paid. That must have been from funds supplied by the SC. To this extent therefore, Mr Woolgar succeeds on his counterclaim.
144. The final limb of Mr Woolgar's invoice-related counterclaim relates to the purchase by him of Ai, Crystal and Predator products. The invoice numbers were 10777a, 10778a and 10779a. It is pleaded that the orders were placed without a deposit payment but on the faith of an assurance that the SC would pay. I could see no evidence of any such assurance. In his oral evidence, Mr Woolgar failed to satisfy me that any such assurance was in fact given. It seems to me likely that these were the very orders that, as I have already related, Becky refused to confirm. In any event I am not satisfied on a balance of probabilities, that the SC engaged to purchase these goods. This element of the counterclaim must, accordingly, fail.
145. Mr Woolgar brings one further claim. It is pleaded in this way:

“In breach of the Ai Agreement, the Claimants have failed to pay the Defendant 1USD per “Ai” golf club purchased by them through him and direct from the factory in the Xiamen in China, who have the “Ai” golf club tooling paid for by the Defendant. Further, the Claimants have failed to disclose how many “Ai” golf clubs they have purchased directly from the said factory and therefore the Defendant is unable to quantify the sum, however, he estimates it to be in excess of 100,000 golf clubs, and therefore seeks damages in excess of USD 100,000.”
146. In his Witness Statement at [38], Mr Woolgar said this about the arrangement that he had entered into with the Claimants in respect of the new range of junior clubs being developed by him under the brand “Ai”:

“In 2019, I presented a junior range of golf clubs branded as “AI” to Lynx Golf. During discussions, Lynx agreed verbally to pay me \$1 for each “AI” club sold. This agreement was made because I bore the economic risk for the project, which

was a significant undertaking. Despite this agreement, I have not received any compensation for the sales of these clubs. My understanding at the time was that this agreement was compensation for my independent development and investment in the product.”

147. It is important to consider what Mr Elford had to say about the agreement for the supply of Ai range golf clubs. It was Mr Elford who had discussed the matter with Mr Woolgar. In his Witness Statement, Mr Elford said this at [65] *et seq*:

“In around 2019, Kevin approached us with his latest “brilliant idea”: the “Ai” range of clubs for junior golfers. I remember that he pitched this idea to us at the meeting room in our offices, during the weekly team meeting that we hold every Tuesday. I was there alongside Stephanie and other employees, including Becky Murphy, Mark Goodwin and Murray Tonry (another senior staff member).

[66] Kevin explained the concept to us. The idea was basically that we would shrink all component parts of the club down to junior size. This was a novel idea. Previously, junior clubs were basically just adult clubs with smaller shafts. I liked the idea.

[67] Kevin also explained to us, at the meeting, that the tooling for the Ai range would cost approximately USD 250,000.

[68] I really liked the “Ai” idea, but at the rate we were going at the time, it would have taken a long time to make our money back had we made that initial outlay. Also, my patience was running thin with Kevin and I was seriously doubting his credibility following the failure of the “face-off” driver. It was clear to me that there was no way, after all the ideas he had that cost us money, that we were going to spend that sort of money on tooling for the “Ai” range. I made that really clear to him sometime after the meeting. I remember saying to Kevin, during a subsequent meeting, something along the lines of: “If you think it is such a good idea, you pay for the tooling. Then we will give you USD 1 per club”. That arrangement would have put all the danger on him for once. It would have been win win for the business.

[69] I recall thinking at the time it was extremely unlikely that he would be able to find the USD 250,000 he needed to cover the tooling costs – he had no history of success in business. I remember asking myself how any normal person could afford that outlay. At some point, I even recall asking him how he was going to pay for it. He was evasive and said something like “money isn’t important”, but that he “raided” his pension.

[70] In any event, this suggestion was entirely contingent on Kevin actually owning the tooling and proving to us that he did (he never did provide us with that proof). As far as I know, my suggestion was never put into writing, as Kevin did not want to draw anything up. Also, I think it is apparent from what Kevin later did to impound our “Ai” imports (see paragraph 106, below) that he did not actually own the tooling. If he did, he could have stopped us ordering “Ai” products

from the factory. He never did. I also have an email from the factory owner confirming Kevin did not own the tooling.

148. From this evidence the controversy can be distilled. So far as Mr Elford was concerned, he was willing to pay the so-called Royalty at the rate of \$1 per club supplied to Lynx, but only if Mr Woolgar had himself paid for and acquired the tooling. In cross-examination, Mr Elford made it clear that he had “agreed in principle to the fee on the basis that Mr Woolgar indeed paid for the tooling.” He could not remember if he had asked for proof that the tooling had been paid for as shortly afterwards he had suffered a heart attack which kept him out of the business for some time. He did know that the Ai clubs had been supplied to Lynx and that they had “sold quite well.”
149. Mr Woolgar’s evidence was straightforward. The deal had been done precisely as Mr Elford had accepted; he had taken responsibility for the tooling costs and had made payments against that liability. So far as he was concerned the arrangement was that the royalty fee would be paid but that in no circumstances would the Claimants take responsibility for the tooling costs: those costs would be for his account. He had not yet met all the tooling costs but he carried the liability; the factory continued to press him for payment of the outstanding balance.
150. It is the Claimants’ case that the agreement as to the royalty was an agreement in principle only and therefore unenforceable, presumably on the footing that there was no intention to enter into legal relations. Alternatively it is argued that the obligation to pay the royalty was conditional upon Mr Woolgar owning the relevant tooling and or evidencing that ownership.
151. Having heard Mr Elford give evidence on this point I have to say that I have come to the view that there was an agreement between the parties. The principal terms were clear: the price was known, as was the subject matter. These were parties who were accustomed to having binding commercial relations between them, typically covering the supply of the golfing products. I do not see that it was any different here. The real question is what was agreed as to payment. It was certainly clear that Mr Elford would not pay for the tooling, but if Mr Woolgar met the tooling costs and supplied the clubs, then Mr Elford did agree to pay the royalty at the rate discussed between them. It seems to me that what Mr Elford did not say or mean was that Mr Woolgar had to pay the entire cost of the tooling before he would pay the royalty on a club supplied. What was most important to him was that the Claimants would not be meeting the tooling cost. That, it seems to me, was the agreement reached. In my judgment, any suggestion of a concern over the proprietary or intellectual property rights in the tooling and the ability to sell the same clubs to others, was an afterthought. Nothing of this was said at the time; nothing of this was part of the agreement that I find was reached and is enforceable.
152. Mr Goodman has drawn the court’s attention to the email exchange between the FC and a Chinese factory on the subject of the Ai range. This exchange took place in February 2021. It is suggested that this exchange makes it clear that Mr Woolgar had not paid for and did not own the tooling:

“In response to your email below:--



1. Ai junior: After double check with our accounting, Kevin did pay few portion of tooling cost to us only. So say all tooling's of heads, shaft mandrels and grip for all different ages to be 75% owned by us. Rest Lynx models are most chosen our available model tools to change logo and cosmetic, so these tools are all from us.

2. Regards Ai model tools, we only do it for Lynx only!"

153. When this was put to Mr Woolgar he accepted that he owed the factory the balance for the tooling costs. He had not paid the full price. He had only paid the first invoice. It seems to me to be unsurprising that when Mark of the SC made contact with the factory in February explaining that he was new to the Lynx business, asking questions about the tooling and confirming an existing order made, that the factory might come to the view that the outstanding balance due from Mr Woolgar would not be paid. The factory put forward the best commercial position from its standpoint. Had it been pressed, it may very well have accepted that the tooling had been ordered by Mr Woolgar, as it seems to have been, and that upon payment of the balance due, it all belonged to him.
154. None of this disturbs my view that Mr Woolgar assumed the economic risk for the tooling. This was an essential step which allowed him to arrange for the supply of the Ai clubs to the SC. Those clubs were supplied and Mr Elford told the court that the Ai range was one of the top two or three best selling Lynx golf ranges.
155. In the circumstances I find that Mr Woolgar is entitled to the royalty amount, levied on each club supplied to the Claimants by Mr Woolgar. Having not paid the balance due to the factory, and it appears having failed to insist on any right to the tooling whilst permitting the factory to exploit it, it seems to me that Mr Woolgar cannot be entitled to claim the benefit of the royalty agreement for Ai clubs supplied directly by the factory. The right to a royalty was predicated on the club being supplied by Mr Woolgar in circumstances where he had funded the development of the necessary tooling.
156. Mr Woolgar has been unable to particularise his loss of royalty claim as he maintains that the Claimants have failed to disclose the number of Ai clubs supplied and sold by them. It should not be difficult to identify the number of clubs supplied by Mr Woolgar, excepting the left hand clubs, the tooling for which Mr Woolgar accepted he had not funded.

*The Registered Mark – the ownership claim*

157. In a discrete section of the trial, argued before me by Mr Zweck, the Claimants advanced a claim against Mr Woolgar in respect of a trade mark registered by him for the word Ai in logo form. This Registered Mark (**RM**) was discovered by the Claimants in April 2022. In the first instance, the Claimants say that they are the

beneficial owners of the RM; they seek appropriate relief from the court to protect their proprietary rights.

158. As an alternative case, the Claimants argue that Mr Woolgar applied for the RM in bad faith. In consequence, they seek an order under the Trade Marks Act 1994, (the **Act**) invalidating the RM.
159. Mr Woolgar's position on the RM claim was straightforward and consistent with his counterclaim: he says he developed the Ai brand as a separate venture and that this was fully recognised by the Claimants. He had independently invested in and developed the Ai brand. Carrying on at [38] of his Witness Statement, Mr Woolgar's evidence was that:

“As part of the Claimants' Disclosure Review Document (DRD), an email from Lynx's accountants (KW0012). The email states: *“Currently the Junior range costs are not available to be claimed as R&D on the basis of the contractual agreement between the Company and Kevin, i.e. he is paid a royalty for use of the R&D that he created and that he also bore the economic risk for in undertaking the project originally”*. I rely on this email as evidence supporting my recollection of the agreement. To my knowledge, no formal request for proof of tooling ownership or payment was ever made during the relevant period. First Witness Statement of Kevin Woolgar Date: 12 February 2025 Claim No: BL-2023-000519 Separately, I applied to register the “AI” trademark on 3 April 2019, prior to presenting the idea to Lynx (KW0013). This was my project, which I independently developed, funded, and protected before any discussions with Lynx. The Intellectual Property Office advised that “AI”, being a generic term, could not be registered as a standalone word. Consequently, I registered a logo-specific trademark instead (Registered trademark number 00003461942).”

160. Mr Woolgar applied for registration of the RM on 28 January 2020. Registration of a trade mark for the word “Ai” in logo form was granted on 8 August 2020: UK trade mark no. 3461942. The RM is registered in respect of the following classifications of goods in Class 28: “Golf clubs, golf bags, golf balls, golf umbrellas, golf gloves, golf headcovers, golf caps”.
161. It was common ground that Mr Woolgar did originate the Ai brand using his expertise; there was no suggestion that Mr Elford or Ms Zinser could have or did conceive and develop the Ai brand concept. Their complaint put simply, was that Mr Woolgar had no business registering a trade mark over a golf range that they were selling as part of the Lynx range, whilst he was working for them as a consultant. It was the complainants that owned the brand developed by Mr Woolgar whilst working for them, or at the very least, he should not have registered the mark under their noses. They should have had the opportunity. Mr Woolgar did not give them such an opportunity.
162. The essence of the grievance felt by the Claimants was the fact that when originally discussing the possible development of the Ai range, Mr Woolgar had given the view to Ms Zinser that Ai was such a common word or set of letters that no trade mark would be possible. That grievance was inflamed when in late 2022, the Claimants learned that Mr Woolgar had notified the UK Border Force of the RM and encouraged the seizing of a shipment of Lynx golfing equipment. The consequence of being informed

of the seizure of Lynx goods was to prompt Mr Elford to file an application with the United Kingdom Intellectual Property Office seeking to bring about a change in the recorded ownership of the RM. The register was duly rectified as asked, and the FC became the registered owner of the RM. In due course the seized goods were released.

163. Aggrieved by the outcome of the application to rectify the register, Mr Woolgar made a like application seeking to reverse the change in the register. This application was itself determined on 5 April 2024. On this occasion Mr Woolgar carried the day. The decision of Mr Mark King for the Registrar, reached the conclusion at [54] that:

“The application for rectification is successful. The result of this will be reversal of the recordal of assignment (Form TM16) and revert the proprietor of the registration back into the name of Kevin Woolgar, as it would have stood had the Form not been filed. This shall take place after the appeal period, or if an appeal is filed, once the proceedings have concluded.

[55] Whilst I find that KW has been successful, I do wish to make some additional points. KW has been consistently vocal about his disapproval that recordal of the change of ownership should not have been made in the first place. He has said that it should have remained in his name until these proceedings were concluded. I understand this argument. However, without having all of the evidence and submissions it was very difficult to establish who the rightful owner was at the time of filing, particularly as the trade mark was found to be filed during the course of services carried under the Agreement. Therefore, I understand the frustrations but given the circumstances I do feel that KW is the architect of his own misfortune particularly as there remains a question over whether he should have applied for the mark in the first place.

164. Mr King’s decision was, as can be seen, based on a technical aspect of the application for rectification made by Mr Elford; he looked at what the effect of the assignment provision contained in the CA was – referred to in the decision as the “Agreement”. Mr King explained it in this way at [49]:

“When the ownership is challenged, it is incumbent on the proprietor to show that the contested registration was transferred to the proprietor under valid assignment. I do not consider the Agreement to be an assigning document. It is an Agreement that an assignment should take place but there is no evidence to show it was actually carried out. Taking all of the evidence into account I am confident that no such assignment exists as CCL would have produced the document if it exists. Therefore, I find that there was no lawful assignment of the trade mark registration, the subject of this rectification. The net effect of this is that an assignment did not occur and therefore the Form TM16 was processed in error.”

165. The coming into effect of Mr King’s decision was expressly delayed by him until the outcome of any appeal. I am told by Mr Zweck that an appeal has been lodged, but is stayed by order of the Appointed Person, pending the outcome of these proceedings. I

am told, and I accept, that I am not bound by any findings of Mr King in respect of the matters argued before him.

*Why does the FC own the RM?*

166. The claim to ownership is put on a number of bases. The first is that the CA bound Mr Woolgar personally, and that at Clause 7.1, he assigned all existing and future intellectual property rights arising from the services he provided under the CA to the FC. The assignment clause provided that:

“You, on behalf of yourself and Atop, hereby assign to the Company all existing and future intellectual property rights (including, without limitation, patents, copyright and related rights) and inventions arising from the Services for the Company. You agree promptly to execute all documents and do all acts as may, in the opinion of the Company, be necessary to give effect to this clause 7”

167. Before proceeding further with this ground, I have to decide whether the CA, or at any rate clause 7.1 of it, was binding on Mr Woolgar. On this point I find myself in agreement with Mr King, who said this in his decision:

“Objectively speaking, I interpret reference to “you” and/or “yourself” in clause 7.1 of the Agreement to be KW in his personal capacity as the sole director of Atop, as well as the company. I do not see how it could be interpreted in any other way. It would be illogical for it not to cover KW personally as he is the sole director and, it appears that he is the sole employee of Atop who then provides services in the nature of acquiring and developing goods, i.e. acting as the middleman. The net effect of this is that the Agreement is personally binding upon KW at least in respect of events that occurred prior to the termination of the Agreement.”

168. It seems to me that Mr Woolgar knew of the assignment clause, he knew it was expressed to be binding upon him and he proceeded to signal his engagement by executing the CA that was addressed directly to him. I accept that his signature was expressly “on behalf of [AUK]” however in my judgment, to restrict the agreement to only the FC and AUK, in circumstances where Mr Woolgar was to all intents AUK, and could see the clear wording of clause 7.1 which obviously extended to apply to him, would be wholly artificial, if not, as in the words of Mr King, illogical.
169. It is also Mr Woolgar’s case that that the CA had, one way or another, come to an end by the time of his application for the RM in January 2020. As I have already indicated, I heard or saw no evidence as would satisfy me on a balance of probabilities that the CA had come to an end by 28 January 2020. I note in passing that Mr King recorded that no evidence was put before him by Mr Woolgar in support of a contention that the CA came to an end on 31 December 2019 (see his Decision at [34]); Mr King found

the agreement to be in effect until 28 April 2022. For this reason, Mr Woolgar's second line of defence must fail.

170. In his decision, Mr King declined to hold that the effect of clause 7.1 was to bring about the assignment of existing or future intellectual property. He said this:

“I do not consider the Agreement to be an assigning document. It is an Agreement that an assignment should take place but there is no evidence to show it was actually carried out.”

171. With the greatest of respect to Mr King, I do not agree. In my judgment there cannot be any doubt that the effect of the words used in clause 7.1, was to achieve, without more, the assignment intended. That is the natural and ordinary meaning of the words “hereby assign”. Nothing more was needed. There was no additional assignment agreement or deed required, as might have been in the mind of Mr King. The position of third parties to the assignment is a different matter, as might be questions over the equitable or statutory character of the assignment, but as between assignor and assignee, so far as I am concerned, nothing further was required.

172. The more difficult question turns on whether the work carried out by Mr Woolgar on the Ai brand arose from the “Services” that he carried out for the company. It is helpful to look again at what was meant by Services. Clause 2.2 of the CA provided that as part of the services to be carried out by Mr Woolgar he would:

“(a) Source appropriate products from the People's Republic of China, South Korea and such other territories as is agreed from time to time for the Company to promote and sell;

(d) Provide design and development expertise, concepts, drawings and ideas to assist with the development of products.”

173. It is common ground that the Ai brand was not something that the FC wanted to pursue on its own account. It would not fund the development of the tooling. Had the tooling not been financed and contracted for by Mr Woolgar there would have been no Ai range. Nothing more would have happened. So far as Mr Elford was concerned, and indeed Ms Zinser, this was yet another idea of Mr Woolgar's that was unlikely to bear fruit. If it did they were happy to pay a royalty on clubs supplied but whether they ever heard of it again was a matter for Mr Woolgar. In these circumstances I have come to the view that Mr Woolgar is on the right side of the argument when he submits that the development of the Ai range was work carried out by Mr Woolgar outside the four corners of the assignment provision contained at clause 7.1 in the CA. The intellectual property did not arise from the Services. For all of these reasons, *mutatis mutandis*, I can also see no support for the submission advanced by Mr Zweck that Mr Woolgar was in this respect, acting as the agent of the FC.

174. In the circumstances I decline to hold that the RM was “*registered in the name of an agent or representative of a person (“P”) who is the proprietor of the trade mark,*

*without P's consent.*" (see s.10B of the Act). The claim that the Register should be rectified and there be a prohibition on the use of the RM by Mr Woolgar, must fail.

*The bad faith claim*

175. I must now move to the alternative argument deployed by Mr Zweck who contended that the RM was invalid. What is said is that the RM should be treated as invalid on the grounds that it was applied for in bad faith: it should thus be revoked *ab initio*. In support of this argument, Mr Zweck invited my attention to sections 47(1) and 3(6), of the Act which provides:

"47. Grounds for invalidity of registration

(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration)."

"3. Absolute Grounds for refusal of registration.

(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith".

176. Section 47(6) is also relevant

"47. Grounds for invalidation of registration ...

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed."

177. The question of the invalidity of a trade mark on the grounds of bad faith was considered by the Supreme Court in *SkyKick UK Ltd and another v Sky Ltd and others* [2024] UKSC 36; [2024] RPC 32 at [240]. It is in my judgment important to look carefully at the principles emerging from this decision, which are in essence a valuable code to take into account, in any consideration of a trade mark case involving a bad faith claim. Having reviewed the background to the concept as a matter of EU trade mark law, as well as providing an analysis of a number of decisions of the CJEU including decisions on the appeal before the Supreme Court, Lord Kitchin, with whom Lords Reed, Lloyd-Jones, Hamblen and Burrows agreed, sought to draw the threads together and set out what he considered to be the principles relevant to the appeal.

[240] "The general principles are these:

- (i) It is an absolute ground of invalidity of an EU trade mark that the application for that registered mark was made in bad faith, and this ground may be relied upon

before OHIM (or, now, the EUIPO) or by means of a counterclaim in infringement proceedings (Lindt, para 34).

(ii) The date for assessing whether an application to register an EU trade mark was made in bad faith is the date the application for registration was made (Lindt, para 35).

(iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation in the European Union, and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 (Malaysia Dairy, para 29; Sky CJEU, para 73).

(iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the EU law of trade marks, namely the establishment and functioning of the internal market, and a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (Lindt, para 45; Koton, para 45).

(v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either

(a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or

(b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin (Koton, para 46; Sky CJEU, para 75).

(vi) The intention of the applicant is a subjective matter, but it must be capable of being established objectively by the competent administrative or judicial authorities having regard to the objective circumstances of the case (Hasbro, paras 39 and 40; Koton, para 47).

(vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the

objectives and commercial logic pursued by the application for registration (Hasbro, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (Lindt, para 37).

(ix) The applicant for a trade mark is not required to indicate or to know precisely when the application is filed or examined, the use that will be made of it (Sky CJEU, para 76; Deutsches Patent-und Markenamt, para 22).

(x) Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the application in the light of the aims referred to in Regulation 40/94 and Directive 89/104 (Sky CJEU, para 77).

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark (Sky CJEU, para 77).

(xii) It follows that the bad faith of the applicant cannot be presumed on the basis of a mere finding that, at the time of filing the application, the applicant had no economic activity corresponding to the goods and services referred to in the application (Sky CJEU, para 78).

(xiii) When the absence of an intention to use the mark in accordance with the essential functions of a trade mark concerns only certain goods or services referred to in the application for registration, that constitutes making the application in bad faith only in so far as it relates to those goods or services (Sky CJEU, para 81).

(xiv) If, at the end of the day, the court concludes that, despite formal observance of the relevant rules and conditions for obtaining registration, the purpose of the rules has not been achieved, and that there was an intention to take advantage of the rules by creating artificially the conditions laid down for obtaining the registration, this may amount to an abuse sufficient to find that the application was made in bad faith (see, for example, Hasbro, para 72).

(xv) Directive 89/104 does not preclude a provision of national law under which an applicant for registration must state that the mark is being used in relation to the goods or services in relation to which it is sought to register the mark, or that the applicant has a bona fide intention that it should be used, provided that infringement of such an obligation cannot constitute a ground for invalidity. It may, however, constitute evidence for the purposes of establishing possible bad faith on



the part of the applicant when the application was filed (Sky CJEU, paras 86 and 87).

178. The Claimants say that Mr Woolgar acted with dishonest intent when he applied for registration of the RM, because he made the application for registration, not with the aim of engaging fairly in competition, but with the intention of undermining, in a manner inconsistent with honest practices, the interests of the Claimants. This the Claimants argue can be inferred from various facts and matters, including the failure of Mr Woolgar to reveal to them that he was making the application. The clandestine nature of the application, so far as they were concerned at any rate, has to be looked at not only in the context of Mr Woolgar's representation that no such RM could be obtained but also that he had no intention of trading his Ai branded goods other than with Lynx. When taken together with the fact, as I have found, of secret commissions, the objective they contend was to gain a proprietary right that could be held over the Claimants with a view to undermining their business in the future.
179. But what was it that Mr Woolgar did? On the evidence that I heard, he "pitched" an idea to the Claimants: they did not like it. They had the view that it was another of Mr Woolgar's schemes that would come to nought. As I have found, an agreement was reached which permitted Mr Woolgar to seek to develop the Ai brand if he chose to and if he took the risk on the tooling costs. If he did, Mr Elford agreed to pay an amount to Mr Woolgar on the basis of each Ai branded golf club sold. This was to my mind a perfectly orthodox commercial arrangement. Mr Woolgar had the view that this was his independent venture; he had tried to engage the Claimants in his commercial idea but they had declined, leaving it entirely a matter for Mr Woolgar if the idea was to have life breathed into it, or perhaps as Mr Elford would have preferred, the Claimants were to hear nothing of the concept ever again.
180. In these circumstances I cannot find that Mr Woolgar had the intention of undermining the business of the Claimants; there was nothing dishonest in Mr Woolgar's state of mind. It does not seem to me that the Claimants have discharged the burden of proving that the mark was registered in bad faith. I do not accept that Mr Woolgar had no intention of securing the RM for purposes other than those falling within the functions of a trade mark. The fact that Mr Woolgar may have secured the RM in circumstances where he did not explain that he was doing so to the Claimants does not whether alone or in conjunction with the other facts and matters relied upon by the Claimants, persuade me that Mr Woolgar was acting in bad faith in the manner that that concept is to be understood, applying the tests set out by Lord Kitchin in *Skykick*.
181. Mr Zwick, perhaps unsurprisingly, invites me to take into account the behaviour of Mr Woolgar in regard to his "secret commissions". I am also reminded of the fact that Mr Woolgar was responsible for the complaint to the UK Border Force which, as I have already related, resulted in the seizure of a quantity of Lynx Golf equipment. So far as I am concerned however, I have to consider the bad faith argument on the facts relating to it, in particular the intentions of Mr Woolgar as I have found them to be when seeking the RM, and by applying the *Skykick* tests. I must judge matters at the date the application was made for the RM. Ultimately I cannot see any basis for sustaining the Claimants' submission that Mr Woolgar's intent in obtaining the RM was to not to trade honestly under it himself, but rather to gain a proprietary right to the Ai brand

that would provide him with leverage against the Claimants in some as yet unknown or unparticularised commercial or legal conflict.

### *Liability*

182. For the reasons that I have given, the Claimants' succeed on their claims against Mr Woolgar founded on the allegations that he was benefitting from secret commissions. Based on the claim in deceit, in my judgment the Claimants are entitled to damages the aim of which is to put the Claimants in the position they would have been had the wrongful representations not been made.
183. The Claimants submit that all quantum issues can be resolved at this trial by:
- a. identifying an average commission percentage across the examples presented to the Court; and then
  - b. applying this to all of the Claimants' purchases made through Mr Woolgar, and in the process resolving the evidential uncertainties against him, given that those uncertainties are of his own doing.
184. As to the evidential uncertainties, Mr Goodman relies upon the decision of Bryan J in *Lakatamia Shipping Co Ltd v Nobu Su* [2021] EWHC 1907 (Comm) where at [914] in the course of a lengthy judgment concerning fraud and allegations of suppressed bank-related documents, the Judge said this:
- “As is apparent from the above, there is a distinction between speculation about whether a particular document or documents exist and a situation where there is reason to believe that particular documents exist and have been suppressed. In the latter case it may be appropriate, in the exercise of the Court's discretion, not simply to give the benefit of the doubt to the other party, but to draw an adverse inference as to what the other documentation would have shown.”
185. The Claimants prepared the table which summarises the known percentage commissions that appear to have been taken/paid. It is submitted that this is a sensible basis for the court to assess quantum. The table contains a column which identifies the reference to the relevant document in the trial bundle. These documents were on the whole, if not indeed all, put to Mr Woolgar during the trial. I am satisfied that there would have been a wealth of additional relevant documents had they not been deliberately suppressed by Mr Woolgar as I have found in this judgment. I am quite prepared, given the evidence of Mr Woolgar as I have held it to be, to draw an adverse inference as to the contents of the invoices and documents that the Claimants were unable to put before the court.
186. This is the Claimants' table.

SOURCE	BUNDLE REFERENCE	% COMMISSION / MARGIN
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<b>Table of Duplicate Invoices</b> (Appendix B to Cs' Written Opening)	A/8.1	Range: 6% - 75.7% Mean: 60.9%
<b>Table of 'Price List' Comparisons</b> (Schedule B to Cs' RRAPOC)	B/4.1	Range: 6% - 29.2% Mean: 10.4%
<b>Specific Pleaded Commissions</b> (paras 25(4-5)(b)-(f) of Cs' RRAPOC)	B/2/9	Range: 7.3% - 21% Mean: 14.3%
<b>Miscellaneous Examples Presented to D During Hearing</b>		
Gift sets with embroidery	D/1416 D/1417	12.8%
Ladies Cart Bag	D/80/1	11.9%
Neoprene Head covers (Adult)	D/1157 D/1841	10%
Neoprene Head covers (Junior)	D/1157 D/1841	30%
Hippo Umbrellas	D/129 D/1432	9.1%
Parallax Driver Head	D/1181 D/1829	70%
Parallax FW Head	D/1181 D/1829	72%
Ai Junior Bags	D/991 D/2120/105	10.3% / 15.9% / 23.6%
Towels	D/65 D/154.1	67.6% / 76%
Crystal Driver Adjustable Pink Head	D/514 (Tab 10215) D/2120.1/163	10.4%

Predator IH Head	D/514 (Tab 10215) D/2120.1/163	8.2%
Crystal IH Club	D/514 (Tab 10215) D/2120.1/163	6.7%
Graphite Shaft	D/514 (Tab 10215) D/2120.1/163	24.6%
Grip Driver	D/514 (Tab 10215) D/2120.1/163	10.0%
Adjustable Hosel for Predator Wood	D/514 (Tab 10215) D/2120.1/163	10.5%
Iron Ti Hosel	D/514 (Tab 10215) D/2120.1/163	18.2%

187. I am prepared to accept that the total amount of monies transferred to Mr Woolgar by the Claimants was USD 8,685,375.79 and GBP 30,026.10, as can be seen from the invoices appended to the PoC. Mr Goodman invites me to take account of the relevant percentages set out in the table and to arrive at the view that 20-30% of the amount paid over by the Claimants was represented by improper secret commissions. In all the circumstances, doing the best I can with the evidence available to the court, albeit with a broad brush, and drawing the adverse inference as I do in regard to the suppressed documents, I am prepared to hold that the correct figure should be 25%.
188. Although the PoC contains a distinct claim in respect of the freight and customs costs relating to the import by the Claimants of Hippo Golf goods in fact delivered to Mr Woolgar, this was not addressed by the Claimants in their closing submissions. What was addressed is the claim for the costs incurred in dealing with the HMRC investigation into the difference in the values appearing on the invoices used by the Horizon import clearing company to calculate import duties on the one hand, and the values in the invoices actually paid by the Claimants on the other. It is claimed that the invoices given to Horizon by Mr Woolgar, who was managed the importation process, were substantially lower than the invoices he remitted to the Claimants (see PoC [25.1]). Why this would be is unclear.
189. It was because of the differential, say the Claimants, that HMRC decided to carry out a wide investigation into their business. This was the only reason that led to management time being taken up in such a wasteful manner; in addition, professional

advice was needed and these costs too could have been avoided, were it not for an unjustified HMRC investigation.

190. Mr Woolgar set out his response to this claim in his skeleton argument at [11].

“The Claimants’ suggestion that the Defendant forged or fraudulently undervalued import invoices is unsupported. The shipping invoices and packing lists in question were prepared by the manufacturers or freight agents. The Defendant’s role was simply to forward these documents to Horizon (the Claimants’ shipping agent) for customs clearance. He did not draft the invoices, nor did he alter their values. In some digital invoice files, the metadata shows the Defendant as “last modified by”, but this was simply because he saved or printed a copy of the file for forwarding, not because he changed any content. Many invoice files show they were created and last edited by the factory or shipper. It is true that some invoices stated values lower than the actual prices paid, but the evidence (including metadata and witness accounts) confirms that the Defendant did not instruct this undervaluation or benefit from it. In fact, the Defendant had no incentive to undervalue the goods, doing so would only reduce import duty payable by the Claimants, which did not benefit him (and risking customs problems would be against his interest). These difference in these undervalued invoices are now what the claimants are referring to as the “secret commissions”. Indeed, after the Defendant’s involvement with the Claimants ended, a similar undervaluation issue arose with the Claimants’ imports, prompting a factory staff member to correct an invoice and remark in an email that “Kevin always asked us for lower prices”. The Defendant will explain that this remark referred to commercial price negotiations (seeking lower purchase prices for Lynx’s benefit), not to lowering values on customs paperwork. There is no evidence whatsoever that the Defendant ever asked any supplier to falsify values for customs. The Claimants’ import agent (Horizon) and their own staff were responsible for customs declarations; if any values were wrong, it was for them to spot and rectify. The Defendant was not the importer of record and had no control over what was ultimately declared to HMRC.

[12] Import Duties and HMRC: It follows that any underpayment of import duties is a matter between HMRC and the importer (Lynx Golf). The Defendant, acting only as a logistics facilitator, did not interface with HMRC or complete customs entries. He was never asked to ensure the values on invoices matched what Lynx actually paid, that was assumed to be handled by the import agent and Lynx’s own import compliance processes. Thus, to the extent HMRC later questioned some shipments (as the Claimants imply), the Defendant bears no legal responsibility.”

191. I accept that there was no direct evidence given as might establish that Mr Woolgar created the invoices submitted to Horizon. It also seems to me to be likely that the invoices were those of the factories or suppliers. Albeit that I agree with Mr Woolgar that it seems difficult to identify any benefit that might have accrued to him by reason of the invoices submitted to Horizon for customs clearance purposes having lower values than the proforma invoices for which he was responsible, the plain fact is that had it not been for the proforma invoices claiming enhanced amounts, the issue would not have arisen. I have found that Mr Woolgar was indeed responsible for the

differential. In my judgment he knew that any invoice created by the factories would show a figure lower than that on the proformas he proffered to the Claimants.

192. Ultimately however the matter comes down to a question of the measure of damage in the law of deceit. The Claimants submit that they are entitled to a “*a sum representing the financial loss flowing directly from [their] alteration of position under the inducement of Mr Woolgar*”.
193. It seems to me that the correct approach to the measure of damages in a deceit case such as this, is explained by the learned authors of *McGregor on Damages* 22<sup>nd</sup> Edn at 50-004:

This prevalence of the tortious measure comes out very clearly in the judgment of Lord Collins MR in *McConnell v Wright*. He there said of the action of deceit:

“It is not an action for breach of contract, and, therefore, no damages in respect of prospective gains which the person contracting was entitled by his contract to expect come in, but it is an action of tort—it is an action for a wrong done whereby the plaintiff was tricked out of certain money in his pocket; and therefore, *prima facie*, the highest limit of his damages is the whole extent of his loss, and that loss is measured by the money which was in his pocket and is now in the pocket of the company. That is the ultimate, final, highest standard of his loss.”

194. What was tricked out of the pocket of the Claimants was the secret commission. It is that loss that I have already found for them on. But what of the additional costs of attending to the HMRC investigation that took place in the circumstances that I have related? These are not costs that could be said to flow directly from the deceit.
195. The question of the extent of recoverable losses in deceit cases was addressed by the Master of the Rolls in *Doyle v Olby (Ironmongers) Limited* [1969] 2 WLR 673. At [167] Lord Denning said this:

“I think that Lord Collins did express himself in too rigid terms. He seems to have overlooked consequential damages. On principle the distinction seems to be this: in contract, the defendant has made a promise and broken it. The object of damages is to put the plaintiff in as good a position, as far as money can do it, as if the promise had been performed. In fraud, the defendant has been guilty of a deliberate wrong by inducing the plaintiff to act to his detriment. The object of damages is to compensate the plaintiff for all the loss he has suffered, so far, again, as money can do it. In contract, the damages are limited to what may reasonably be supposed to have been in the contemplation of the parties. In fraud, they are not so limited. The defendant is bound to make reparation for all the actual damages directly flowing from the fraudulent inducement. The person who has been defrauded is entitled to say:

“I would not have entered into this bargain at all but for your representation. Owing to your fraud, I have not only lost all the money I paid you, but, what

is more, I have been put to a large amount of extra expense as well and suffered this or that extra damages."

All such damages can be recovered: and it does not lie in the mouth of the fraudulent person to say that they could not reasonably have been foreseen. For instance, in this very case Mr. Doyle has not only lost the money which he paid for the business, which he would never have done if there had been no fraud: he put all that money in and lost it; but also he has been put to expense and loss in trying to run a business which has turned out to be a disaster for him. He is entitled to damages for all his loss, subject, of course to giving credit for any benefit that he has received. There is nothing to be taken off in mitigation: for there is nothing more that he could have done to reduce his loss. He did all that he could reasonably be expected to do."

196. Adopting the same approach, I am satisfied that the Claimants are entitled to recompense for the cost and expense to which they have been put. The restriction on what a fraudulent person may be heard to say in a case such as this notwithstanding, the cost and expense of the HMRC investigation was in my judgment wholly foreseeable by Mr Woolgar as just the type of costs as might well arise out his manipulation of the invoices and costs payable for the importation of Lynx golfing products from China.
197. In the circumstances I am prepared to accept Ms Zinser's evidence on the costs and time incurred. The Claimants summarised the figures in the table below.

<b>STAFF MEMBER</b>	<b>SALARY (or equivalent salary) (GBP)</b>	<b>PERCENTAGE OF WORKING HOURS SPENT ON HMRC INVESTIGATION (in the year in which the work was done)</b>	<b>SUM CLAIMED (GBP)</b>
Becky Murphy	50,000.00	50%	25,000.00
Stephanie Zinser	122,000.00	40%	48,800.00
Steven Elford	120,000.00	10%	12,000.00
Mark Goodwin	42,000.00	10%	4,200.00
		<b>GRAND TOTAL</b>	<b><u>89,200.00</u></b>

198. The Claimants also seek the professional costs of advisers who assisted the Claimants attend to the serious business of the HMRC Investigation. Work was done by the well-known accountancy firm, RSM. The relevant invoices were set out in a table.

INVOICE DATE	REFERENCE	SUM PAID (GBP, excluding VAT)
26.04.22	D/2122.04/3	10,000.00
27.05.22	D/2122.04/4	20,000.00
22.06.22	D/2122.04/5	12,500.00
26.07.22	D/2122.04/6	1,850.00
24.08.22	D/2122.04/7	3,000.00
28.09.22	D/2122.04/8	7,000.00
21.10.22	D/2122.04/9	2,500.00
24.03.23	D/2122.04/13	16,000.00
24.05.23	D/2122.04/14	8,000.00
28.06.23	D/2122.04/15	37,000.00
02.07.23	D/2122.04/17	-34,000.00
02.07.23	D/2122.04/18	-25,000.00
26.07.23	D/2122.04/16	34,000.00
	<b>GRAND TOTAL</b>	<b><u>92,850.00</u></b>

199. The Claimants have accepted that a deduction from the total sums claimed for both the staff/management costs and RSM costs must be made to reflect the fact that the scope of the HMRC Investigation included imports unrelated to Mr Woolgar. The Claimants suggested 74%. Taking the best a view I can in all the circumstances, and allowing for time being incurred by the Claimants and their staff on other matters, I am prepared to allow 50% of the costs claimed.

### *Conclusions*

200. For the reasons set out in this judgment, the Claimants succeed on their claims for damages arising from the action in deceit. They are also entitled to equitable compensation and proprietary remedies as might be justified, as a result of my findings



on the *Quistclose* Trust based claim. The claims brought for ownership or invalidation of the RM must however fail.

201. Mr Woolgar succeeds on his Counterclaim in respect of the invoice claims, and also as to the royalty amount, in each case to the extent I have explained in this judgment.
202. In order to address the consequences of this judgment, and as discussed during the trial, I shall see to it that a consequential hearing is listed so soon as is convenient for the parties.