

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/07/2010

Before :

MR JUSTICE NORRIS

Between :

The Law Society of England & Wales

Claimant

- and -

- 1) Isaac & Isaac International Holdings Ltd**
- 2) Zikkito Marketing, Publishing & Creative Services Ltd**
- 3) Isaac Mathews**
- 4) Anthonia Akinyele**
- 5) Victor Aszeez (Aka Victor Strong or Victor Davies)**
- 6) Ruth Mungai**
- 7) M Solutions and Financial Ltd**
- 8) Martin Mwanunshiku**
- 9) Estate & Property Development Ltd**
- (10) Osedobe Nmah (Aka Paul Nmah)**
- (11) Maureen Nmah**
- (12) Sles Trading Fze (A Dubai Company)**
- (13) Henry Babatunde Zollner**
- (14) Mrs Idayat A Dosun**
- (15) Jason Mercer**

Defendants

Michael McLaren QC and Fenner Moeran (instructed by Devonshires) for the Claimant
None of the Defendants appeared or was represented.

Hearing dates: 29 April and 6 May 2010

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.

Mr Justice Norris.....7 July 2010

Mr Justice Norris :

1. On 22 October 2007 the Law Society intervened in the practice of Messrs Southbank Solicitors (“ Southbank”). By the resolution for the intervention the Society also resolved that all sums of money held by Southbank in connection with its practice (and the right to recover or receive them) should also vest in the Society.
2. Southbank had been involved in mortgage fraud. Conveyancing transactions would be set up. Southbank would be retained to act for the lender. Southbank would complete all of the conveyancing forms necessary to procure the payment of the mortgage advance by the lender to Southbank and its lodgement in Southbank’s client account in readiness for completion. The conveyancing transaction would then be abandoned. But instead of Southbank repaying the mortgage advance to the lender the money would be paid out of client account to a third party (the primary recipient) and then on to subsequent secondary recipients.
3. On 2 April 2008 the Society also intervened in the practice of Phoenix Nova Solicitors (“Phoenix”) by means of a resolution in the same form. It was discovered that Phoenix had also been involved in mortgage fraud of an identical kind.
4. It is established on the evidence that there was paid out of the Southbank client account the sum of £1,072,883 on suspect transactions, and out of the Phoenix client account the sum of £5,210,188. In the right of its vesting resolutions the Society commenced proceedings against the primary and secondary recipients of these monies.
5. It is the Society’s case that the payments were made out of client account in breach of trust. If that fact is established then the Society cannot simply claim repayment from the

primary recipients, because the wrongful recipient of trust property is not without more personally liable to restore the benefit received: Lewin on Trusts 18th edition paragraph 42.02. Therefore the Society alleges that the payments were received dishonestly and that each recipient knew that the relevant payment was part of a transaction in which he or she could not honestly participate or about which the recipient was suspicious and made a conscious decision not to undertake such reasonable enquiries as the circumstances indicated should be made.

6. In fact in a receipt-based claim it is not necessary to establish a dishonest state of mind.

Such a case requires (according to BCCI v Akindele [2001] Ch 437) proof:-

- (a) that the monies were held on trust or subject to fiduciary obligations;
- (b) that they were paid over in breach of that trust or those fiduciary obligations;
- (c) that they were received beneficially; and
- (d) that at the time of receipt (or before they were dealt with) the recipient had such knowledge as would make it unconscionable for it, him or her to retain the benefit of the receipt.

7. However, as is clear from paragraph 21.2 of the Particulars of Claim the Society relies on the same facts to mount a claim against the direct or indirect recipients for dishonest assistance in a breach of trust. To bring home this claim the Society must (according to Royal Brunei v Tan [1995] 2 AC 378 as interpreted in Barlow Clowes International v Eurotrust Limited [2006] 1 WLR 1476) in such a case as this prove:-

- (a) that the monies were held on trust or subject to fiduciary obligations;
- (b) that they were paid over in breach of that trust or those fiduciary obligations;
- (c) that the defendant assisted in that breach; and
- (d) that the defendant acted dishonestly in so assisting (in the sense that his actual state of knowledge about the payment and the circumstances in which it was made rendered his participation contrary to normal and acceptable standards of honest conduct).

The only conduct pleaded as amounting to assistance is either the receipt of payment or participation in the making of payments.

8. In addition to these claims in equity the Society also alleges that the defendants were all participants in an “unlawful means” conspiracy. To make good this claim the Society must prove (according to Kuwait Oil Tanker Co v Al Bader [2000] 2 All ER (Comm)

271 at para.106):-

- (a) loss or damage;
 - (b) caused as a result of unlawful action;
 - (c) that unlawful action being taken pursuant to a combination or agreement between the defendant and another to injure the claimant by lawful means;
 - (d) whether or not the combination or agreement to injure is the predominant purpose of the defendant to do so.
9. The relevant partners in Southbank and in Phoenix appear to have absconded. On 22 May 2008 the Society commenced proceedings against the primary recipients and the secondary recipients. There is before me the trial of the Society's claim against:
 - (a) Isaac & Isaac International Holdings Ltd ("Holdings"), Zikkito Marketing Publishing and Creative Services Ltd ("Zikkito"), Isaac Matthews ("Mr Matthews") and Antonia Akinyele ("Ms Akinyele") (who may be grouped together as "the Matthews Defendants");
 - (b) Victor Azeez ("Mr Azeez"), Ruth Mungai ("Ms Mungai") and M Solutions and Financial Ltd ("Solutions") (who may be grouped together as "the Azeez Defendants"); and
 - (c) Estate and Property Development Ltd ("Estates") Paul Nmah ("Mr Nmah") and Maureen Nmah ("Mrs Nmah") (who may be grouped together as "the Nmah Defendants").
10. I have grouped the Matthews Defendants together because it is admitted in the pleadings that:-
 - (a) Mr Matthews is the brother of Ms Akinyele;
 - (b) Mr Matthews is the sole shareholder in Holdings and Zikkito;
 - (c) Ms Akinyele is the sole director of Holdings and Zikkito and the sole signatory on their respective bank accounts.
11. I have grouped the Azeez Defendants together because it is admitted on the pleadings that:-
 - (a) Mr Azeez is the husband of Ms Mungai; and
 - (b) Mr Azeez was a shareholder and director of Solutions.

It is established on the evidence that Mr Azeez is also known as Victor Strong (and he is so described in many of the mortgage applications submitted by Solutions to lenders).
12. I have grouped the Nmah Defendants together because the evidence establishes (or it is admitted in the pleadings or in affidavits filed on behalf of Mr Nmah in response to the disclosure requirements contained in freezing orders):-
 - (a) that Mr Nmah is the husband of Mrs Nmah;
 - (b) that Mr Nmah is a director of Estates;
 - (c) that Mrs Nmah is the other director of Estates;
 - (d) that Mr Nmah is known by at least seven aliases (Osedobe Nmah, Osedobe Paul Nmah, Paul Oscar Nmah, Paul Smith, Paul Osi Nma, Osi John Junior Edward and Paul Christopher);
 - (e) that Mrs Nmah is known by at least three aliases (Maureen Kabuta, Chilufia Kabuta and Maureen

Chilufya Kabuta);

- (f) that there are many dealings between persons bearing these names, and that in relation to three properties (1 Southdene, 9 Engel Park and 110 Watling Avenue) there are both purported dealings, and frequent uses of those addresses in connection with the various aliases both for public registration purposes and in connection with various other conveyancing transactions.
13. Although I have grouped the relevant defendants together the groups are not themselves discrete and isolated units. The evidence establishes close connections between each of them. Sometimes their names are connected with the same property. So for example Mr Azeez was registered for electoral roll purposes as occupying 1 Southdene which was registered in the name of and dealt with by the Nmah Defendants. Again, Holdings and Zikkito made payments to Ms Mungai and to Solutions. Holdings made three admitted payments to Estates. Mr Azeez and Mr Nmah were business partners trading together from premises rented from a Mr Sillence. The Society produced sufficient material at trial to persuade me that the reality of the situation is that the Matthews Defendants, the Azeez Defendants and the Nmah Defendants form a composite whole (though some intragroup connections were much stronger than others).
14. None of the defendants attended trial. Defences (of varying degrees of detail) had been filed by Holdings, Zikkito, Mr Matthews, Ms Akinyele, Mr Azeez, Ms Mungai, Mr Nmah and Mrs Nmah (but not by Solutions or Estates). On 26 March 2010 David Richards J ordered that each defendant must serve any witness statement on which they intended to rely (and any notice of intention to rely on hearsay evidence) by 8 April 2010. No defendant did so. In the circumstances it was for the Society to prove its case at trial. Given the nature of the evidence produced by the Society and the absence of any party to cross examine the Society's witnesses upon it, I directed that the witness statements tendered by the Society should stand as evidence in the case pursuant to CPR 32.5. However, before reaching a judgment on whether the Society had proved its case I have considered such Defences as were filed and any affidavit filed by any Defendant pursuant to the disclosure obligation contained in the interim freezing orders. I did so for the purpose of considering whether it was fair and proper to decide the questions in issue on the pleaded case, or whether I ought in justice to take some other course.
15. I will address first the Society's case against the Matthews Defendants beginning with Holdings.
16. The Society alleges that out of the Phoenix client account there was paid to Holdings a total of £4,085,361 in the period from 25 October 2007 until 6 December 2007. In its Defence Holdings put the Society to strict proof that each component part of that total sum was paid in the amount and on the date stated. Holdings advanced no positive case, save in relation to a payment of £970,167 which the Society says was paid on 28 November 2007. It is pleaded that if such a payment was made, then the acting mind of Holdings (Mr Matthews) believed it to be the legitimate proceeds of the sale of a plot of land in Nigeria.
17. In my judgment the pleaded payments out of the Phoenix client account to Holdings are conclusively proved. It is established to my satisfaction by the evidence of Ms Rebecca Costen (which analyses the incoming and outgoing amounts on the client ledger and chronicles the relevant transaction dates by reference to the Phoenix files) that the relevant payments were the proceeds of mortgage advances held by Phoenix in its client account. There can be no doubt that Phoenix held those advances in its client account

on trust for the various lenders and that a payment otherwise than in or towards completion of the transaction in respect of which the advance had been made would be a breach of trust.

18. I must therefore determine in what capacity (whether beneficially or as intermediary) and with what mind (with a clear conscience, or with such knowledge as makes retention unconscionable, or dishonestly) Holdings received this money.
19. As to the first, I do not find the question entirely straightforward. My reading of the facts would be (and my finding is) that Holdings was in fact principally a conduit for payment on to others. But whether that was because the money it received was at the free disposal of Holdings and was dealt with at the untrammelled direction of those who controlled Holdings, or whether it was because Holdings received the money subject to an obligation to redirect it to an identified secondary recipient, is hard to say on the available evidence. Given the difficulty of formulating an enforceable obligation I have concluded that it is unlikely that Holdings received as intermediary and likely that it received beneficially (even if it was anticipated that it would be dealt with in a particular way). The significance of the question relates (a) to the nature of the knowledge required to constitute one of the recognised causes of action and (b) the availability of a tracing remedy.
20. As to the second, it is necessary as a preliminary step to identify the directing mind of Holdings. It seems to me unlikely that Mr Matthews should choose to give full free executive control to a sister who had no beneficial interest in Holdings. It is in my judgment more likely that formal control was vested in Ms Akinyele but that Mr Matthews retained a power of direction. Although I have based this conclusion upon the probabilities, it is in fact supported:-
 - (a) by Mr Matthews' pleaded case (see the fourth substantive paragraph of paragraph 18 of his Defence);
 - (b) by what is said by Ms Akinyele in her disclosure affidavit and in her Defence.

I therefore find that the controlling minds of Holdings were Mr Matthews (as a shadow director) and Ms Akinyele (as director in law).

21. I find that their state of mind at the time of receipt of each of the relevant sums (and at the time of dealing with such as were passed on to secondary recipients) was dishonest. Nothing in the Phoenix documents available to the Society suggests any commercial relationship or any retainer between Phoenix and Holdings which would justify the payment of £4,085,361 by the former to the latter. The documents do not suggest that any of these credits to Holdings' bank account was ever explained by Phoenix: nor do they suggest that Holdings ever enquired. Holdings itself has not provided any disclosure of any such documents. In the circumstances to accept and to retain, and moreover then to deal with, such vast unexplained credits is conduct so contrary to the normal and acceptable standards of honest conduct that it raises a strong inference of dishonesty, a case which calls for an answer.
22. In fact, in the instant case both Mr Matthews and Ms Akinyele have been convicted of offences of dishonesty in connection with these matters.
23. Mr Matthews was charged on an indictment with conspiracy to acquire, use or have criminal property contrary to section 329(1) of the Proceeds of Crime Act 2002 ("POCA"); and with knowingly entering into an arrangement in relation to criminal proceeds contrary to section 328 POCA. It was conceded in the evidence filed pursuant to the freezing order (see paragraph 21 of the affidavit of 7 November 2008) that the allegations underlying the present claim were essentially the same as the criminal allegations. Mr Matthews pleaded guilty to the charges on the first day of the trial at

- Southwark Crown Court. It is not possible for Mr Matthews to deny that he was dishonest in relation to these matters. The only positive case pleaded (relating to receipt of the proceeds of a Nigerian land transaction) is not supported by evidence. Although the transaction is referred to in bare outline in the affidavit filed pursuant to the freezing order, no permission has been given to adduce evidence by affidavit at trial: and the tenor of the evidence is inconsistent with the guilty plea in the criminal proceedings.
24. Ms Akinyele was charged on indictment with acquiring, using or having criminal property contrary to section 329 of POCA: and with the same charge of knowingly entering into an arrangement in relation to criminal proceeds contrary to section 328 POCA. In the same manner, in the instant case her solicitor has also acknowledged in evidence filed on her behalf at an interlocutory stage that this present action and the criminal proceedings relate to the same matters. She pleaded guilty. She based her plea on the assertion that she suspected wrongdoing by others, but did not actually know of it. This led to a Newton hearing. At that hearing she gave evidence that she was suspicious of the £4.085 million paid to Holdings, but that Mr Matthews had told her that the company was doing well. HHJ Beddoe decisively rejected this, saying:-
“I am quite satisfied that Ms Akinyele knew by the 25 October 2007 or [so] very shortly thereafter as makes no practical difference ... that her brother was reconnected to serious financial crime and she was prepared to assist him with it, knowing that she was doing so.”
25. As well as the inference I have drawn as to dishonesty the Society has therefore adduced positive evidence of a dishonest state of mind (under section 11 Civil Evidence Act 1968). To this Holdings has given no answer. It has served no witness statement. It has not attended trial. Its guilty mind has therefore been established.
26. I therefore find and hold:-
- (a) that Holdings dishonestly assisted Phoenix in relation to a breach of trust by Phoenix in its dealings with £4.085 million odd and is liable to account for the same as constructive trustee;
 - (b) that Holdings knowingly received that £4.085 million odd, and is a constructive trustee of and must account for the same; and that the Society can trace in equity into the proceeds of that receipt.
27. I turn to the case against Zikkito. The Society alleges that out of the Phoenix client account there was paid to Zikkito £1,124,826 between 25 October and 7 November 2007. Zikkito’s Defence puts the Society to strict proof of this allegation. It advances no positive case in relation to the receipts.
28. In my judgment the alleged payments are conclusively proved. I find that the monies paid were held on trust by Phoenix and that the payment to Zikkito constituted a breach of trust. I hold that Zikkito’s knowledge or state of corporate mind is determined by the knowledge or state of mind of Mr Matthews and Ms Akinyele. The absence of any commercial or professional relationship and the absence of any explanation to or enquiry by Zikkito means that the knowing receipt and the conscious retention by Zikkito of the monies from Phoenix justifies the inference of a state of corporate mind incompatible with accepted standards of honesty, and raises a case which calls for answer. This inference is reinforced by proof (by reference to the convictions of Mr Matthews and Ms Akindele of the offences indicated) of a dishonest state of mind by Zikkito’s human agents. This evidence is not answered.
29. I therefore find and hold:-

- (a) that Zikkito dishonestly assisted Phoenix in relation to a breach of trust by Phoenix in its dealings with £1.124 million odd and is liable to account for the same as constructive trustee;
 - (b) that Zikkito knowingly received that £1.124 million odd, and is a constructive trustee of and must account for the same; and that the Society can trace in equity into the proceeds of that receipt.
- 30. This brings me to Mr Matthews. The case against him advanced at trial is that he dishonestly assisted Phoenix in its breaches of trust and is personally liable for the £5,210,185 which passed to Holdings and Zikkito in respect of this dishonest assistance. Subject to any issues raised in the Defence of Mr Matthews that must follow from the findings and holdings I have already made in relation to the two previous claims.
- 31. Mr Matthews filed a Defence. It has much in common with the Defences of Holdings and Zikkito. But it raises some specific issues with which I must in fairness deal.
- 32. First, Mr Matthews asserts that he had a partner (a Mr Tkumber) who played an active role in the management of Holdings and of Zikkito (but who has now fled to Nigeria or China). It was Mr Tkumber who informed Mr Matthews that Holdings would be receiving a payment of about £1 million (it received £970,167 on 28 November 2007) in connection with a land sale in Nigeria. It is pleaded that Mr Matthews had no reason to doubt this. No evidence to this effect has been set out in any witness statement. There is no disclosure which supports it. No application was made at trial to adduce evidence to this effect. Such evidence would in any event have been inconsistent with Mr Matthews' guilty plea in the criminal proceedings, which I am satisfied related to the entire Phoenix monies.
- 33. Secondly Mr Matthews admits personal receipt from Holdings of the sum of £40,000 on 5 December 2007. He pleads that this was lawful remuneration for legitimate work. No evidence was led at trial to prove this plea. But in any event I am not concerned with the question whether (as between Holdings and Mr Matthews) there was a contract of employment under which wages were due. On the findings and holdings I have already made, and upon an analysis of the incoming and outgoing funds of Holdings, I am satisfied that the money which funded this payment was derived from a receipt by Holdings of money paid to it by Phoenix in breach of trust, and that Holdings' human agent Mr Matthews was dishonest in enabling the participation of Holdings. On those facts the question is not whether Mr Matthews had a lawful claim to wages as against Holdings. It is whether the money so received by Holdings could lawfully and honestly be used to satisfy any lawful wage claim that Mr Matthews may have had: and plainly it could not. This amounts to a knowing receipt of property in breach of trust (in fact, a dishonest receipt, though that adds nothing).
- 34. Thirdly, Mr Matthews admits giving instructions for Holdings to pay £10,000 to Miss Akinyele on 4 December 2007. He asserts an innocent explanation for the payment. No evidence was led at trial in support of the pleading. The innocent explanation advanced is not consistent with the guilty plea in the criminal proceedings. The plea is not made out: and it does not cause me to revisit any of the conclusions already stated.
- 35. Fourthly, I should record that although Mr Matthews was neither present nor represented at trial, after the conclusion of the trial he wrote directly to the Court of to say that this was because he was in prison and that he really wanted to defend the case: he asked me not to decide it. I have decided to give judgment because the trial is over, because before that trial Mr Matthews had not complied with any order as to the filing

of witness statements (and therefore at most could have cross examined the Society's formal witnesses and argued against the making of inferential findings), and because CPR 39.3 means that the door is not shut.

36. In the light of the foregoing I therefore hold:-
- (a) Mr Mathew dishonestly assisted in the breach of trust by Phoenix and is personally liable to account on the footing of constructive trusteeship for the whole £5.21 million odd paid out by Phoenix to Holdings and Zikkito;
 - (b) Mr Matthew knowingly received the sum of £40,000 which he held as constructive trustee and for which he must account and the Society can trace into the proceeds of that receipt.
37. The Society asked me to go further. Some of those further claims to relief relate to Estates, and are better examined in that context. But some relate to alternative bases for relief in respect of the claims I have already decided.
38. Not content that it should have a direct personal claim in respect of the £5.21 million odd paid by Phoenix to Holdings and Zikkito coupled with a direct proprietary claim in respect of proven actual receipts by Mr Matthews, the Society asked me to grant relief against Mr Matthews in respect of the knowing receipt by Holdings and Zikkito of the £5.21 million. The route to this conclusion was by "piercing the corporate veil" of Holdings and Zikkito: see paragraph 18 of the Re-amended Particulars of Claim. As the ground for doing so the Society relies on Mr Matthews' "knowledge and control" of Holdings and on "the matters aforesaid". The "matters aforesaid" relate only to the various payments made to Holdings and to Zikkito and (as regards £1,590,649) payments on by Holdings and Zikkito to other defendants. It is not said that all of these payments were for the benefit of Mr Matthews in some way.
39. The matters which it is necessary to establish before the Court will pierce the corporate veil were recently considered by Munby J in Ben Hasham v Al Shayif [2009] 1FLR 115. Paragraphs [158] to [185] contain a convenient survey of the principles and of their recent application. They elaborate the fundamental principle enunciated by Lord Keith of Kinkel in Woolfson v Strathclyde Regional Council (1978) SC (HL) 90 at 96 - that piercing the corporate veil is appropriate only when there are special circumstances which indicate that the company is a mere façade concealing the true facts.
40. Of the facts pleaded in support of this allegation, the fact of Mr Matthews' "knowledge and control" of Holdings and of Zikkito is not of itself sufficient. Nor, in my judgment, is the fact that companies of which he had intimate knowledge and control received £5.21 million and paid out £1.59 million to other defendants. I have already held him personally liable as a dishonest assistant in the sum of £5,210,188. I have already held that he is a constructive trustee (on the basis of knowing receipt) in respect of everything that it is proved he received (with the consequent availability of a tracing remedy). I do not see what would be gained by saying that he should be treated as if he was the knowing recipient of everything that Holdings and Zikkito received, for it would not add the total of his liability and it would not enable the Society to trace into any further property. "Piercing the corporate veil" should not become a routine adjunct to any claim brought against a company for dishonest assistance or knowing receipt.
41. Subject to one point (whether Mr Matthews is liable for payments made to Estates) there is on my findings and legal conclusions no need to address the common law claims for conspiracy and for "money had and received" because it was not said that damages could exceed the proceeds of the mortgage fraud.

42. The same claims were raised against Ms Akinyele. She filed a Defence which essentially put the Society to proof of its case. She admits the payments to Holdings and Zikkito totalling £5.21 million odd; and she admits the onward payment to others of £1.59 million odd. The positive case she advances is that all actions (i.e. both receipts and payments) were carried out on the instructions of Mr Mathews, and she asserts that she had no knowledge or control over the actions of Holdings or Zikkito. She admits personal receipt of £10,000 which she pleads was paid to her for onward transmission to her and her brother's family in Nigeria.
43. I have already held that the controlling minds of Holdings and Zikkito were Mr Matthews and Ms Akinyele. That conclusion was reached in knowledge of what Ms Akinyele pleaded. She has not given evidence in support of her Defence. The only evidence she gave was in the context of her conviction; and HHJ Beddoe reached in criminal proceedings a clear conclusion on that evidence that Ms Akinyele knew by 25 October 2007 that Mr Matthews was involved in serious financial crime and was prepared to knowingly to assist him with it.
44. The evidence establishes that Ms Akinyele drew cheques on Zikkito's account to "cash" on 26 October 2007 (£15,000), 30 October 2007 (£7,000), 2 November 2007 (£7,000), 8 November 2007 (£5,000) and 12 November 2007 (£7,000). The Society asked me to treat these as receipts by Ms Akinyele. As well as signing each of the cheques there is no doubt (contrary to the assertion contained in paragraph 6 of the affidavit she swore in November 2009 pursuant to the freezing order) that she personally collected the cash on 26 and 30 October and on 8 and 12 November because the cheques either record the production of her passport or bear her countersignature on encashment. I regard it as probable (given that this is the bank's evident routine, of which Ms Akinyele would have been aware) that she also encashed the cheque on 2 November 2007. These cheques were not identified in the Re-amended Particulars of Claim as being monies which it was alleged had been personally received by Ms Akinyele and formed part of her knowing receipts. I therefore considered whether I could fairly treat them as such. Mr McLaren QC submitted that the pleadings did ask for an account: and that what he had done was to prove at trial some of what would be demonstrated on the taking of the account. I accept this submission.
45. I find and hold:-
- (a) That Ms Akinyele dishonestly assisted Phoenix to deal with its client money in breach of trust by receiving into Holdings and Zikkito's bank account £5.21m odd of client monies and then distributing those monies at the direction of Mr Matthews and that she is personally liable to account for such monies;
 - (b) That Ms Akinyele knowingly received £10,000 for which she must account as constructive trustee and into which the Society can trace;
 - (c) That Ms Akinyele is bound to render an account of all sums which she personally received from the accounts of Holdings and Zikkito after 25 October 2007 and that there should be interim judgment on that account in the sum of £41,000 (into which the Society is entitled to trace).
46. For reasons which I have already given I would decline to "pierce the corporate veil". The Society also mounted a conspiracy claim against Ms Akinyele in connection with payments to Estates: and I will address that claim in that context.

47. I turn to the Azeez Defendants and to the case against Solutions. Solutions was a mortgage broker. It is alleged to be the recipient of some money from Holdings (£35,000 on 6 December 2007). (At trial there was reference to a further unpleaded receipt of £39,923.) But it is not as a recipient of money that it chiefly featured in the Society's case presented at trial. That case centred upon a claim for dishonest assistance.
48. The pleaded case focuses upon payments and upon receipts of client money. Paragraphs 14.1 and 14.2 of the Re-amended Particulars of Claim allege receipt and allege a state of mind upon receipt. Paragraph 14.3 alleges that Solutions had a dishonest state of mind in relation to payments made out of the Phoenix and out of the Southbank client accounts. But it does not identify any conduct by Solutions which constituted "assistance" in relation to those payments (whether by inducement to commit the breach of trust or by enabling the commission of the breach of trust) to which the dishonest state of mind may be relevant. Unlike Holdings and Zikkito, Solutions did not make its own bank account available as a conduit through which to pass the proceeds of fraud (so that receipt of itself constituted assistance). What Solutions is actually supposed to have done with a dishonest state of mind is not spelled out. I do not think I can fairly decide the case against Solutions founded upon "dishonest assistance" where the nature of that assistance is simply not alleged or identified in the pleading.
49. However paragraph 13A of the Re-amended Particulars of Claim goes further. It alleges that Solutions was part of a conspiracy with the other Defendants to use unlawful means (namely fraud) to injure the clients of Phoenix and of Southbank: and damages are sought. Although the point was not raised at trial, I am for present purposes prepared to treat a cause of action in conspiracy as falling within the "rights of recovery" which vested in the Society on the intervention into the relevant firm, because I think it highly desirable that all causes of action which facilitate restoration of the client account (even by means of an award of general damages) should be available to the Society (whether based upon contract, trust, restitution, tort or otherwise), and that none should remain vested solely in the partners of the practice which is the subject of the intervention (or available only to the clients themselves to pursue directly).
50. Solutions filed no Defence, and may therefore be taken to have admitted the allegation of conspiracy to injure by unlawful means (notwithstanding that the unlawful means themselves are not identified). Although the allegation was admitted, the Society led evidence to establish the means. That evidence consists of an analysis of the mortgage applications which generated the advances that were misappropriated. 21 of the 23 applications which led to misappropriated advances were generated by Solutions. It is possible in 20 such cases specifically to link the actual mortgage applications that were generated by Solutions to the particular mortgage advances that were subsequently misappropriated out of the Phoenix account. These linked applications and advances total over £7.15 million. It is not possible to be that specific in relation to the Southbank money. But it is established that in both of the transactions which make up the Southbank misappropriations the conveyancing or payment references are "Fernando", and that this is also the reference used to obtain the advance of £970,167 on the application by Solutions which was credited to the Phoenix client account and paid to Holdings. The identical reference raises an inference (pleaded in the Re-Amended Particulars of Claim and effectively admitted by Solutions) that these transactions are all part of a common fraudulent scheme, an inference which is not countered by any evidence from Solutions.
51. The conspiracy to injure and the unlawful means are thus admitted. There is no specific plea by the Society of causation or of loss and damage in the Re-amended Particulars of

Claim. However, in paragraph 21 the Society alleges (albeit in the context of a claim for equitable or restitutionary relief) that, but for the breaches of trust, payments totalling £6,283,071 would not have been made from the client accounts of Phoenix (£5,210,188) and Southbank (£1,072,883). In my judgment this is legally sufficient: see Lonrho v Al Fayed (No.5) [1993] 1 WLR 1489. I am satisfied that those advising Solutions would have understood that it was being said that but for the conspiracy a sum of £6,283,071 would not have been paid out of the Phoenix and Southbank client account. (I have accepted the figure used in the Society's skeleton argument in identifying the total pleaded sum.) Solutions does not challenge these figures. I have already found that the Phoenix figure is correct. I now find that the Southbank figure is also correct. The Society has therefore established that Solutions was party to a conspiracy to use unlawful means (namely the fraud and/or breach of duty involved in obtaining and then misappropriating advances) with the intention to injure clients of Phoenix and Southbank and caused loss of £6,283,071 which is recoverable as damages.

52. It is admitted that Solutions received £35,000. I find that that receipt was a beneficial receipt (and not as a mere agent or intermediary). Solutions is a company: its knowledge is that of its human agents. Mr Azeez was a director of and shareholder in Solutions. The available documents justify the conclusion that he was one of the two principal actors. His knowledge would be the knowledge of Solutions. His hand is to be found at work in the vast majority of the relevant mortgage applications and I have no doubt that he knew that the £35,000 received by Solutions was the proceeds of mortgage fraud. Thus Solutions received the £35,000 knowingly in breach of trust.
53. The material deployed at trial shows that Holdings made a payment of £39,923 to Solutions on 30 November 2007. I will adopt the same approach to this unpleaded payment as is set out in paragraph 44 above.
54. I therefore find and hold:-
 - (a) that Solutions is liable in damages for conspiracy in the sum of £6,283,071;
 - (b) that Solutions knowingly received and must account as constructive trustee for the sum of £35,000 (in respect of which receipt the Society is entitled to trace);
 - (c) Solutions is bound to render an account of all sums which it received from the accounts of Holdings and Zikkito and that there should be interim judgment on that account in the sum of £39,923 (into which the Society is entitled to trace).
55. The case against Mr Azeez was put at trial as one of dishonest assistance in the payments of £5.21 million odd by Phoenix to Holdings and Zikkito and of £1.072 million odd by Southbank to Estates, of knowing receipt and of damages for conspiracy.
56. It was not in fact alleged that Mr Azeez himself received any money. He filed a Defence. In it he admitted (notwithstanding the absence of any allegation to this effect) that the funds paid into Ms Mungai's account were his. This was a reference to payments totalling £140,067 which had been paid by Holdings on 3 December 2007 and by Zikkito on 22 and 29 January 2008. At the same time as the Defence of Mr Azeez was served, Ms Mungai served her Defence in which she too admitted the receipt of these monies and of a further £79,043 from Zikkito on 8 November 2007. I would read the Defence of Mr Azeez as referring to all of the payments mentioned in the Defence of Ms Mungai, and therefore as acknowledging receipt of £219,110.

57. In relation to these admitted receipts I am wholly satisfied that Mr Azeez' state of knowledge was such that it would be unconscionable for him to retain them.
58. But I do not consider it just to adjudge Mr Azeez liable as a dishonest assistant in relation to the whole of the £5.21 million from Phoenix (let alone the £1.072 million that passed from Southbank to Estates). The case in dishonest assistance is again pleaded by reference to payments and receipts, with no other conduct being alleged to constitute the relevant assistance. It would be unjust to allow the Society to succeed at trial on a case which did not plead a key component viz. "assistance" (even though the Defence of Mr Azeez indicates that he has some appreciation of that case).
59. But once again there is the alternative case in conspiracy. In his Defence Mr Azeez denies being "Victor Strong", denies arranging and submitting false and misleading applications for mortgages, denies participating in organising that mortgage advances be paid to solicitors who were complicit in the fraud, and denies participation in the diversion of the funds so obtained to other conspirators. This displays a remarkable comprehension of a case which was not in fact pleaded against him.
60. No positive case was advanced which might address the quite remarkable coincidence between the mortgage applications submitted by Solutions, the mortgage advances made to Phoenix and Southbank, and the mortgage monies misappropriated (and the inferences to which this gives rise). If the Defence was to succeed Mr Azeez would have to cross examine the Society's witnesses using any foundation laid in his own witness statements or disclosure. But Mr Azeez filed no witness statements, did not give disclosure and did not attend the trial.
61. In my judgment the only proper inference to draw from the primary facts proved by the Society (the mortgage applications, the conveyancing files, the banking documents of Phoenix and Southbank and those disclosed by the other Defendants, the conveyancing and title documents, the documents of public record which establish connections between the defendants, and the criminal convictions of Mr Matthews, Ms Akinyele and Ms Mungai) is that Mr Azeez was a key conspirator.
62. For the reasons given in paragraph 51 above the Society has therefore established that Mr Azeez was party to a conspiracy to use unlawful means (namely fraudulent mortgage applications transactions) with the intention to injure clients of Phoenix and Southbank that caused a loss of £6,283,071, which loss is recoverable as damages.
63. This makes it unnecessary to consider the claim to "pierce the corporate veil" which was yet again raised and placed in the forefront of the Society's submissions.
64. I therefore find and hold:-
- (a) that Mr Azeez is liable in damages for conspiracy in the sum of £6,283,071;
 - (b) that Mr Azeez knowingly received and must account as constructive trustee for the sum of £219,110 (in respect of which receipt the Society is entitled to trace).
65. I now turn to Ms Mungai. It is pleaded (and is established to my satisfaction) that she received £140,067. She filed a Defence in which she effectively admitted receipt of another £79,043. So I find that she received £219,110.
66. In her Defence (which only put in issue a very small part of the Society's case) Ms Mungai said that these payments belonged to Mr Azeez, who had used *her* account to retain *his* money because he did not have an account of his own. She therefore put in issue whether she had received the money beneficially, or only as agent or intermediary or trustee. Whilst I have accepted that the money that went into Ms Mungai's account was money which Mr Azeez effectively "received", it does not follow that Ms Mungai must in turn have received it necessarily as an agent or intermediary or trustee. The

money was put into an account under her sole control, and the starting point is that it is her money. If a husband pays money which belongs to him into his wife's account then there is no presumption that she holds it on resulting trust for him, or that her power of disposal over it is somehow limited. That would need to be established by evidence. Ms Mungai adduced none at trial. In my judgment she received the money beneficially.

67. I am in no doubt that her state of knowledge in relation to those receipts was such that she cannot retain them but must hold them as constructive trustee. On 10 March 2010 she was found guilty of having (between 30 August 2007 and 31 March 2008) conspired with Mr Azeez to acquire, use or have criminal property contrary to section 329 POCA; and also of removing from the jurisdiction (between 1 October 2007 and 31 January 2008) money knowing or suspecting it to constitute criminal property contrary to section 327 POCA. That evidence, tendered under section 11 CEA 1968, as to the state of mind of Ms Mungai between those stated dates was not challenged by any contrary evidence tendered at trial. So I am satisfied that a case of knowing receipt in relation to £219,110 is made out.
68. But the Society also ran a case of dishonest assistance. In the opening of the case this related to the £5.21 million odd extracted from Phoenix: in closing this was enlarged to cover the additional £1.072 million of extracted from Southbank. I have considerable difficulty with this case. Once again the focus of the "dishonest assistance" is the receipts and payments that were made: no other conduct is alleged. The only receipts and payments in which Ms Mungai was proved to be involved are the subject of the "knowing receipt" claim. In relation to them Ms Mungai was a secondary recipient. I do not see how the receipt of £219,110 from Zikkito establishes assistance in a breach of trust that had already occurred when Phoenix transferred the money to Zikkito (let alone how it establishes assistance in a breach of trust by Phoenix in transferring money to Holdings or by Southbank when it transferred money to Estates). I would dismiss a dishonest assistance claim.
69. Once again paragraph 13A of the Re-Amended Particulars of Claim provides the alternative case in conspiracy to injure by unlawful means. The amendment is not addressed in any Defence filed by Ms Mungai: nor has she sought any further information. The allegation is therefore to be taken as admitted. For the reasons given in paragraph 51 I consider that the case is sufficiently pleaded. There is, however, no need to rely on a bare pleading point because Ms Mungai's conviction establishes that she was a conspirator: and she was the human agent through which Solutions acted. She was charged with being a conspirator with her husband and I see no reason why she should not be liable to the same extent as her husband.
70. I therefore find and hold:-
 - (a) that Ms Mungai is liable in damages for conspiracy in the sum of £6,283,071;
 - (b) that Ms Mungai knowingly received and must account as constructive trustee for the sum of £219,110 (in respect of which receipt the Society is entitled to trace).
71. I turn to the Nmah Defendants, and begin with Estates. It is pleaded by the Society, admitted by Estates, and in any event conclusively established on the evidence that Estates was paid £715,383 out of the Southbank client account on the 12 September 2007, and a further £357,500 on the 19 September 2007. Estates was also paid £109,170 by Holdings in three payments on the 22 and 23 November 2007 and 11 December 2007, which monies had their origin in the Phoenix client account. The Society alleges that this constitutes knowing receipt of these sums totalling £1,182,053.
72. Estates has not filed a Defence and may therefore be taken to admit that this is so. In a

Defence filed by Mr Nmah it is alleged that the money actually received from Southbank represented “the loan obtained by way of investment from Mr Horace” which was to be repaid out of the sale of 9 Engel Park. In that Defence it is also alleged that the money actually received from Phoenix via Holdings represented a repayment by Mr Matthews (not Holdings) of a loan given by Mr Nmah (not Estates). Although these defences are not advanced by Estates itself I have nonetheless considered them. They are not demonstrated by any disclosure by Estates and they are not supported in any evidence adduced by Estates. I have decided to disregard them. Thus a claim for knowing receipt of £1,182,053 is made out.

73. In the course of examining disclosure documents of other defendants the Society discovered that Holdings had paid a further £188,144 to Estates on the 19 November 2007. This is not pleaded by amendment. Since the Society has asked for (and Estates does not contest providing) an account, and because I am satisfied on the evidence that the payment was made, this will justify an interim award on the account in that sum.
74. Once again the Society advances a claim for dishonest assistance in breaches of trust by Phoenix and by Southbank in the sum of £6,283,071. Once again the only conduct relied upon is the fact of receipt of payment.
75. Although it does not add anything to overall recovery, in my judgment this is a sufficient plea in relation to the £1,072,883 which passed directly from Southbank to Estates. The willingness to receive and to retain that money assisted the breach of trust by Southbank. But it is an insufficient plea in relation to the money passing through Holdings. The breach of trust had already occurred when Phoenix paid the money to Holdings, and the onward payment to Estates did not assist in that breach of trust. No other “assistance” is alleged. Likewise in relation to the money which Phoenix paid Holdings and which Holdings either kept or paid on to other defendants and which never reached Estates; the payment by Phoenix to Holdings was the breach of trust, and there is no conduct by Estates which is pleaded or particularised as assisting in that breach. So I would dismiss the dishonest assistance claim so far as it relates to monies deriving from Phoenix.
76. But once again there is a sufficiently pleaded claim in conspiracy. Estates has effectively admitted paragraph 13A of the Re-Amended Particulars of Claim without requiring the Society to specify what the conspirators did. I would again give judgment for damages accordingly. The pleaded claim alleges conspiracy amongst the defendants generally. Had the matter been put in issue I would have been satisfied on the evidence of the connections between the Nmah Defendants, the Matthews Defendants and the Azeez Defendants to have found that they were all parties to the same overall mortgage fraud scheme. In particular this is demonstrated by the payments by Holdings to Estates.
77. It is in this context that I can now address the outstanding claims against Mr Matthews and Ms Akinyele. The outstanding question is whether they dishonestly assisted in the breach of trust by Southbank when it paid £1,072,883 to Estates, or are otherwise liable. I do not consider that the dishonest assistance claim is made out (having regard to the way that it is pleaded). It is not alleged that Mr Matthews and Ms Akinyele actually did anything in relation to this breach of trust.
78. But the conspiracy claim is again pleaded. This time it is directly addressed in the Defence of Mr Matthews. He denies knowledge of the Azeez Defendants or of the Nmah Defendants; he denies being party to any conspiracy and denies acting in a way that would injure the Southbank clients. The Society is therefore put to proof of these matters.
79. I have held that there are sufficient connections between the groups of the Defendants

for them to be regarded as a whole. There is a direct connection between Holdings and Estates as regards three payments totalling £109,170 in November and December 2007 (and as will appear there are payments by Zikkito to Mrs Nmah). Furthermore, the indictment to which Mr Matthews pleaded guilty charged him with conspiracy with (amongst others) Mr Azeez and Ms Mungai, and the position adopted in these proceedings was that the criminal proceedings covered the same ground. In my judgment the Society has led sufficient evidence on the matters in issue to establish on the balance of probabilities that Phoenix and Southbank are part of one scheme and of a single conspiracy. Mr Matthews has tendered no evidence that would undermine that conclusion. In my judgment he was party to concerted action directed to obtaining, misappropriating and distributing mortgage advances. Mr Matthews was directly involved in the breaches of trust by Phoenix: but I do not rest my conclusion upon that. The unlawful means upon which the conspirators agreed was the setting up of mortgage transactions with a view to their being abandoned and the proceeds retained (the subsequent breach of trust being the means of distribution). Accordingly the mere fact that Mr Matthews was not involved in the distribution of the Southbank money does not matter. I am satisfied (given his proven involvement) that he was aware of the whole plan and a party to the common design even if he did not participate in every single step in its execution.

80. Ms Akinyele simply denied paragraph 13A of the Re-Amended Particulars of Claim. She thereby put the claim in issue, but advanced no positive case and tendered no evidence on it. For the same reasons I would reach the same conclusion as on Mr Matthews' case.
81. I therefore find and hold:-
 - (a) that Estates is liable in damages for conspiracy in the sum of £6,283,071;
 - (b) that Estates knowingly received and must account as constructive trustee for the sum of £1,182,053 (in respect of which receipt the Society is entitled to trace);
 - (c) that Estates dishonestly assisted in the breach of trust by Southbank and is personally liable to account on the footing of constructive trust for £1,072,883;
 - (d) that each of Mr Matthews and Ms Akinyele is liable (cumulatively to his or her other liabilities) for damages for conspiracy in the sum of £1,072,883.
82. I turn to Mr Nmah. It is alleged that he received £15,000 from Zikkito out of Phoenix money on 29 January 2008. He filed a defence, the terms of which are obscure: but he does not deny receipt of this money.
83. What is noteworthy about this Defence is that it proceeds on the assumption of a complete identity between Estates and Mr Nmah. Where that is the case it is very tempting to say that the corporate veil may be pierced and Mr Nmah held liable for the same sums and on the same bases as Estates. I resist the temptation to decide liability on such a refined pleading point.
84. I have dealt with the "knowing receipt" of £15,000 of Phoenix money. I have accepted that Estates dishonestly assisted Southbank to commit a breach of trust by receiving and retaining £1,072,883. The Society says that Mr Nmah also dishonestly assisted. Estates did not put in a Defence. Mr Nmah did.
85. In that Defence he denies involvement in any illegal mortgages, denies arranging and submitting false or misleading applications and denies organising that mortgage advances be paid to firms who were complicit in the fraud so that the advances could be

diverted to other conspirators. So far as any of these matters is implicit in the Society's pleaded case it is therefore in issue.

86. On the evidence adduced by the Society I find that Mr Nmah was in business with Mr Azeez from August 2006 until December 2007 and that the overwhelming probability is that they together produced the mortgage applications which led to the misappropriation of mortgage money. This would account for the fact that Mr Nmah's company received some of the proceeds of the mortgage frauds generated by applications brokered by Mr Azeez' company: and also for the fact that the same "Fernando" reference occurs in applications which lead to the payment of Phoenix money to Holdings and Southbank money to Estates. It is supported by the frequent connections between the Azeez Defendants and the Nmah Defendants which an analysis of the mortgage applications, conveyancing files and public registers discloses (as set out in the evidence of Mr Dunn). Mr Azeez and Mr Nmah acted in concert. Mr Nmah has provided no disclosure and adduced no evidence to undermine that conclusion.
87. Thus when Estates received £1,072,883 from Southbank derived from mortgage advances under the reference "Fernando" I am in no doubt that Mr Nmah knew that to be the proceeds of mortgage fraud, and that in permitting Estates to receive and retain that money he was assisting Southbank to breach the trust subject to which it held the money.
88. For reasons which I have already given in relation to Estates I do not think that the dishonest assistance claim can be carried any further.
89. For reasons which I have already given in relation to other Defendants as to the sufficiency of the pleaded case, and in the light of my findings in relation to the conspiracy and as to Mr Nmah's involvement I would hold him liable in damages for conspiracy.
90. I therefore find and hold:-
 - (a) That Mr Nmah is liable in damages for conspiracy in the sum of £6,283,071;
 - (b) That Mr Nmah knowingly received £15,000 which he holds as constructive trustee and for which he must account and into which the Society can trace;
 - (c) That Mr Nmah dishonestly assisted Southbank to breach its trust in relation to £1,072,883.
91. This brings me to Mrs Nmah. She is not alleged to be the recipient of any money. Paragraph 14.3 of the Re-Amended Particulars of Claim simply alleges that she had a dishonest state of mind in relation to payments made by or to others because she knew that the payments passing between those third parties were ones in which she "could not honestly participate" or as to which she was suspicious. This "participation" is not identified. The only reference to what she has done is in paragraph 17B of the Re-Amended Particulars of Claim where it is said that the Society intends to rely on the *actus reus* of the crimes of which Mr Matthews, Ms Akindele and Ms Mungai were convicted as establishing Mrs Nmah's dishonesty. For reasons which I have set out above in my judgment this fails to establish the assistance which Mrs Nmah is said to have provided to Phoenix and to Southbank to facilitate their breaches of trust. I therefore reject the case advanced in closing and developed by further written submissions that Mrs Nmah is liable as a dishonest assistant.
92. But there is of course the claim that she was one of those who conspired to injure by unlawful means (namely fraud and breach of duty) the clients of Phoenix and Southbank. She has not pleaded to the conspiracy claim as such. She simply alleges that she is a full-time housewife: but she has provided no disclosure and adduced no

- evidence in support of that allegation.
93. It is of course for the Society to prove its case on all matters in issue. It cannot simply rely on the failure of Mrs Nmah to make out any defence. I am satisfied that the Society has proved sufficient facts to raise a properly founded inference that she was a participant in the scheme.
 94. First, I am satisfied that she received £115,000 on 22 January 2008 from Zikkito deriving from Phoenix money. Whilst I consider that this unpleaded fact cannot be used to found liability on an unpleaded cause of action (“knowing receipt of £115,000”) I do not see any unfairness in permitting it to be used in support of a pleaded conspiracy which Mrs Nmah did not require to be particularised and to rebut her pleaded defence that she was a simple housewife. No legitimate ground for receipt and retention of this payment is disclosed in any material before the court. It suggests that she got the money because she was one of the conspirators.
 95. Second, I am satisfied that she was a director of Estates. The proper inference to draw from appointment as a director is that the appointee discharges the duties (including the duty to know of and to supervise the company’s affairs) attendant upon that role. It is not to be assumed that a director breaks the law, and Mrs Nmah has adduced no evidence that she did so. Furthermore, the Society has demonstrated that she is a secretary or director of three other companies and conducts her own lingerie business under the name “Ladies’ Secret” (in respect of which business a County Court judgment was awarded against her and a charging order made against one of her properties). The only proper inference is that she is an active businesswoman. As an active businesswoman who was a director of Estates the probability is that she knew exactly what was going on. Mrs Nmah pleads in her Defence that she did not participate in the affairs of Estates. But she has led no evidence to that effect which would displace the conclusion I have reached on the evidence at trial.
 96. Third, it is quite plain that she used three aliases and under these various names featured in the background transactions as connected with properties involved in the mortgage fraud. That she should receive part of the proceeds of purported dealings in those properties is more than coincidence.
 97. The conclusion I would draw from this material is that Mrs Nmah was (as much as Mr Nmah) the human agent of Estates and sufficiently involved in the conspiracy in which Estates participated to receive £115,000.
 98. I therefore find and hold that Mrs Nmah is liable in damages for conspiracy in the sum of £6,283,071.
 99. As will be apparent from the length of this judgment the Society alleged multiple causes of action against multiple defendants. I fear that it will have done so in large measure to establish the irrecoverable. It is to be hoped that those having to plead and argue such cases will resist the temptation to advance multiple analyses of the same facts in terms of differing causes of action unless it is anticipated to produce a significantly different outcome in terms of ultimate recovery having regard to the defendant’s means. Hearings become unwieldy, judgments interminable and costs wholly disproportionate unless such a discipline is observed. In the instant case I think (though this is easily said with the benefit of hindsight) that greater thought might have been given to the relationship between dishonest assistance and knowing receipt, as to the real relevance of the attempt to “pierce the corporate veil”, and as to the need to argue “dishonest assistance” having successfully pleaded a much more general conspiracy claim. But that said, the amendment (largely unanswered) which pleaded conspiracy in some respects saved the day.
 100. Where I have made a finding of dishonest assistance and a further finding of knowing

receipt in respect of an equal or smaller sum I should make plain that the two findings are not cumulative. The smaller is included in the larger, but simply provides a different basis for recovery. Likewise (save where otherwise stated) where I have found a defendant liable in equity to account as constructive trustee and have also awarded damages against that defendant, the two are not cumulative: to the extent that tracing or the rendering of a personal account results in a payment then that payment *pro tanto* discharges the liability in damages.

Mr Justice Norris.....7 July 2010