Neutral Citation Number: [2020] EWHC 659 (Ch)

Case No: CH 2019 000206

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/03/2020

Before:

MR JUSTICE MORGAN

- -

Between:

VIDYA BHUSHAN GOYAL	**Appellant**
- and -	
(1) FLORENCE CARE LIMITED	**Respondents**
(2) SHANTHI EDWARDS	
(3) DKLM LLP	

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- -

Andrew Butler QC (instructed by **Child & Child**) for the **Appellant**
There was no appearance on behalf of the **First and Second Respondents**
Nigel Burroughs (instructed by **Beale & Company Solicitors LLP**) for the **Third Respondent**

Hearing dates: 20 & 21 February 2020

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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.

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MR JUSTICE MORGAN

MR JUSTICE MORGAN:

Introduction

1. This is an appeal against parts of an order made on 4 July 2019 by His Honour John Hand QC, sitting as a Deputy Circuit Judge in the County Court at Central London, following a reserved judgment which he handed down on 14 June 2019, which itself followed a trial which took place over four days in September 2018.

2. The Appellant, Mr Goyal, is the Claimant in these proceedings. His claim was originally against seven Defendants but only three of those Defendants participated in the trial and it is not necessary to make further reference to the others. The three Defendants who participated in the trial are now the three Respondents to this appeal.

3. The judge gave the Appellant permission to appeal on one proposed ground of appeal but not on other proposed grounds. On 4 October 2019, I gave the Appellant permission to appeal on all of the grounds in his Appellant's Notice, save to the extent that he already had such permission from the judge.

4. At the hearing of the appeal:

    i) the Appellant was represented by Mr Butler QC who also appeared for the Claimant in the County Court;

    ii) the First and Second Respondents did not appear and were not represented; they had been represented by counsel in the County Court;

    iii) the Third Respondent was represented by Mr Burroughs who also appeared for that party in the County Court.

The First Respondent

5. When the appeal was called on before me, Mr Butler for the Appellant told me that the First Respondent had been dissolved in October 2019. He invited me to adjourn or stay the appeal in relation to the First Respondent. In the circumstances, I will stay the appeal in relation to that Respondent.

The Second Respondent

6. The Second Respondent is Mr Shanthi Edwards. On 11 April 2019, a bankruptcy order was made in relation to Mr Edwards. That order was made between the end of the trial and the hand down of judgment in the County Court. The judge did not know of the bankruptcy order when he handed down his judgment and therefore his judgment does not refer to the fact that Mr Edwards had become bankrupt. The judge did refer to the fact of bankruptcy when he gave his reasons for refusing the Appellant permission to appeal in relation to one part of the order which he made following judgment.

7. By the date of the Appellant's Notice, trustees in bankruptcy had been appointed in relation to Mr Edwards. The appeal in relation to Mr Edwards has been pursued notwithstanding his bankruptcy. At the outset of the hearing before me, Mr Butler for

the Appellant addressed me as to the possible relevance of section 285 of the Insolvency Act 1986.

8. Under section 285(1), the court has power to order a stay of this appeal against the Second Respondent. However, I have not been asked by anyone to order such a stay and, in those circumstances, I see no reason to order such a stay of my own initiative.

9. Section 285(3)(a) provides that after the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall have any remedy against the property or person of the bankruptcy in respect of that debt. I will assume that the Appellant is a creditor in respect of a debt which is within section 285(3) as I did not hear any argument as to that matter. Mr Butler submitted that the continuation of this appeal against Mr Edwards did not involve the Appellant having a remedy against the property or person of Mr Edwards in respect of that debt. He cited *Heating Electrical Lighting and Piping Ltd v Ross* [2012] EWHC 3764 (Ch), [2012] BPIR 1122 in support of that submission. That case is authority for the proposition that bringing and pursuing proceedings up to the point of judgment is not contrary to section 285(3)(a). That decision was followed by Registrar Barber in *Hellard v Chadwick* [2014] BPIR 163. In that case she granted a stay of the proceedings under section 285(1) and the grant of the stay was upheld on appeal: see [2014] EWHC 2158 (Ch), [2014] BPIR 1234. I will follow these authorities as to the scope of section 285(3)(a) and hold that that paragraph does not prevent the Appellant continuing with his appeal in relation to the Second Respondent.

10. Section 285(3)(b) provides that a creditor who is within section 285(3) shall not commence any action or other legal proceedings against the bankrupt (before his discharge) except with the leave of the court. The claim against the bankrupt in this case was commenced long before the bankruptcy order. Although I did not hear any submissions as to section 285(3)(b), I consider that the bringing of an appeal in existing proceedings does not involve the commencement of an action or other legal proceedings within section 285(3)(b).

11. It follows that the Appellant is entitled to continue with his appeal in relation to Mr Edwards.

The judgment in relation to the claim against the Second Respondent

12. The judgment is lengthy and detailed and contains a review of a number of authorities in relation to various legal points that were argued in the County Court. At this stage, I will summarise only the points which are material to the appeal in relation to the claim against the Second Respondent, Mr Edwards. From this stage onwards, it is convenient to refer to the Appellant and the Second Respondent by name.

13. The judge summarised the arrangements made between Mr Goyal and Mr Edwards and others as to a proposed joint venture involving the purchase of care homes. The joint venture involved the creation of a company to become the holder of the legal title to the care homes. The First Respondent, Florence Care Ltd, was the company which was formed for this reason.

14. The joint venture involved Mr Goyal investing his own money in the venture. In February 2012, Mr Goyal transferred £160,000 to the client account of DKLM LLP,

which is the Third Respondent. I will refer to them as "the Solicitors". They regarded Mr Edwards as their client for this purpose. In August 2012, Mr Goyal transferred £590,000 to the Solicitors' client account. When I consider the appeal in relation to the Solicitors, I will need to set out the communications between Mr Goyal and the Solicitors in much greater detail.

15. By the end of August 2012, the sums of £160,000 and £590,000, paid into the Solicitors' client account by Mr Goyal, remained in that account. This is subject to a possible qualification that a cheque (number 24096) for £10,000 had been drawn on that account prior to the end of August 2012 but that cheque was later cancelled on 21 February 2013. The judge, I think correctly, regarded this possible qualification as irrelevant in view of the fact that the £10,000 had never in fact been paid out of the account.

16. On 6 September 2012, the Solicitors transferred the sum of £377,982.70 from the client account in relation to Mr Edwards to another client account associated with Mr Edwards. Although, at the Pre-Trial Review, Mr Goyal had applied for disclosure in relation to this account, that application failed. Accordingly, by the time of the trial, Mr Goyal had not been told where that sum of money had gone. However, at the trial, it emerged that the Solicitors, acting on the instructions of Mr Edwards, had transferred that money so that it could be used for the purchase of the Plas Eleri care home by Atlantis Medicare (Plas Eleri) Ltd.

17. In September and October 2012, there were further transfers from the client account for Mr Edwards. For example, £40,000 was paid for stamp duty on 14 September 2012 and approximately £24,000 was paid as "completion monies" on 24 September 2012. It is possible that some of the further transfers at this time were in connection with the purchase of the Plas Eleri care home.

18. On 6 December 2012, Florence Care Ltd contracted to purchase a property described as the Cawston care home for a price of £1.7 million and paid a deposit of £170,000. The money for the deposit came from the Solicitors' client account for Mr Edwards. At this point, the balance in that account stood at approximately £85,000.

19. In 2013, on a number of occasions, Mr Goyal asked for the return of the £750,000 he had paid into the Solicitors' client account.

20. The low point for the balance in the Solicitors' client account in relation to Mr Edwards was reached on 26 June 2013 when the balance stood at approximately £30,000.

21. In August 2013, Mr Edwards made eight payments into the Solicitors' client account bringing the balance to a little over £1.56 million. The payments were described as "completion monies" and the sum of £1.56 million was paid out of the account on 13 August 2013 to enable Florence Care Ltd to complete the purchase of the Cawston care home.

22. By the time of the trial, Mr Goyal accepted that he would not claim that he had acquired rights in relation to the Cawston care home as a result of the earlier arrangements for a joint venture.

23. As to the relationship between Mr Goyal and Mr Edwards, the judge held:

i) The arrangements in relation to the proposed joint venture and the payment of monies by Mr Goyal to the Solicitors' client account had given rise to a fiduciary relationship between Mr Edwards and Mr Goyal;

ii) Mr Edwards committed a breach of his fiduciary duty to Mr Goyal when he used the money in the Solicitors' client account for his own purposes and not for the purposes of the proposed joint venture.

iii) In particular, the use of the money in the Solicitors' client account in connection with the purchase of the Plas Eleri care home was a breach by Mr Edwards of his fiduciary duty to Mr Goyal as that purchase was not part of the proposed joint venture.

24. At an earlier point in his judgment, the judge had referred to the history of the litigation and, at this stage, it is convenient for me to refer to that history. From June 2013 onwards, the sum of £750,000 which had been paid by Mr Goyal, began to be repaid by a series of instalments. The present proceedings were brought in March 2015 in respect of the balance then outstanding (£290,000). £65,000 was paid to Mr Goyal after proceedings were commenced. On 26 May 2016, Mr Goyal obtained a judgment in default against Mr Edwards for £225,000 together with interest to be assessed. Mr Edwards applied for that judgment to be set aside but his application was dismissed. Mr Goyal asked for a default judgment giving him further remedies but Master Price declined to make the order sought and instead gave directions which ultimately resulted in the claim for further relief being transferred to the County Court and considered at the trial in the County Court. In April 2018, Mr Goyal obtained by way of disclosure by the Solicitors the ledger card for their client account in relation to Mr Edwards. On 2 July 2018, Mr Goyal applied for specific disclosure to enable him to know where monies had gone from that client account. At a Pre-Trial Review on 10 July 2018, HH Judge Monty QC dismissed the application for specific disclosure. I was told that the judge at the Pre-Trial Review said that the application was premature. By July 2018 the judgment debt was paid together with interest at the judgment rate between the date of judgment and the date of payment. Accordingly, by the time of the trial, Mr Goyal did not claim repayment of the £750,000 nor interest following judgment. Instead, he claimed equitable compensation or interest on the £750,000.

25. The judge considered what remedy he should give Mr Goyal in relation to Mr Edwards breach of fiduciary duty. Mr Goyal claimed an account and an inquiry and an account of profits. The judge said at [109]-[110] (in this passage, the judge referred to submissions made by Mr Burroughs on behalf of the Solicitors, but the judge plainly regarded those submissions as also being helpful to him in connection with the remedy to be ordered against Mr Edwards):

> "109. This takes me to the question of remedy. I have set out at paragraph [85] of this judgment a somewhat extensive passage from the judgment of Lord Millett in the **Libertarian Investments** case. That case itself illustrates that even in cases where there has plainly been a breach of trust or a breach of fiduciary duty it does not axiomatically follow that such a

> remedy will be granted. I think that Lord Millett used the word "*right*" not in the sense of an absolute entitlement and intended to convey that even though the account is available in respect of breach of trust or breach of fiduciary duty it will not always be ordered by the court which will exercise its discretion, carrying out the usual balancing exercise in the context of the factual circumstances.
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> 110. I have already accepted above that the court knows little of the Plas Eleri transaction and that argues in favour of an account. It seems to me that Mr Burroughs was correct in submitting that as a matter of discretion in some circumstances the court ought not to order an account. For all the reasons summarised above in my synopsis of his submissions, I think this is not a case where I should exercise the court's discretion to order an account of profits. This matter has gone on for too long and too much water has gone under the bridge for it to be consistent with justice, equity or, if you like, the overriding objective, for me to order an account now."

26. In paragraph 110 of his judgment, the judge referred to his earlier synopsis of Mr Burroughs' submissions and that appears to be a reference to paragraphs [66]-[67] of the judgment which were in these terms:

> "66. At some point, submitted Mr Burroughs, the Claimant had been obliged to make an election between any claim based on losses and any claim for an account. By entering judgment, by accepting payments from the fourth Defendant and by seeking to have a charging order made it had become unjust and inequitable for the court to allow the Claimant to now pursue an account of profits The letter from the court dated 29 June 2016 at page A115a of the hearing bundle was of particular importance. By it the Claimant had been told that to amend or vary the order there must be an application made to the court. No such application had been made and the court should not allow matters to be changed now. Also, the court should bear in mind that any judgment in favour of the Claimant's argument would not bring about a final decision. This would be made after any account had been ordered and completed. It was then the Claimant would be entitled to choose between the remedy most favourable to him. This must lie some way in the future. Whether it is put in terms of an election being made or in terms of complying with the "*overriding objective*" (and the judgment of the Privy Council in **Tan Man Sit** as delivered by Lord Nicolls might be regarded as identifying a proto-"*overriding objective*" - see age 521H – 522C) the court ought to set its face against the matter going to the further stage of an account being taken.
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> 67. The **Bank of Australia** case referred to in the judgment in **Tang Man Sit** and relied upon by Mr Butler QC as justifying a

> different election as between the fourth Defendant and teh sixth Defendant is distinguishable on its facts from the instant case. There the claims were different and the loss might have been different. Here the claims were the same and the loss would b the same."

27. At [111]-[112] of his judgment, the judge dealt with Mr Goyal's claim for interest. In that respect, the judge awarded simple interest at the rate of 3.5% per annum from 15 June 2013. The judge's subsequent order provided that interest was payable on £290,000 from 15 June 2013 to the issue of proceedings on 15 March 2015, amounting to £17,762.50.

28. Following judgment, Mr Goyal applied for permission to appeal the judge's refusal to order an account. The judge refused permission to appeal and gave his reasons in writing. He said he had not previously known that a bankruptcy order had been made in relation to Mr Edwards. He said that he regretted the delay in handing down judgment but the refusal to order an account was not related only to delay. The reference in the judgment to "water under the bridge" since 2013 referred to the events that had occurred as well as the passage of time. He referred to the fact that the joint venture had collapsed and there was no hint of any significant profit having been made by Mr Edwards. If he had known of the bankruptcy, he would have added that as a reason to refuse an account. His reference to the "overriding objective" was to the speech of Lord Nicholls in *Tang Mang Sit* at [65].

The appeal in relation to the Second Respondent

29. Mr Butler on behalf of Mr Goyal submits that the judge was wrong to refuse to direct an account in relation to Mr Edwards' dealings with the money paid by Mr Goyal into the Solicitors' deposit account.

30. In particular, Mr Butler submits:

    i) The submissions at trial did not focus on the general discretion to order an account; the submissions had been about an alleged election by Mr Goyal; at the trial, Mr Butler had submitted there had not been an election and in response the various Defendants shifted their ground in closing submissions and the judge did not hold that Mr Goyal had made any relevant election;

    ii) The victim of a breach of fiduciary duty was entitled almost as of right to an account as to what profit the fiduciary had made from his breach;

    iii) The judge did not give clear reasons as to why he was withholding an order for an account;

    iv) The judge did not find that any of the normal equitable defences applied in this case;

    v) There was nothing in the procedural history which supported a refusal of an account;

vi) Mr Goyal had not delayed in claiming an explanation as to what had happened to his money; I was referred to the correspondence in support of this submission;

vii) There were no procedural delays for which Mr Goyal was responsible;

viii) Mr Goyal only obtained sight of the ledger card for the Solicitors' client account in April 2018;

ix) Mr Goyal was refused specific disclosure at the Pre-Trial Review on the ground that it was premature;

x) The judge's delay in handing down judgment should not be held against Mr Goyal;

xi) A refusal of an account rewards bad behaviour by a fiduciary;

xii) Mr Edwards has not been prepared to disclose what he did with Mr Goyal's money;

xiii) Mr Edwards compounded his fault by pretending at the trial that he could not remember what he did with Mr Goyal's money;

xiv) The position is not affected by Mr Edwards' bankruptcy as Mr Goyal is interested in identifying the proprietary remedies he has following the taking of an account

Discussion and conclusion in relation to the Second Respondent

31. Before considering the principles which apply to the remedy of an account of profits, it is relevant to consider the nature of the fiduciary duty which was broken by Mr Edwards in this case. Snell's Equity, 34th ed. at paras. 7.041- 7.050 discusses the general principle that a fiduciary is not to profit from his fiduciary position. This is a major theme of fiduciary loyalty. The clear settled rule is that a fiduciary is required to account for any benefit or gain obtained or received by reason of or by use of his fiduciary position.

32. As to the availability of an account of profits, paragraph 7-054 of Snell's Equity states:

> "A fiduciary is bound to account for any profit or benefit that he or she has received in breach of fiduciary duty. The principal's entitlement to an account of profits which have been made in breach of fiduciary duty is virtually as of right. It is not relevant that the profit or benefit was not made at the expense of the fiduciary's principal, provided it was made in breach of fiduciary duty."

33. Paragraph 7-055 of Snell states that: [l]ike all equitable remedies, the account of profits is discretionary" and that the account is fashioned to meet the circumstances of the case in accordance with settled equitable principles. Snell then gives examples,

not applicable in the present case, of when it might be inequitable to award an account of profits.

34. Mr Butler referred to the discussion of the remedy of an account of profits in *Ultraframe (UK) Ltd v Fielding* [2005] EWHC 1638 (Ch) at [1550] and [1579]-[1588] per Lewison J. The judge described the ordering of an account as an equitable remedy but one which was not discretionary in the true sense as it was granted or withheld on equitable principles. He said at [1588], that the profits for which an account is ordered must bear a reasonable relationship to the breach of duty proved. The same judge, as Lewison LJ, repeated that requirement in *Parr v Keystone Healthcare Ltd* [2019] 4 WLR 99 at [18].

35. Mr Butler referred to another passage in *Ultraframe*, at [1579]-[1580], where Lewison J stated that one of the grounds on which an account might be withheld would be where the taking of an account would be a disproportionate response to the gain which had been made or to the nature of that which had been misused. The judge derived that last proposition from *Satnam Investments Ltd v Dunlop Heywood* [1999] 3 All ER 652. Mr Butler accepted that it was relevant in the present case to consider the proportionality of a grant of the remedy of an account of profits.

36. The appeal in relation to Mr Edwards was argued on one side only. However, I think I ought to say that I have reservations about the suggestion that *Satnam* is authority for the proposition that when the court is asked to order an account of profits against a defaulting fiduciary it should consider the matter from the standpoint of proportionality. In *Satnam*, the claim being considered by the Court of Appeal was not a claim against a defaulting fiduciary. Instead the claim was against an alleged accessory and the Court of Appeal put forward a number of reasons for finding the alleged accessory not liable for an account of profits. Those reasons included the passage at [1999] 3 All ER 652 at 672 which was cited by Lewison J in *Ultraframe*. Indeed, in *Ultraframe*, it may be that the judge's reference to proportionality was also in relation to the claim against the accessory in that case, rather than against the fiduciary. More recently, it has been explained in *Novoship (UK) Ltd v Mikhalyuk* [2015] QB 499 that claims against an alleged accessory to a breach of fiduciary duty give rise to different considerations from claims against a defaulting fiduciary: see, in particular, at [118]-[119].

37. My reservation is confined to the use of the concept of proportionality in this context. I entirely accept that the remedy of an account of profits may be withheld where it would be inequitable to grant it.

38. In the present case, the judge quoted at length from the judgment of Lord Millett NPJ in the Hong Kong Court of Final Appeal in *Libertarian Investments Ltd v Hall* [2013] HKCFA 93. The passage quoted was from paragraphs [166]-[172].

39. In *Libertarian Investments*, the claim was for equitable compensation for breach of fiduciary duty. The issue about the order for an account was a narrow one. The lower courts had ordered an account in order to determine the amount of compensation payable. The Court of Final Appeal held that it had enough material to determine the amount of compensation and that, from a procedural standpoint, it was preferable for it to determine the compensation itself rather than to direct an account for that

purpose. It was in that context that Lord Millett made his remarks about an order for an account.

40. It is clear that Lord Millett was referring to an order for an account in order for the court to obtain facts and figures to enable it to determine the amount of compensation. Lord Millett explained that such an order was not the grant of a remedy for a wrong. Instead the court was enforcing the obligation of the trustee or fiduciary to account for property which is the subject of the trust or the fiduciary obligation.

41. I consider that the type of account discussed by Lord Millett is different from an order for an account of profits which is a true remedy for a breach of fiduciary duty. An account of profits was separately considered by Lord Millett at [169] where he described how a fiduciary may be called upon to restore to, or pay over to, the beneficiary of the fiduciary obligation the profits made by the fiduciary in breach of fiduciary duty. In relation to the remedy of an account of profits, such a remedy is available, virtually as of right, against a defaulting fiduciary although the remedy may be withheld on established equitable grounds.

42. I have set out the judge's reasons for refusing to order an account in this case. The reasons stated by him in his judgment taken together with the reasons he gave for refusing permission to appeal on this point were:

    i) The court's power to order an account is a discretionary one;

    ii) The court carries out a balancing exercise in the context of the factual circumstances;

    iii) The lack of information about the Plas Eleri transaction pointed in favour of an order for an account;

    iv) The procedural history was relevant;

    v) An order for an account would not bring about a final decision;

    vi) The court ought to set its face against the matter going to the further stage of an account being taken;

    vii) The matter had gone on for far too long;

    viii) Too much water had gone under the bridge for it to be consistent with justice or equity or the overriding objective to order an account;

    ix) The reference to water under the bridge included the fact that the joint venture had collapsed, there was no hint of any significant profit having been made by Mr Edwards and Mr Edwards was bankrupt.

43. I consider that the judge's approach was wrong in principle in a number of respects.

44. What Mr Goyal was seeking was an order for an account and inquiry in order to ascertain what, if any, profit Mr Edwards had made and to enable Mr Goyal to make an election between the remedy of an account of profits and compensation for breach of fiduciary duty. The judge appears to have thought that he was merely deciding a

procedural point as to whether to order an account. In fact, the effect of his decision was to deny Mr Goyal the possibility of recovering from a defaulting fiduciary a profit which may have been made with Mr Goyal's money. That was a remedy to which Mr Goyal was prima facie entitled and of which he ought not to have been deprived in the absence of good reasons in equity for that outcome.

45. The fact that Mr Edwards had throughout refused to disclose what had happened to Mr Goyal's money in relation to the Plas Eleri transaction was a powerful reason for ordering an account. A refusal to order an account potentially allowed Mr Edwards to get away with making a profit from a breach of fiduciary duty. The judge said that there was no hint of any significant profit having been made by Mr Edwards. It is true that it is not known whether Mr Edwards had made a profit. Mr Edwards would know whether that was so but he refused to say. He ought not to be given the benefit of the doubt about that. The judge was in no position to assume that Mr Edwards had not made a profit. An account was necessary in order to establish the position.

46. I cannot see anything in the procedural history which militates against an order for an account. It seems to have been initially argued on behalf of Mr Edwards that Mr Goyal had elected in a way which precluded him for pursuing an account of profits but that submission was not persisted in and the judge did not find that there had been an election. If there was no election, then the earlier remedies obtained by Mr Goyal did not mean that he has lost his prima facie entitlement to seek an account of profits. The fact that he did not persist in seeking a further default judgment but instead the claim went to trial is not a good reason for refusing to order an account.

47. As to the time it had taken to bring the matter to trial, the judge did not find that Mr Goyal was at fault in that respect. I do not see how the mere passage of time in this case could justify withholding the remedy of an account of profits if that is what Mr Goyal ultimately elected to have.

48. As to the "water under the bridge", I do not see how the collapse of the joint venture is material. As to Mr Edwards' bankruptcy, the judge appears to have left out of account the possibility of a proprietary claim by Mr Goyal and, in any case, the judge does not appear to have had any information about the state of affairs in relation to the bankruptcy to judge whether a claim to the profits made by Mr Edwards would be worthwhile even in the absence of a proprietary claim.

49. As the judge was wrong in principle in his approach to the application for an account, it falls to me to make my own decision on that application. I consider that the right order in this case is to order an account and an inquiry into the use which Mr Edwards made of Mr Goyal's money for Mr Edwards' own benefit. The use of that money in relation to the Plas Eleri transaction is obviously the most significant matter to be the subject of that account and inquiry but the order ought not to be confined to that transaction as there were further sums used for purposes which have not as yet been explained.

50. The purpose of the account and inquiry is to enable Mr Goyal to know if it is in his interests to elect for an account of profits. That is a remedy to which he is prima facie entitled and he ought not to be denied the ability to make that election by a refusal to order an account and an inquiry. An account of profits may in due course be available

to Mr Goyal and may be of real benefit to him. There are no reasons in equity why the court should withhold the order sought by him.

The order in relation to the Second Respondent

51. I will allow the appeal in relation to Mr Edwards.

52. Following the hand down of this judgment, I wish to have written submissions as to precisely what order should be made. As I understand it, Mr Goyal does not at present wish to be forced to elect between compensation in the form of interest and an account of profits. He needs to have more information as to what Mr Edwards did with Mr Goyal's money in breach of fiduciary duty.

53. It is now established that, in a case like the present, the court will make such order as is appropriate in all the circumstances to provide Mr Goyal with the information which is reasonably required to enable him to make an informed election: see *Island Records Ltd v Tring International plc* [1996] 1 WLR 1256 at 1259G-1260D, *Tang Mang Sit v Capacious Investments Ltd* [1996] AC 514 at 521G-H.

54. Accordingly, Mr Goyal should make written submissions to the court within 14 days from today as to what order is appropriate. I am prepared to make an appropriate order by way of disposing of this appeal rather than remitting the matter to the County Court for it to consider what order to make. However, following the making of such order, the matter ought to be remitted to the County Court for it to deal with any further applications in relation to this part of the case.

The appeal in relation to the Third Respondent

55. Mr Goyal contended that the Solicitors held the sums of £160,000 and £590,000 on a resulting trust for him. It was said that the trust was a *Quistclose* trust, so called after the decision in *Quistclose Investments v Rolls Razor Ltd* [1970] AC 567. It was then said that the Solicitors had paid away various sums in breach of that trust and that they were liable to Mr Goyal for their breach of trust. Mr Goyal claimed either an account of profits or compensation. He accepted that if compensation were awarded then it should be calculated as a sum by way of interest and the correct figure would be the figure awarded against Mr Edwards, namely, £17,762.50. As to the possibility that the Solicitors had made a profit from their breach of trust, it was said that the fees which they had earned by acting for Mr Edwards at a time when he misused the money provided by Mr Goyal would have contained a profit element.

56. The judge held that Mr Goyal had not established a trust in his favour either in relation to the £160,000 or the £590,000. He rejected a contention for Mr Goyal that the Solicitors were under a duty to inquire of Mr Goyal as to the use to which these monies were to be put. He also held that if there had been a trust under which the Solicitors were to hold money pending instructions from Mr Goyal, he had given instructions on 3 October 2012 which allowed the £160,000 to be used in relation to the purchase of Cawston care home. The judge further held that if there had been a trust in relation to the £160,000 there had not been a breach of that trust when other monies were used for the Plas Eleri transaction and possibly in other respects for Mr Edwards' benefit.

57. Before considering the challenges now put forward to the judge's conclusions, I need to set out the relevant facts in some detail.

The facts in relation to the Solicitors

58. I have already referred to the judge's findings as to the involvement of Mr Goyal and Mr Edwards in a proposed joint venture, to the two payments by Mr Goyal to the Solicitors' client account and to the payments out of that account.

59. By January 2012, Florence Care Ltd had been created for the purposes of the proposed joint venture and it was proposed that it would acquire the Cawston care home. On 16 January 2012, a firm of accountants, Bowker Orford, who were acting in connection with the proposed joint venture, emailed Mr Goyal to say that the vendors of that care home required to be shown proof of funding for the purchase. In particular, the vendors wanted a letter from the solicitors dealing with the purchase stating that the solicitors held the necessary funds. Bowker Orford asked Mr Goyal to provide a letter from his bankers stating that he had £750,000 to invest. They also asked Mr Goyal to transfer the funds to DKLM Solicitors client account, as soon as possible. Details of that client account were attached to the email.

60. The attachment to the email of 16 January 2012 provided the bank details of the client account. The details stated that the transfer should quote the reference AK.SHA. The "AK" was a Mr Adam Keeble, a solicitor at the firm. The "SHA" was Mr Shanthi Edwards who appears to have been treated by the Solicitors as their client on this transaction. The bank details also gave the address and telephone number of the Solicitors and a reference to their website.

61. Also on 16 January 2012, another participant in the proposed joint venture, Mr Sondhi (who was the Third Defendant in these proceedings) emailed Mr Goyal to ask him to provide proof of funds.

62. On 18 January 2012, Mr Goyal emailed Bowker Orford and Mr Sondhi an attached letter from Lloyds TSB Bank plc ("Lloyds") dealing with credit facilities. In fact, the letter from Lloyds referred to the position of "Metro Properties" rather than to Mr Goyal. The papers also refer to a company, Metro Property Investments Ltd ("Metro"). At the hearing of the appeal, I raised the question whether it was the money of this company which was transferred to the Solicitors' client account. That would suggest that the claim in this case ought to have been made by Metro rather than Mr Goyal. I was not given any clear answer as to what the position had been. No point of this kind was taken at the trial and the matter proceeded on the basis that Mr Goyal could be equated with Metro. Accordingly, I will approach matters that way and hereafter I will only refer to Mr Goyal and not to Metro. The letter from Lloyds stated that Mr Goyal had sanctioned credit facilities in place to complete a purchase of a care home.

63. Bowker Orford and Mr Sondhi did not find the Lloyds' letter to be sufficient and emailed Mr Goyal to ask for a more specific letter. On 20 January 2012, Lloyds prepared a different letter stating that Mr Goyal had sanctioned credit facilities in place to complete a purchase of a care home for £750,000. This letter was addressed to the Solicitors. It seems to have been the case that Mr Sondhi and Bowker Orford

were not satisfied with this version of the letter either and it was not sent to the Solicitors.

64. On 4 February 2012, Mr Edwards emailed Mr Sondhi referring to a conversation he had had with Mr Goyal about a proposal that Mr Goyal would send money to the Solicitors to be "held to his order" subject to the legal arrangements being completed.

65. On 16 February 2012, Bowker Orford emailed Mr Goyal asking him to transfer funds to the Solicitors' client account and attaching for a second time details of that account, again requesting the use of the reference AK.SHA.

66. At this time, the solicitor dealing with the matter at the Solicitors was Mr Kiran Morzeria. Mr Keeble was not dealing with the matter at that stage.

67. On 16 February 2012, Bowker Orford emailed Mr Morzeria to say that he would receive funds of between £160,000 and £180,000 into the Solicitors' client account; the funds would be from Mr Goyal who would be investing in the acquisition with Mr Edwards.

68. On 16 February 2012, Mr Morzeria replied to Bowker Orford stating that the Solicitors would need "KYC+ money laundering Bank statements etc".

69. At 16.04 pm 21 February 2012, the financial controller at the Solicitors emailed the "TT Group" at the Solicitors to say that the sum of £160,000 had been received by the Solicitors. This money had been transferred by Mr Goyal to the Solicitors' client account. There was no suggestion that Mr Goyal had communicated to the Solicitors at this point any instruction that the money should be held to his order or should be subject to any restriction.

70. By 16.35 on 21 February 2012, Mr Morzeria had obviously been informed of the receipt of £160,000 and he emailed Bowker Orford to say that if this was funding for the nursing home then "please provide KYC Bank Statements & who has sent the funds?"

71. At 16.56 on 21 February 2012, Bowker Orford replied to Mr Morzeria saying that the money was for Mr Edwards nursing homes acquisition and that Bowker Orford would "get the KYC to you".

72. At 16.58, Mr Morzeria wrote again to Bowker Orford asking for bank statements etc and asked "do you know the investor? We must know the basis upon which he has sent funds can he write to us?"

73. It is to be inferred that Bowker Orford contacted Mr Goyal in response to Mr Morzeria's request and at 19.01 on 21 February 2012, Mr Goyal sent an email which is now at the centre of his claim against the Solicitors. The email was sent to contactus@dklm.co.uk. Although the judge thought that the email did not bear any reference, it is fairly clear that in the subject matter line of the email was written "AK.SHA". The email stated:

> "Dear Sir/Madam

> I have transferred £160,000 into your account which as agreed should be held till you receive further instructions and should only be used as proof of funds for exchange until advised further.
>
> Please confirm these have been received.
>
> Kind regards
>
> Vidya Goyal"

74. Although this email uses the phrase "as agreed", there was no finding that Mr Goyal had communicated with the Solicitors before this email or had agreed anything with them as to this payment.

75. There was no evidence as to why Mr Goyal addressed this email to the "contactus" email address. It is likely that Mr Goyal was not given an email address for the Solicitors when he was asked by Bowker Orford to write to the solicitors and so he looked up the Solicitors' website and found the "contactus" address on that website. The judge did not make any finding on this point.

76. There was some evidence at the trial as to the system in place at the Solicitors for dealing with emails sent to the "contactus" address. This evidence was provided by a consideration of what had happened later, in October 2012, when Mr Goyal sent a second email to the "contactus" address. The email was sent at 21.22 on 3 October 2012. That email was accessed by a Ms Johnson, the Solicitors' practice manager at that time, and she forwarded the email to property@dklm.co.uk at 10.47 on 4 October 2012. Mr Keeble gave evidence in the course of his cross-examination that the practice manager monitored the inbox for the "contactus" address and forwarded emails as and when they were received. Mr Keeble said that when an email was forwarded to property@dklm.co.uk, the email would be seen by everyone in the property department, including himself and Mr Morzeria.

77. There was no positive evidence as to what happened to Mr Goyal's email of 21 February 2012. It is to be inferred that it was received by the Solicitors as there was no suggestion that it had bounced back to Mr Goyal. Mr Morzeria and Mr Keeble both said that they had not seen that email in February 2012 or at any time before October 2012 when it was part of the chain attached to the email sent on 3 October 2012 to which I have just referred. The judge accepted their evidence and Mr Butler ultimately did not challenge that finding on appeal.

78. Although Mr Goyal's email of 21 February 2012 asked the Solicitors to confirm the receipt of his payment he did not receive any such confirmation from the Solicitors until very much later, pursuant to a later request for information about the payment.

79. On 22 February 2012, Bowker Orford emailed Mr Morzeria attaching a draft of a letter they wanted the Solicitors to write to the vendors of Cawston care home to confirm that funds were available. At this point, Bowker Orford plainly were aware that Mr Goyal had sent £160,000 to the Solicitors.

80. On 23 February 2012, the sum of £160,000 was posted to the Solicitors' client account in relation to Mr Edwards. Mr Morzeria wrote to Bowker Orford reminding him that the Solicitors needed "complete KYC & Bank statements for MPI". "MPI" must have been a reference to Metro. On the same day, Mr Morzeria emailed the vendors to say that his firm was in receipt of £160,000.

81. On 28 February 2012, Mr Keeble's name appears as a person copied in to an email sent by Mr Morzeria to the vendors in connection with the purchase of a care home.

82. On 26 March 2012, Bowker Orford and Mr Morzeria were in communication about another transaction being the purchase by Atlantis Medicare (Plas Eleri) Ltd of a care home at Plas Eleri. It was said that another buyer had paid a deposit for the purchase of £202,500 and completion of the purchase was due on 2 April 2012. It appears that Mr Edwards was intending to take over the benefit of the contract of purchase of this care home. This purchase was not part of the proposed joint venture in which Mr Goyal was involved.

83. On 5 April 2012, Mr Morzeria emailed Bowker Orford on the subject of compliance with the money laundering regulations. Mr Morzeria asked for a number of documents in relation to Metro and its directors and shareholders.

84. On 19 April 2012, Bowker Orford sent Mr Morzeria copies of Mr Goyal's passport and a utility bill. Mr Morzeria replied asking for the rest of the documents he had requested. This request does not appear to have been complied with because on 8 June 2012, Mr Morzeria emailed Bowker Orford and Mr Edwards on the subject to KYC for Metro. As it happened, that email also referred to the Plas Eleri transaction and was copied to Mr Keeble who was dealing with that transaction.

85. On 12 June 2012, Mr Edwards emailed Mr Goyal and asked him to send a bank statement to the Solicitors for their "compliance requirements".

86. On 19 June 2012, Bowker Orford sent to the Solicitors documents in relation to the sum of £160,000 to show the connection with Mr Goyal and relevant bank statements.

87. On 20 June 2012, Mr Gilmour of the Solicitors met Mr Goyal at a social event and the next day he suggested that they meet to consider acting for Mr Goyal as their client.

88. On 14 August 2012, Mr Keeble of the Solicitors wrote to the Bank of Ireland who were connected with the sale of the Cawston care home to say that a further £600,000 was being transferred to the Solicitors' client account in the near future. This seems to have been a reference to a further transfer to be made by Mr Goyal.

89. On 20 August 2012, Mr Goyal transferred £590,000 to the Solicitors' client account using the reference AK.SHA. There was no other communication at that time from Mr Goyal to the Solicitors. Mr Goyal told Mr Edwards and Bowker Orford that he had made this transfer. On 21 August 2012, Mr Sondhi emailed Mr Goyal to say that the Solicitors had confirmed receipt of the money.

90. On 6 September 2012, the Solicitors transferred £377,982.70 from their client account in relation to Mr Edwards and transferred it to a different account.

91. On 3 October 2012, Mr Goyal emailed the Solicitors. I have referred to his email earlier in this judgment. The email had attached to it the earlier email of 21 February 2012. The email of 3 October 2012, which had been sent to the "contactus" address, was forwarded to the property department of the Solicitors at 10.47 on 4 October 2012, as earlier explained. The email of 3 October 2012 stated:

> "I have transferred another £590,000 on 20th August 2012 to your account.
>
> I need confirmation you are holding a total of £750,000 ASAP for my bank manager.
>
> Please confirm funds are being held for the purchase of Florence Care Ltd.
>
> Please reply ASAP.
>
> Thank you."

92. On 5 October 2012, Mr Keeble replied to Mr Goyal confirming the earlier receipt of £160,000 and £590,000. He added that the Solicitors had confirmed to the Bank of Ireland that they had seen evidence of funds to enable them to proceed with a transaction in the sum of £1,700,000.

93. On 7 November 2012, Mr Goyal emailed Mr Keeble to say that he needed the money on deposit back for a purchase he was making. Mr Goyal appeared to be willing to continue in the proposed joint venture as he offered to provide a letter from his bank as to the availability of funds.

94. On 9 November 2012, Mr Edwards emailed Mr Keeble to say that after meeting Mr Goyal, the Solicitors did not need to return the money to Mr Goyal who would leave that money for Florence Care Ltd. The judge found that Mr Goyal had reached some form of accommodation with the other participants in the proposed joint venture so that Mr Goyal did not then continue to ask for the return of the money.

95. On 6 December 2012, Florence Care Ltd contracted to buy the Cawston care home and paid a deposit of £170,000, the money coming from the Solicitors' client account in relation to Mr Edwards. It appears that Mr Goyal was informed shortly thereafter of the exchange of contracts. At this stage, Mr Goyal appeared willing to continue with the proposed joint venture.

96. On 8 April 2013, Mr Goyal emailed Mr Edwards to ask for the return of the money "you are holding on my behalf". On 20 May 2013, Mr Goyal again asked for the return of the money; this email was copied to Mr Keeble. On the same day, Mr Goyal emailed Mr Keeble direct asking for the return of the money. On 22 May 2013, Mr Keeble emailed Mr Goyal with an update on the acquisition of the Cawston care home.

97. On 26 May 2013, Mr Goyal again emailed Mr Keeble and Mr Gilmour about the return of the money. Mr Gilmour replied on 28 May 2013 stating that their client was Mr Edwards and that Mr Goyal was not their client.

98. I have earlier referred to the fact that Mr Edwards began to pay sums to Mr Goyal and, later, Mr Goyal commenced these proceedings.

The construction of the February email

99. Before considering whether the Solicitors were aware of the email of 21 February 2012, and when they were aware of it, I need to decide what the email means and what its effect would have been if the Solicitors had been aware of it at the time that they received the £160,000 from Mr Goyal.

100. On its true construction, the email did seek to impose a restriction on the use which might be made of the £160,000. With one qualification, the email stated that the money was to be held until the Solicitors received further instructions from Mr Goyal as to the use of the money. Until then the money was to be held to the order of Mr Goyal. The qualification was that the Solicitors could tell the vendors of the Cawston care home that the Solicitors were in funds for exchange. I do not read that last stipulation as amounting to an authority from Mr Goyal that his money could actually be used for exchange without further instructions from him. But even if that stipulation did have that meaning, in other respects the money was to be held to the order of Mr Goyal.

101. The terms of the email were capable of imposing a trust on a recipient of the money who was aware of the email. The trust was essentially a resulting trust for Mr Goyal subject to the qualification I have referred to which, possibly, meant that the money could be used for exchange of contracts.

102. If the right reading of the email was that the money could be used for exchange of contracts then the trust could properly be described as a *Quistclose* trust. *Quistclose Investments v Rolls Razor Ltd* [1970] AC 567 has been authoritatively analysed by Lord Millett in *Twinsectra Ltd v Yardley* [2002] 2 AC 164 at [68] – [103] and that analysis was applied by the Court of Appeal in *Bellis v Challinor* [2015] EWCA Civ 59. A *Quistclose* trust is a resulting trust in favour of the person paying money to another coupled with a power for that other to use the money for a specified purpose only.

103. If the right reading of the email was that the money could not be used for exchange of contracts, then the trust would be a simple resulting trust for Mr Goyal.

The need for knowledge on the part of the Solicitors

104. Mr Butler submits that the sending of the email of 21 February 2012 to the Solicitors had the effect of making the Solicitors trustees of the £160,000. The first question is: must it be shown that the Solicitors knew of the terms of that email? I consider that the answer to that question is: yes. I also consider that this answer is in accordance with principle and is supported by the relevant authorities.

105. As to principle, I would analyse the position as follows. The money in a solicitor's client account is normally held on trust for the client. When a sum of money is paid by third party to a solicitor, to be held in the client account, then the default position is that the money is held on trust for the client. This proposition is established by *Bellis*

v Challinor per Briggs LJ at [79] where that is described as the default position, subject to any agreement or arrangement to the contrary.

106. Further, as is also explained in *Bellis v Challinor*, for there to be a trust binding the Solicitors in this case, the trust must be created by words or conduct: see per Briggs LJ at [58]-[59]. The agreement or arrangement referred to in that case at [79] must be one which is binding on the Solicitors. On the facts of the present case, Mr Edwards owed fiduciary duties to Mr Goyal in relation to the money advanced by Mr Goyal. However, what Mr Goyal has to show, in order to succeed against the Solicitors, is that the money held by the Solicitors was not held by them on trust for Mr Edwards but was held by them on trust for Mr Goyal.

107. As to the requirement of knowledge on the part of the Solicitors, that requirement is considered in *Quistclose* itself, both in the Court of Appeal (reported at [1968] Ch 540) and in the House of Lords. In the Court of Appeal, all three members of the court proceeded on the basis that knowledge of the terms of the trust was necessary and they held that the bank had the requisite knowledge: see at 555E-556C, 556F-G, 561C-563D and 563G-564D. In the House of Lords, Lord Wilberforce (with whom the other members of the House agreed) held that the bank had to have "notice" of the trust (see at 579G-H) and he held that the bank did have the requisite notice (see at 582B-G). There is a difference between notice and knowledge: see, for example, *In re Montagu's Settlement* [1987] Ch 264 at 285D. The arguments of counsel in the House of Lords in *Quistclose* approached the matter on the basis that was required was knowledge and not merely notice: see at 571H and 575D.

108. In *Twinsectra*, Lord Millett described the position in this way at [76]:

> "It is unconscionable for a man to obtain money on terms as to its application and then disregard the terms on which he received it. Such conduct goes beyond a mere breach of contract. As North J explained in *Gibert v Gonard (1884) 54 LJ Ch 439*, 440:
>
> "It is very well known law that if one person makes a payment to another for a certain purpose, and that person takes the money **knowing** that it is for that purpose, he must apply it to the purpose for which it was given. He may decline to take it if he likes; but if he chooses to accept the money tendered for a particular purpose, it is his duty, and there is a legal obligation on him, to apply it for that purpose." [emphasis added]"

109. Further, the requirement is described in *Bellis v Challinor* as "knowledge": see at [93]-[94].

110. In view of the fact that the default position in the present case was that the Solicitors held the money in their client account on trust for Mr Edwards, it ought to be necessary for Mr Goyal to make the Solicitors aware that the money he is paying to them, to be received by them in their client account, is not held on trust for Mr Edwards but is instead impressed with a trust for Mr Goyal. Only in that way would Mr Goyal make an agreement or arrangement to the contrary of the default position, as described in *Bellis v Challinor* at [79].

111. The House of Lords in *Quistclose* left open the question as to when the recipient of the money must know of the restriction on its use: see per Lord Reid at 578D and per Lord Wilberforce at 582B.

112. It is enough if the Solicitors knew (at whatever is the relevant time) of the restriction being imposed by Mr Goyal on the use of the monies; it does not have to be shown that the Solicitors understood that the legal consequence of that restriction was the creation of a trust obligation: see *Quistclose* in the Court of Appeal, per Russell LJ at 561E.

What did the Solicitors know?

113. The Solicitors were dealing with a proposed purchase by Florence Care Ltd of the Cawston care home. They regarded their client as Mr Edwards and possibly also Florence Care Ltd. On 16 February 2012, Bowker Orford told the Solicitors that they would receive £160,000 to £180,000 into their client account and that the money would come from Mr Goyal who was investing in the acquisition with Mr Edwards.

114. On 21 February 2012 at 16.04, the £160,000 arrived into the Solicitors' client account. The Solicitors' financial controller told the Solicitors' TT Group that the money had arrived. By 16.35 on 21 February 2012, Mr Morzeria had been informed of the receipt of the money. It seems that Mr Morzeria thought that the money might well be the money to which Bowker Orford had referred on 16 February 2012 because, at 16.35 on 21 February 2012, he emailed Bowker Orford and asked them about the money. On 21 February 2012 at 16.56, Bowker Orford told Mr Morzeria that the money was indeed for Mr Edward's acquisition of the care home. At this point, the Solicitors knew that they had £160,000 in their client account and that it was to be held by them for Mr Edwards. By this point, Mr Goyal had not done anything to place a restriction on the use of the money or to impress the money with a trust in his favour.

115. On 21 February 2012 at 19.01, Mr Goyal sent his email to the "contactus" address. That email did not bounce back to Mr Goyal. Although there was no evidence about this, it is to be inferred that it arrived in the inbox for that address rather than being caught by a spam filter. The Solicitors did not give evidence that it had been caught by a spam filter and given that the address was a general "contactus" address, it is likely that Mr Goyal's email would have gone into the inbox.

116. There was no evidence as to what then happened in relation to the email. It would have been available to be read by the practice manager who monitored the "contactus" emails. There was no evidence that the practice manager did read the email. If the practice manager did read the email, there was no evidence as to what he or she did with it. In particular, there was no evidence that the email was deleted by accident nor was there evidence that the email was forwarded to anyone. The judge found that Mr Morzeria and Mr Keeble were not informed of the email at this stage. The first time that Mr Keeble would have been aware of it would have been on 3 October 2012.

117. In his skeleton argument, Mr Butler submitted that the restriction in the email had been communicated to the Solicitors on 21 February 2012. He submitted that the court should reach that conclusion by analogy with the posting rule which holds that, in the

law of contract, an offer is treated as accepted by a letter of acceptance which is posted to the offeror. I do not think that a reference to the posting rule is in point but Mr Butler's essential point was that Mr Goyal had followed an acceptable method of communication with the Solicitors and he should not be disadvantaged because they had not followed their own internal system whereby the email ought to have been passed to everyone in the property department including Mr Morzeria.

118. Mr Butler also submitted that cases as to the service of notice, such as *Haywood v Newcastle upon Tyne Hospitals NHS Trust* [2019] 1 WLR 2073, showed that what was done in this case amounted to the giving of notice to the Solicitors and it was nothing to the point that the Solicitors' internal system as to emails had broken down.

119. Then, Mr Butler submitted that as the Solicitors had specified the "contactus" address as an address to which emails could be sent, they were estopped from denying that the communication had been received.

120. At the hearing of the appeal, Mr Butler put his case a different way. He submitted that there was no issue of fact as to whether the email was received by the Solicitors; it was received in the inbox of the "contactus" address. The real question concerned whether it was right to hold that the Solicitors knew the contents of the email. For that purpose, he said that one had to ask if the knowledge of the email on the part of some individual at the Solicitors should be treated, by a process of attribution, as the knowledge of the Solicitors. He cited the judgments of the Court of Appeal (Nourse, Rose and Hoffmann LJJ) in *El Ajou v Dollar Land Holdings plc* [1994] BCC 143.

121. I agree with Mr Butler that in a case where it is alleged that a company (or in this case, an LLP) knows a fact, it is relevant to ask who at the company or LLP knew the fact and whether that person's knowledge is to be attributed to the company or LLP.

122. In *El Ajou*, the Court of Appeal held that it was not appropriate to ask whether the identified person was the directing will or mind of the company for all purposes but that, instead, one asked if he was the person having management and control in relation to the act or omission in point.

123. Shortly after *El Ajou*, Lord Hoffmann returned to the question of the attribution of knowledge to a company in *Meridian Global Funds Management Ltd v Securities Commission* [1995] 2 AC 500. Again, he held that one asked if the identified person with relevant knowledge was a person having management and control, on behalf of the company, in relation to the act or omission in point.

124. The question of attribution was also considered by the Supreme Court in *Bilta (UK) Ltd v Nazir (No 2)* [2016] AC 1 (see at [65]-[70] and [180]-[209]). On the question of attribution of knowledge to a company, the Supreme Court agreed with the earlier authorities to which I have referred.

125. In the present case, Mr Goyal cannot show that the persons at the Solicitors who received money into the client account knew of the contents of the relevant email. Nor can he show that the persons who were handling the transaction for Mr Edwards knew. The only person identified who might have known of the email was the practice manager who dealt with emails received at the "contactus" address.

126. There was some limited evidence at the trial as to the functions of the practice manager in relation to an email in the inbox of the "contactus" address. It was said, by reference to what happened to Mr Goyal's later email of 3 October 2012, that the practice manager should consider the emails received in this way and should decide what to do with them and, in particular, should consider to whom they should be forwarded.

127. In the case of Mr Goyal's email of 21 February 2012, if the practice manager had been aware of its existence and had read it, he or she would have seen the reference to "AK.SHA" and should have sent the email to Mr Keeble for him to deal with. Mr Keeble was not dealing with the purchase of the Cawston care home or any other possible joint venture care homes at that time but he would probably have forwarded the email to Mr Morzeria who was so dealing.

128. I do not think that the practice manager would have been expected to do anything else in relation to this email. Accordingly, in relation to knowledge of the contents of the email, even if the practice manager should be held on the facts to have known the contents of the email, that knowledge ought not to be attributed to the Solicitors. Further, on the facts, the email was not forwarded to Mr Keeble or Mr Morzeria and so they did not know about it.

129. The result is that, although Mr Goyal communicated the contents of his email so that they were received in the "contactus" inbox, that did not involve the knowledge of some individual being attributed to the Solicitors.

130. As explained in *El Ajou*, if an agent of a company (or an LLP) knows a relevant fact, there are circumstances where that knowledge is to be imputed to the company (or the LLP). Imputation of the knowledge of an agent to a principal is a possible alternative analysis to attribution of knowledge. Mr Butler did rely on what Hoffmann LJ had said in *El Ajou* at 157B-C as to imputation of an agent's knowledge where the agent was authorised to receive a communication or a notice. However, Hoffmann LJ also dealt with an alternative case where an agent was under a duty to pass on information to his principal but did not do so. In such a case, he held that the existence of the duty gave rise to a rebuttable inference of fact that the knowledge had been passed on to the principal.

131. It was said by Hoffmann LJ in *El Ajou* per at 156B that "[t]he circumstances in which the knowledge of an agent is imputed to the principal can vary a great deal and care is needed in analysing the cases". The difficulties of analysis in this area are also the subject of comment in Bowstead & Reynolds on Agency, 21st ed. at paras. 8-208 – 8-217.

132. Mr Butler's reliance on imputation of an agent's knowledge was restricted to citing the passage in *El Ajou* dealing with the case of an agent authorised to receive communications. In this case, I am far from clear, the issue not having been examined, that the practice manager's duties in relation to the "contactus" address meant that she was authorised to receive communications in the relevant sense. Further, the principle relied upon by Mr Butler might be confined to cases of notice and not extend to cases of alleged knowledge. Mr Butler did not, in terms, argue that the practice manager was under a duty to pass on Mr Goyal's email to the property

department so that, in law, it was to be presumed that she had done so and therefore the property department knew of the contents of the email.

133. The question of imputation of an agent's knowledge was not raised by Mr Butler in his skeleton argument and was dealt with very briefly in the course of his oral submissions. I feel considerable hesitation in carrying out my own research into this topic and deciding the appeal based on that research. If this issue were to be decisive of the appeal, I may have had to invite further submissions. I note that in *Bilta (UK) Ltd v Nazir (No. 2)* (which was not cited to me) at [197], Lord Toulson and Lord Hodge thought there was force in the suggestion that, in *El Ajou*, the rules of agency could have produced the result that the individual's knowledge would be imputed to the company.

134. However, as will be seen, the appeal against the solicitors fails on other grounds so that I will not find against Mr Goyal on this point.

135. I will, however, deal with the submissions made by Mr Butler in his skeleton argument on the question of the Solicitors' knowledge of the contents of the relevant email. I see the force of the argument that Mr Goyal had done what he could to communicate with the Solicitors and the law should hold that the contents of his email had come to the attention of the Solicitors so that they knew of its contents. As against that, it can be said that Mr Goyal's attempt to impress a trust on the payment of £160,000 left a great deal to be desired.

136. First of all, he sent the £160,000 to the Solicitors' client account without any covering communication. At that stage he made no attempt to impress a trust in his favour on the money. However, I recognise that that point really concerns the timing of the communication rather than the manner of the communication. When he did want to communicate with the Solicitors, he chose to do so by email. Further, he did not ask for the email address of an individual solicitor but found out for himself (it seems) the existence of the "contactus" address and sent his email there. In his email he asked the Solicitors to confirm that they had received the money but when he knew that he had received no confirmation from them, he did not contact them again.

137. As to the submission that the sending of the relevant email was the giving of notice to the Solicitors, it is possible in law to give someone notice without that person necessarily knowing of the contents of the notice. The requirement in the present case is that the Solicitors knew of the restriction in the relevant email.

138. As to estoppel, there was no specific representation by the Solicitors that they would be treated as knowing the contents of the "contactus" inbox as distinct from holding out that address (I presume they did so on their website) as a permitted method of communicating with the Solicitors. Further, the judge made no findings of fact in relation to the allegation of estoppel.

139. Finally, Mr Butler argued that when the Solicitors received the £160,000 they were under a duty to inquire of the paying party as to the circumstances of the payment. Mr Butler submitted that the very act of paying the money to the Solicitors showed that Mr Goyal might not have wanted to place the money at the free disposal of Mr Edwards and therefore the Solicitors were under a duty to inquire, as alleged. I am not able to accept this submission. Before they received the money, the Solicitors had

been told, on behalf of their client, that the money was on its way and the reason for the payment. Assuming that the Solicitors did not know of the email of 21 February 2012, the Solicitors had not received any communication from Mr Goyal. The default position is that money paid into the client account is to be at the free disposal of the client. The Solicitors were entitled to act on that being the default position.

140. Accordingly, I consider that the only way in which Mr Goyal could succeed in showing that the Solicitors knew of the contents of the relevant email would be if, on the facts, the practice manager knew of the contents of the relevant email and if, on the law, that knowledge is to be imputed to the Solicitors.

141. Mr Goyal also has a problem with the timing of the relevant email. The £160,000 was received by the Solicitors on 21 February 2012 at 16.04. Mr Morzeria knew that the money had been received and was to be credited to Mr Edwards by 16.56 on 21 February 2012. It would seem to follow that, at the latest from that point, the Solicitors held the money on trust for Mr Edwards. Mr Goyal sent his email outside working hours at 19.01 on 21 February 2012. The earliest that the email would have come to the attention of a relevant person at the Solicitors would have been the morning of 22 February 2012. It would not have been open to the Solicitors at that point, in relation to money they held as trustee for Mr Edwards, to bring that trust to an end and to hold the money instead as trustee for Mr Goyal, without the consent of Mr Edwards. Of course, if the Solicitors had contacted Mr Edwards to discuss Mr Goyal's email, Mr Edwards might have agreed to the Solicitors holding the money as trustee for Mr Goyal but that did not occur. When I identified this timing point in the course of argument, Mr Butler said that the point was not argued in the County Court and was not raised by a Respondent's Notice. Therefore, I might not have dismissed the appeal on this ground alone (at least not without considering any application by the Solicitors for permission to serve a late Respondent's Notice) but for the further reasons which I will give I will dismiss the appeal on other grounds. As the timing point is a fairly obvious one on the documents, I have thought it right to mention it.

142. In the course of the argument, I invited submissions as to the requests which the Solicitors had made in relation to compliance with the requirements in relation to money laundering. I had in mind the possibility that the Solicitors might not have become a trustee for anyone, alternatively might have held the money on a resulting trust for Mr Goyal, until those requirements were complied with and so that might affect the timing point to which I have referred. Further, I had in mind the possibility that the money laundering requirements might have been relevant to Mr Butler's earlier submission that the Solicitors had a duty to inquire as to the circumstances of the payment. Although both counsel made helpful submissions as to the money laundering requirements, I was not asked to find that those requirements affected any of the above reasoning.

143. If Mr Goyal were able to establish a trust in his favour in relation to the £160,000, I consider that Mr Goyal would not be able to establish a breach by the Solicitors of that trust. On 3 October 2012, Mr Goyal asked the Solicitors to confirm that they were holding the monies he had paid for the purchase by Florence Care Ltd. Accordingly, in relation to the alleged trust of the £160,000, these were further instructions from Mr Goyal which allowed the Solicitors to use that money as the deposit for the purchase of the Cawston care home. For the reasons I have explained earlier, a sum in excess of

£160,000 remained in the account until £170,000 was paid as the deposit on exchange of contracts for the Cawston care home.

144. Even if the email of 3 October 2012 was not an instruction from Mr Goyal which allowed the £160,000 to be used as the deposit for the purchase of the Cawston care home, Mr Goyal gave evidence that he would have agreed to the money being used in that way and, after it had been used and he became aware of that, he did not object but sought to proceed on the basis that the purchase of the Cawston care home remained part of the proposed joint venture.

145. As to the payment of £590,000 made by Mr Goyal to the Solicitors' client account on 20 August 2012, if there had been a trust created in relation to the £160,000, I would not hold that there was also a trust in relation to the £590,000. Mr Goyal paid the £590,000 into the Solicitors' client account without taking any step specific to that payment to impose a restriction on the Solicitors' use of that money. The default position was that they held it in their client account on trust for Mr Edwards. The email of 21 February 2012 had been sent to "contactus" about six months earlier and there had been no reference to it either by Mr Goyal or by the Solicitors in the intervening period.

146. Further, if there were no trust in relation to the £160,000, it would be even more clear that there was no trust of the £590,000.

147. Mr Goyal's complaint is about payments being made for Mr Edwards' own purposes. However, those payments were made out of the £590,000 which was not subject to a trust in favour of Mr Goyal even if there had been a trust in his favour in relation to the £160,000.

148. Although the Solicitors acting on the instructions of Mr Edwards paid out monies from the £590,000 which resulted in Mr Edwards committing a breach of his fiduciary duty to Mr Goyal, it is not said that the Solicitors are liable to Mr Goyal as accessories to that breach of fiduciary duty.

149. I will dismiss Mr Goyal's appeal in relation to the Solicitors.