Neutral Citation Number: [2018] EWHC 1781 (Ch)

Case No: HC-2016-001255

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (Chd)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/07/2018

Before :

THE HONOURABLE MR. JUSTICE FANCOURT

- -

Between :

Angel Group Limited (in liquidation) **Angel (London) Limited (in liquidation)** **Angel Wakefield Limited (in liquidation)** **Angel Heights Development Limited (in liquidation)**	**Claimants**
- and -	
Julie Anne Davey	**Defendant**

- -
- -

Mr Robert Anderson QC, Mr Harry Adamson and Mr Andrew Trotter (instructed by **Jones Day**) for the **Claimants**
Mr Geoffrey Kuehne (instructed by **Signature Litigation LLP**) for the **Defendant**

Hearing dates: 1, 2, 10, 11, 14-18 May, 6, 7 June 2018

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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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THE HONOURABLE MR. JUSTICE FANCOURT

Mr Justice Fancourt:

Introduction

1. The Claimant companies, acting by their liquidators, bring these claims against the Defendant, Ms Davey, to recover properties (or their proceeds of sale) in California, Israel and Northern Cyprus ("the Properties") and for compensation for breach of trust or breach of fiduciary duty.

2. Before the Claimant companies went into administration in October 2012 or April 2013, and then liquidation in December 2015, Ms Davey was their only director. She held all but one of the shares in the First Claimant ("AGL"), which was the holding company for the Angel group. The other share was owned at all relevant times by Valeshaw Limited, a dormant company owned by Ms Davey that was eventually dissolved on 7 March 2017. The other claimants are wholly-owned subsidiaries of AGL. Another limited company that features in the story, Angelic Interiors Limited ("Angelic"), is owned by Ms Davey and is not a subsidiary of AGL. It too is in liquidation.

3. Before the administration, at some time between April 2009 and July 2011, Ms Davey purported to transfer to herself personally the beneficial interest in the Properties, which had previously been held on trust by her pursuant to declarations of trust made on 30 April 2007 and 30 April 2008 ("the Trust Deeds") and treated as owned by the Second Claimant ("Angel London").

4. The main issue in this claim is whether such transfer was effective, or whether the Defendant continued to hold the properties on trust for AGL or other Claimant companies at the times when they were subsequently sold by her. There is an initial issue of interpretation of the Trust Deeds: Ms Davey contends that the Properties are only held by her on trust for the Claimant companies to the extent that any of them contributed to their original purchase prices.

5. Ms Davey's case is that the Properties remained owned beneficially by her, save for part of one of the Israeli properties; and in the alternative that AGL's beneficial interest in the Properties was lawfully sold to her, subject in the case of the Californian properties to substantial mortgage debts, the purchase price being funded by a dividend or dividends and otherwise by her director's loan account with AGL. The liquidators of the Claimant companies dispute the validity of all the company resolutions relied upon by Ms Davey. They contend that the documents that are relied upon in support of her case were fabricated and are false records of events that never took place.

6. There are two discrete further issues. First, whether the 2008 Trust Deed declared an effective trust in favour of AGL of £900,000 standing to the credit of identified bank accounts. Second, whether Ms Davey was personally entitled to £550,000 paid by the Secretary of State into her Israeli personal bank account in January 2012 or whether those monies belonged to the Second Claimant.

The procedural history

7. The proceedings have taken an unusual course.

8. The claim form was issued in April 2016 and the Defence filed in September 2016. This pleaded that the Trust Deeds were either effective only to the extent that any of the Claimant companies had contributed to the purchase of the Properties (as to which the Claimants were put to proof) or alternatively void for uncertainty. It averred that Ms Davey had substantially funded the purchase of the Properties herself. It further pleaded that on 11 May 2010 Ms Davey made resolutions of AGL declaring a dividend of £11million and that payment of the dividend be made by transferring the Claimants' purported beneficial interest in the Properties to her, subject to the mortgages. By mistake, the resolutions were not documented at the time but were documented at an unspecified later time by a Mr French, an employee of another company in the Angel group.

9. In March 2017, Ms Davey provided a draft amended defence. This pleaded the following three matters:

   i) The two Israeli properties and the most valuable Californian property had in fact been wholly funded by a company called Angelic House Developments Limited ("Developments"), which was not an AGL subsidiary, and were held by Ms Davey on resulting or constructive trust for Developments, with the result that, so far as those properties were concerned, the Trust Deeds and any purported transfer of the beneficial interest in them were ineffective (para 12A).

   ii) In 2009, mistakenly believing the two Israeli properties to be owned by AGL, Ms Davey caused AGL to declare a dividend of £7.2million, of which £5.2million was to be paid by a transfer of the beneficial interest in those properties, which was recorded in minutes of board and shareholder meetings of AGL dated 30 April 2009 (para 20A).

   iii) The £11million dividend of AGL declared on 11 May 2010 remained unpaid, since AGL had no title to transfer the Properties and had not done so, and so AGL was indebted to Ms Davey in that amount (para 50).

10. By February 2017, the Claimant companies had obtained undertakings or proprietary injunctions in Israel and in this court freezing the proceeds of sale of the Israeli properties and the largest Californian property, Vista del Mar. It was then understood by the Claimants that the other properties had been sold and the proceeds dissipated.

11. With a letter dated 13 April 2017 from her then solicitors, The Khan Partnership LLP ("TKP"), Ms Davey sent copies of certain minutes referred to in paragraph 20A of the Amended Defence. These were minutes of a board meeting of AGL of 30 April 2009 resolving to pay a dividend of £7.2million and minutes of a meeting of the board and the members of AGL of the same date, which noted that Ms Davey held the Israeli properties on trust for AGL and that it was agreed that, in consideration of £5.2million to be deducted from the dividend, the beneficial interest in the Israeli properties was to be transferred to Ms Davey and that the previous declaration of trust was no longer effective or valid.

12. These documents were later explained by TKP in a letter dated 9 June 2017 as having been found by Ms Davey "intermingled with some of her personal files". No other copy of these signed documents exists in the Claimant companies' records, though electronic records show that the text of them was first created in July 2009. TKP's letter further explained that the signed documents so provided and the amendment in paragraph 20A of the Amended Defence were to be relied upon "in order to provide the factual background to the reasons for entering into the May 2010 dividend and resolution".

13. Owing to default by Ms Davey, disclosure and inspection did not take place until November 2017, following an unless order dated 25 October 2017. As a result, exchange of statements of witnesses of fact was due on 8 December 2017. Two hours before the deadline for exchange, TKP notified the Claimants' solicitors that Ms Davey had insufficient funds to prepare witness statements and would not be complying further with the directions of the Court until some funds were released to enable her to do so.

14. The Claimants applied for an unless order relating to exchange of evidence. Ms Davey applied for an order varying the freezing injunction in this court so as to permit her to use some of the proceeds of sale to fund her legal representation. Both applications were heard by His Honour Judge Hodge QC on 21 February 2018. He dismissed the application to vary the injunction and ordered that Ms Davey be debarred from calling factual evidence at trial unless she applied for relief from sanctions. He expressed astonishment that no effort appeared to have been made on behalf of Ms Davey either to prepare her witness statement or to apply for relief against sanctions. He deprecated the considerable resources that had instead been devoted to seeking to release frozen funds. He set a new timetable for exchange of expert evidence.

15. No application was subsequently made for relief against sanctions relating to evidence of witnesses of fact, nor was any such evidence served on behalf of Ms Davey. She failed to serve any expert evidence. TKP came off the record on 8 March 2018. New solicitors, Warren's Law and Advocacy, wrote to the Claimants' solicitors on 20 March 2018 stating that they were instructed but only for the purpose of applying for an adjournment of the trial. Those solicitors did not serve notice of change of representation until 13 April 2018, when they also issued an application for an adjournment of the trial due to start on 1 May 2018 until after September 2018, on grounds that Ms Davey was too unwell to represent herself as a litigant in person. Still no application was made for relief against sanctions.

16. I heard the adjournment application on the first day of trial. I rejected the application as I was satisfied that Ms Davey had the resources available to her to fund representation and because she was not going to be giving evidence at trial, having been debarred from doing so. I did however adjourn the start of the trial for 8 days to allow Ms Davey and her lawyers to prepare to conduct her defence on any realistic basis that was available to her. Ms Davey disclosed that day a (virtually complete) draft expert accountancy report. I therefore granted relief against sanctions in relation to that evidence, on condition that the substance of the final version of the report was served by the end of that week (allowing for any topping and tailing and formal compliance with the Civil Procedure Rules to be done in the following days). No application was made for relief against sanctions in relation to evidence from Ms Davey or any other factual witness.

17. The day before the trial was due to resume, Warren's Law and Advocacy applied to come off the record and a new firm, Signature Litigation LLP indicated that they hoped to be instructed to act for Ms Davey. Those solicitors instructed Mr Geoffrey Kuehne, who appeared before me on her behalf then and throughout the trial.

18. In the event, the trial started properly on Friday, 11 May 2018. I rejected a last-minute application to adjourn the trial for a further four weeks. I put in place a timetable for the trial that gave Mr Kuehne and his instructing solicitors a reasonable opportunity (so far as consistent with the need to progress the trial) to prepare for each witness to be called by the Claimants and then to prepare closing submissions. Still no application was made for relief against sanctions in relation to evidence of fact to be called by Ms Davey. Moreover, no attempt was made by Ms Davey to serve her expert accountancy evidence, as I had permitted her to do. Accordingly, at trial, she was debarred from calling any evidence to support her defence.

19. The inability to call evidence of fact or opinion has, inevitably, placed the Defendant at a disadvantage, particularly in relation to issues about the effect (if any) of the disputed documents dated 30 April 2009 and 4 and 11 May 2010 on which the Amended Defence relies and the allegations about resolutions having in fact been made by AGL on 30 April 2009 and on 4 and 11 May 2010 that were later documented.

20. At trial, Ms Davey's case significantly changed from her pleaded case. In the first instance, she abandoned her argument that the Trust Deeds were void for uncertainty. She also abandoned entirely the factual case that Developments had funded the purchase of the Israeli properties (introduced at paragraph 12A of the Amended Defence). The suggestion made in TKP's letter that the alleged resolutions of AGL of 30 April 2009 were relied on only as background was abandoned, and instead these alleged resolutions (para 20A of the Amended Defence) became a principal part of Ms Davey's case, with the consequence (if correct) that a dividend of £7.2million was declared on 30 April 2009 and the beneficial interest in the Israeli properties transferred when the document of that date was signed by Ms Davey in 2009, not in 2010 or 2011 as previously pleaded. Finally, Ms Davey has abandoned her pleaded case that AGL owes her £11million.

21. As a result of the changes of position at trial and other issues properly conceded during it, the parties agree that the following principal issues remain for my decision:

    i) The true meaning and effect of the Trust Deeds executed on 30 April 2007 and 30 April 2008 as regards the Properties;

    ii) The true meaning and effect of the Trust Deed executed on 30 April 2008 as regards the £900,000 in two bank accounts;

    iii) Whether AGL made resolutions in April 2009 or in May 2010 that had the legal effect of transferring the Properties to Ms Davey or whether the signed documents dated 30 April 2009, 4 May 2010 and 11 May 2010 are false records dishonestly produced and backdated by Ms Davey or on her behalf;

    iv) Whether AGL made any effective company resolution regarding the Properties in June 2011 and if so whether the alleged transfer of the Properties at that time was a breach of fiduciary duty by Ms Davey;

v) The date on which the Properties should be valued for the purpose of awarding the Claimant companies compensation for breach of trust or breach of fiduciary duty, and the values of the Properties on that date;

vi) Whether Ms Davey was entitled to the £550,000 paid on behalf of the Secretary of State in January 2012.

22. Before addressing the first of those issues, it is necessary to establish the factual background against which the Trust Deeds were executed.

Factual background

23. The Angel group of companies, of which AGL is the holding company, was in the business of property development and commercial and residential lettings: it had approximately 350 properties in England, Wales and Scotland, including 19 commercial properties and 3 hotels. By 2009, its business was substantially dependent on three contracts with the UK Borders Agency to provide accommodation in the North East, Yorkshire, Humberside and Glasgow areas for asylum seekers.

24. As a result of the ownership of AGL's shares by Ms Davey, in practice all the Claimant companies conducted their businesses according to her will. Her business manager – called on occasions her finance manager – was a Mr Jack French. He reported solely to Ms Davey and had charge of most of the group's employees. A Mr William Cheung was the company secretary of the Claimants and an in-house accountant for the group. Ms Davey and the Angel group also relied on professional advice from an accountant, Mervyn Clarke, who was a director of the group's auditors until 2009. From 14 July 2009, a company called HLB Vantis Audit plc took over as auditors from Mr Clarke's firm. The accountants who worked on the group's affairs there were a Mr Baldwin and a Mr Warren. Vantis went into administration in July 2010 and emerged as McBrides Accountants LLP. It became the Angel group's accountants and auditors from August 2010 and acted for Ms Davey and the group thereafter until the Claimants went into administration in October 2012.

25. The Angel group's business was funded by a £50million revolving credit facility from Bank of Scotland dated 14 October 2004, secured by fixed and floating charges over all property and future property of the group. The debt was to be repaid on 30 September 2009 unless previously agreed otherwise in writing.

26. Between July and September 2004, the Defendant purchased in her name plot #39 Galet Tchelet, Herzliya Pituach in Israel and 43 plots of undeveloped land in the Turkish Republic of Northern Cyprus. Plot #39 was funded by Ms Davey herself as to US$2,739,985 of the purchase price and by Angel London as to the remaining US$115,000. Mr Luke Steadman FCA, who was called by the Claimants to give expert forensic accountancy evidence, agreed that there was nothing to show that Ms Davey had not herself funded the purchase of Plot #39 to that extent.

27. As to the Cypriot plots, these were purchased between September 2004 and March 2005, apparently by Ms Davey and Ron Ben Shahar. Mr Steadman accepted that there was no evidence prior to the year end 2007 accounts of Angel London to link ownership of those properties with the Claimants. The only document to which the Claimants have been able to point that may suggest that the Angel group owned them before 30 April

2007 is a bookkeeping document prepared by McBrides, used for the purpose of preparing the 2008 accounts. This identifies the costs and date of purchase of the Israeli properties, between 2 September 2004 and 16 March 2005, but this is under a heading "Angel Group Limited Angel Cyprus 30.4.07 Y/E 30th April 2007". McBrides, and as they previously were, Vantis, did not work for the Claimant companies until July 2009. This document, prepared after that time, is also consistent with the Israeli properties acquired on those dates only being treated as assets of AGL in the 2007 year end accounts. In my judgment, it does not show (and no other document or evidence shows) that, prior to 30 April 2007, the Cypriot properties were owned or treated as owned by a Claimant company.

28. Prior to 30 April 2007, several Californian properties were purchased by Ms Davey. These were 2702 Piantino Circle, 2779 Matera Lane, 2775 Matera Lane and 2642 Matera Lane, all in San Diego. Mr Steadman accepted that, on the documentary evidence available, the completion monies were derived from funds owned or borrowed by Ms Davey and the proceeds of sale of another property in Eads Avenue, San Diego that had nothing to do with the Claimant companies. The purchases were completed in the name of Ms Davey.

29. Plot #39 in Israel and the Cypriot properties are shown as assets in the accounts of Angel London (and in the consolidated group accounts) for the year ended 30 April 2007. None of the Californian properties purchased before that date is shown as an asset of the Claimant companies in the year end 2007 accounts.

30. On 29 June 2007, Ms Davey purchased Vista del Mar in La Jolla, near San Diego for US$14,030,000. The purchase price was funded as to $8,460,000 by Ms Davey's personal secured borrowing and as to the remainder of the purchase price by funds owned by her. Mr Steadman agreed that there was no evidence that any of the Claimant companies' funds were used to purchase Vista del Mar.

31. On about 5 September 2007, Plot #37 Galet Tchelet, Herzliya Pituach was purchased by Ms Davey. This time, the purchase monies were provided entirely by Angelic Interiors, though the purchase was completed in Ms Davey's name.

32. In the accounts of Angel London for the year ended 30 April 2008, all the Californian properties, the Israeli properties and the Cypriot properties are treated as its assets. The mortgage debts secured on the Californian properties are treated as liabilities of Angel London and the aggregate of the deposits and purchase monies (other than the borrowed sums) are treated as a liability owed by Angel London to Ms Davey. The same treatment is accorded to Plot #39, but Mr Steadman has not been able to identify in Angel London's accounts any credit item relating to a liability to Angelic Interiors in respect of the purchase price of Plot #37. The same position obtains in relation to the accounting treatment of the Cyprus properties in that year.

The Trust Deeds

33. On 30 April 2007, Ms Davey executed a declaration of trust, signing it as a deed in the presence of Mr Clarke. The deed reads as follows:

> "**DECLARATION OF TRUST**

> Re: Various Properties on the attached schedule: ["The properties"]
>
> I JULIE ANNE DAVEY, Known as JULIA DAVEY, of 47 Coldhabour, London, E14 9NS HEREBY DECLARE that "the properties" are and have at all times during the period they have been held by me and /or registered in my name, at all times been held by me in trust for ANGEL GROUP LTD or various of its subsidiaries ["the beneficiaries"] who have funded the acquisition of "the properties".
>
> I HEREBY UNDERTAKE to transfer or otherwise deal with "the properties" in such manner as "the beneficiaries" may direct and to account to "the beneficiaries" for all monies in respect of "the properties".
>
> In witness whereof I have hereunto executed and delivered this Declaration of Trust as a deed, this 30th day of April 2007."

On the second page of the document is the attached schedule, headed "PROPERTIES HELD IN TRUST AS AT 30 APRIL 2007". The properties there identified are the following:

> "46 Plots of land in Turkish Republic of Northern Cyprus [T.R.N.C]
>
> Participation in USA General Partnership Re: Fort Myers and Las Vegas
>
> Plot #39 Plot of land, Herzliya, Pituach, Israel".

34. Ms Davey's case is that this declaration creates a trust of the scheduled properties only to the extent that AGL or its subsidiaries funded the acquisition of the properties on the attached schedule. So far as the Cypriot properties and Plot #39 are concerned, therefore, the trust would only take effect as to part of the beneficial interest in Plot #39 represented by Angel London's contribution to its purchase price of $115,000 and not in relation to the Cypriot properties. This is because, in the light of the background facts identified above, neither AGL nor any of its subsidiaries funded the acquisition of the Cypriot properties and Ms Davey herself funded the considerable majority of the purchase cost of Plot #39. The treatment of these properties subsequently in the 2007 accounts of Angel London is not part of the factual background against which the Trust Deed must be interpreted. Rather, the accounting treatment appears to me to follow as a consequence of the declaration of trust. Despite the language of the Trust Deed, there is no evidence to suggest that any of these properties were or were treated as assets of Angel London or of AGL before 30 April 2007.

35. Mr Kuehne submits that the words "who have funded the acquisition of 'the properties'" identify which if any of AGL and its various subsidiaries is a beneficiary. If one or more companies contributed, they can both be beneficiaries. He submits that it should therefore follow that the extent of a beneficiary's interest should be in proportion to its contribution. So if Ms Davey contributed 9/10ths of the purchase price

of a given property and Angel London contributed 1/10th, the Trust Deed takes effect only in relation to the 1/10th share.

36. The Claimants submit that the words "who have funded the acquisition of 'the properties'" are no more than descriptive of the position of AGL or various of its subsidiaries, and that there are no words that signify that the trust is to take effect only "to the extent that" any such company funded an acquisition. The Claimants seek to pray in aid of their interpretation the way in which the properties were subsequently treated, both in the accounts and by Ms Davey herself in her later dealings with them, but of course these matters are not admissible as an aid to establishing the objective meaning of the words used in the Trust Deed. I reject the argument that the accounting treatment of the Properties in the schedule forms part of the factual matrix against which the Trust Deed must be interpreted. In my judgment, there was no such accounting treatment of the properties before the date of the Trust Deed. The Claimants emphasise that the Trust Deed is clearly unprofessionally drafted and not well drafted, and that therefore the presumption against the use of superfluous language, which in professional documents has a real part to play in interpreting them, ought not to apply here to determine their meaning. The Claimants submit that the Trust Deed should be interpreted as a declaration of trust of the whole of the beneficial interest in the properties in the schedule in favour of AGL, or alternatively in favour of AGL or any subsidiary that contributed to the purchase price.

37. In my judgment, the references to the subsidiaries of AGL and to the funding of the acquisition of the properties by the beneficiaries cannot simply be ignored in the way that the Claimants' primary case requires. If Ms Davey intended to declare a trust of the properties in favour of AGL, nothing could have been simpler to draft. In my judgment, the natural interpretation of these words is that the trust takes effect in favour of AGL or, where a subsidiary of AGL has funded (in whole or in part) the purchase price, in favour of that subsidiary. The words were doubtless included because Ms Davey was well aware that Angel London, a subsidiary of AGL, had contributed to the purchase price of Plot #39. In those circumstances, it makes obvious sense that the trust should operate in favour of that subsidiary rather than the holding company, AGL. On the other hand, where a property was funded entirely by Ms Davey, the trust would operate in favour of AGL and not any of its subsidiaries.

38. Ms Davey's argument that the trust only takes effect to the extent that AGL or a subsidiary contributed cannot be right in the view of the terms of the second paragraph of the Trust Deed. Ms Davey there undertakes to transfer or deal with each of the properties in such manner as the beneficiaries may direct. The beneficiaries are AGL or its contributing subsidiary, not Ms Davey. Further, Ms Davey undertakes to account to the beneficiaries for <u>all</u> monies in respect of properties. That would make no sense at all if Ms Davey were to retain the majority beneficial interest in the properties. Nor, indeed, would there be any purpose in including the Cypriot properties in the schedule. Mr Kuehne submitted that the undertaking to account for all monies could be restricted by interpreting it as applying only in the case where the property was held wholly on trust for a beneficiary, and that the undertaking to deal with the properties was no more than a provision reciting the well-known right of a beneficiary as a matter of law in such circumstances. I have no hesitation in rejecting those submissions. There is no warrant for restrictively interpreting the second paragraph of the Trust Deed in that way.

39. Accordingly, in my judgment, the 2007 Trust Deed operated so that the Cypriot properties were held on trust for AGL and Plot #39 was held on trust for Angel London. Ms Davey retained no beneficial interest in those properties as a result of executing the Trust Deed.

40. On 30 April 2008, Ms Davey executed and signed as a deed a further declaration of trust. This too was apparently witnessed by Mr Clarke. It is evident that the same template was used to produce the 2008 Trust Deed as was used for the 2007 Trust Deed. Save that the date of the 2008 Trust Deed is different and that it was evidently signed and witnessed on a separate occasion, the content of the operative part of the declaration of trust is identical to that of the 2007 Trust Deed. The difference comes in the attached schedule.

41. The schedule attached to the 2008 Trust Deed is in the following terms:

> **"PROPERTIES HELD IN TRUST AS AT 30 APRIL 2008"**
>
> 7310 Vista Del Mar, San Diego, California
>
> 2775 Matera Lane, San Diego, California
>
> 2642 Matera Lane, San Diego, California
>
> 2382 Bahia Drive, San Diego, California
>
> 2779 Matera Lane, San Diego, California
>
> 2702 Piantano Circle, San Diego, California
>
> 46 Plots of land in Turkish Republic of Northern Cyprus [T.R.N.C]
>
> Plot #39 Plot of land, Herzliya, Pituch, Israel
>
> Plot #37 Plot of land Herzliya, Pituach, Israel
>
> Apartment C307, Angel Plaza, Krakow, Poland
>
> Koolanoo Project [Part].
>
> Participation in USA General Partnership re: Fort Myers and Las Vegas

BANK ACCOUNTS

Coutts Bank Deposit £500,000.00

Abbey Bank Deposit £400,000.00"

42. By 30 April 2008, at which time the 2008 Trust Deed has to be interpreted, Ms Davey had purchased in her own name all the Californian properties and Plot #37 in Israel, in addition to the real properties that were subject to the 2007 Trust Deed. Plot #37 had been wholly funded by Angelic Interiors. In addition, the 2007 year end accounts of Angel London and AGL (among other companies) had been published, which as Mr Steadman has explained were consistent only with treating Plot #39 and the Cypriot properties as assets of Angel London. For reasons that I have already given, there is no evidence to suggest that Plot #39 and the Californian properties were treated as assets of AGL or any of its subsidiaries before the 2008 Trust Deed was executed.

43. Plot #39 and the Cypriot properties already being held on trust for Angel London and AGL respectively by virtue of the 2007 Trust Deed, Ms Davey could not declare a new trust of the beneficial interest in those properties on 30 April 2008. However, she could and did declare a trust of the Californian properties and Plot #37. In accordance with the interpretation of the 2007 Trust Deed explained above, the 2008 Trust Deed had effect so that each of these Californian properties was held on trust for AGL. Plot #37 having been entirely funded by Angelic Interiors, which is not a subsidiary of AGL, that property too became held on trust for AGL. It follows that Ms Davey no longer had any beneficial interest in the Californian properties or Plot #37 with effect from 30 April 2008.

44. The remaining issue as a matter of interpretation of the 2008 Trust Deed is whether the two identified bank accounts, containing £900,000 were also held on trust for AGL. The declaration of trust is only of "the properties", which are the various properties on the attached schedule. The schedule is the second page of the declaration of trust. It contains, among other properties, the identity of the two bank accounts. Accordingly, the Claimants argue that the bank accounts too are the subject of the trust. A bank account may properly be described as property, they say, and the purpose of including the bank accounts on the schedule was to make them subject to the same trust.

45. Ms Davey submits that the schedule clearly distinguishes between, on the one hand, "properties held in trust as at 30 April 2008" and "bank accounts". Each is clearly a separate sub heading in the schedule. The "properties" referred to on the first page of the 2008 Trust Deed are therefore to be understood as the properties so described falling under the first heading on the schedule. Ms Davey submits that is not an ordinary use of language to describe bank accounts as "properties", nor are bank accounts aptly described as "held by me and /or registered in my name", nor does it make sense to describe the beneficiaries as having funded the acquisition of bank accounts.

46. I asked counsel whether the original document signed on 30 April 2008 provided any indication of whether the second page was a separate document that had been attached to the declaration of trust or whether both pages were produced as a single document. No one was able to cast any light on the answer to that question. It appears to me that

the two pages of each of the Trust Deeds are likely to have been produced as a single document. That is because the font used is consistent between the two pages and the layout used is identical for both Trust Deeds, even though the content of the second page of the 2008 Trust Deed is more extensive than the equivalent 2007 page. In other words, page two of each document appears to be a bespoke schedule for the Trust Deed and not a separate document that has been attached to a declaration of trust. In any event Ms Davey was not able to advance any reason why a separate document, listing properties to be held in trust as at 30 April 2008 and also listing two bank accounts would have been used in the way that it was if the bank accounts were not also subject to the declaration of trust. The properties in the first part of the schedule are not restricted to real properties: they include rights of participation in a project and a general partnership. That being so, there is no obvious repugnancy in using the words "various properties" to include money in a deposit account. It may not make sense to talk of the acquisition of bank accounts having been funded by subsidiaries, but in many cases those words are inapplicable to the real properties on the schedule too. That being so, in my judgment the identified bank accounts are subject to the declaration of trust and are to be held from 30 April 2008 by Ms Davey on trust for a AGL.

The circumstances surrounding the April 2009 and May 2010 company documents

47. In the circumstances that I have just described, the Properties were held on trust for AGL (or in the case of Plot #39, Angel London) with effect from 30 April 2007 and 30 April 2008. I find that as a consequence of those Trust Deeds, the Properties were treated as assets of Angel London in its accounts and the mortgage debts in relation to the Californian properties were treated as liabilities of Angel London. In its accounts, Angel London was treated as being indebted to Ms Davey in the amount of the net purchase price that she had contributed to the purchase of the Properties. Thus, the accountancy treatment was as if Angel London had borrowed the net purchase price from Ms Davey then itself acquired the Properties. That was not in fact the reality, for the reasons that I have given. Why it is that Ms Davey declared trusts of the Properties that she had bought with her own money is unclear, in the absence of any evidence from or on behalf of Ms Davey. Later documents imply that this was done on the basis of accountancy advice from Mr Clarke. At all events, the documents clearly show that Ms Davey recognised that the Properties were beneficially owned by Angel London.

48. By June 2009, it is evident that Ms Davey was having second thoughts about this. On 25 June 2009, Mr Perry Kurash, a consultant to the Angel Group sent an email to Ms Davey in the following terms:

> "Julia
>
> You might like to send something like this….
>
> Dear
>
> As discussed, as you know the assets in Poland, Israel and the United States are held in my own name. I was requested by my accountant to sign a trust deed where these assets are held in trust for the UK companies. I am not sure what the benefit is to me in

> doing this and given that I have no personal liability with the Banks in the UK, I want to make sure that the Banks cannot get access to these assets. I own to UK companies 100 percent and the simple thing would be to unwide [sic] this trust. Can I do this? If so are there any potential issues. Can you please send me a copy of the trust deed I signed?
>
> Many thanks"

49. Mr Kurash was clearly suggesting that an email along these lines, reflecting Ms Davey's concerns and wishes, should be sent to a professional advisor, either Mr Clarke or another consultant, or lawyers.

50. Minutes of a board meeting and separate minutes of a meeting of the board and members of AGL, signed by Ms Davey, which were disclosed by her in circumstances described in paragraph 12 above, state that the meetings in question took place on 30 April 2009, nearly two months before the date of Mr Kurash's email to Ms Davey. Both documents are headed with the name of AGL. The first document is further headed "Minutes of a meeting of the board of directors held on Thursday 30 April 2009" and reads as follows:

> "It was noted that the profits for the year ended 30 April 2009 were estimated to be £3 million before taxation. It was further reported that the estimated CFADS figure for the year 30 April 2009 in accordance with the formula required by the bank [Bank of Scotland] was £7,210,000.
>
> The companies [*sic*] distributable reserves at the end of the previous financial year were noted as £11,008,831.
>
> The board carefully considered the companies [*sic*] over all cash flow and financial position in the light of the information currently before them.
>
> It was accordingly resolved that a dividend of £7,200,000 [Seven Million Two Hundred Thousand Pounds] be payable to the Shareholder Ms Julia Davey as of today's date.
>
> The meeting was concluded."

The document is apparently signed by Ms Davey as "Chairman & Director:"

51. The second document is headed "Minutes of a meeting of the board of Directors and Members held 30 April 2009". It reads:

> "Ms Julia Davey duly declared her interest in the matters to be considered at the meeting.
>
> It was noted that certain properties listed herein had originally been purchased in the name of Ms Julia Davey and were previously held by her in trust for the company. Being:

> 37 Galet Tchelet
>
> 39 Galet Tchelet
>
> It was noted that it was considered to be inappropriate to the group strategy for these properties to be retained by the company, given, amongst other factors the unstable market conditions in Israel.
>
> It was agreed that Ms Davey have the two properties transferred to her beneficial title with immediate effect from today for a total consideration of £5,250,000 [Five Million Two Hundred and Fifty Thousand Pound], this consideration to be deducted from the dividend voted earlier today to Ms Davey [in the sum of £7,200,000]
>
> It was therefore further agreed that as of 30th April 2009, the properties at 37 & 39 Galet Tchelet were held beneficially by Julia Davey and that the previous declaration of trust was no longer effective or valid.
>
> The meeting was duly closed".

The document is apparently signed by Ms Davey as Chairman.

52. A further disclosed document purports to be minutes of a meeting of shareholders of AGL held on 25 June 2009, the same date as Mr Kurash's email. It reads:

> "The sole shareholder Ms Julia Davey was present and duly confirmed that notice was to be deemed as properly received and had indeed been duly received.
>
> The directors *[sic]* minutes of 30th April 2009 were considered in the light of the management accounts to 30th April 2009.
>
> The shareholders duly ratified the directors decision and a dividend payable at 30th April 2009 in the sum of £7,200,000 [Seven Million Two Hundred Thousand Pounds] to Ms Julia Davey was confirmed and duly resolved as payable a 30th April 2009."

The document is apparently signed by Ms Davey as chairman.

53. The evidence of Mr Nicholas Guy Edwards, a joint liquidator of the Claimants companies, was that no signed copy of any of these 2009 company documents was able to be located anywhere on the Angel Group server and that it is clear from the metadata of unsigned versions these documents that they were not created before 17 July 2009. Ms Davey now accepts that these documents were not created before July 2009. Ms Davey has neither pleaded nor given her lawyers instructions about the date on which the versions disclosed by her were signed. Her original pleaded case did not place any reliance on those documents, other than as part of the background to what were asserted

to be effective resolutions of AGL declaring a dividend and transferring the beneficial interest in the Properties in May 2010.

54. On 14 July 2009, Vantis wrote to Ms Davey offering terms on which to become the auditors of the Angel Group. Those terms were accepted by countersignature on Vantis's letter on 7 August 2009. Meanwhile, on 21 July 2009, Mr Clarke sent Ms Davey and Mr French notes relating to the Angel Group's 2009 accounts, the work in progress and the Israeli properties. The first was principally concerned with sorting out financial details and journal entries. It includes the line: "As you know, the two properties 37 & 39 in Israel have been transferred back to Julia at £5,250,000". The second note, in an email, reads (so far as material) as follows:

> "Dear Julia & Jack: As dioscussed with Jack topday [*sic*], I feel Julia should approve these instructions [given the sensitive nature of the matters] before they go to William Cheung: Subject to this approval, William needs to make entries as follows: -
>
> ….
>
> 2] Angel Group:
>
> a] Debit P & L Reserves £7,200,000 Credit Julia Davey…Being dividend at 30th April 2009.
>
> b] Debit Julia Davey £5,250,000 Credit Israel [total] WIP Account…. being transfer back to Julia of 37 & 39 Galet Tchelet…."

It seems clear from these notes that Mr Clarke was proposing (subject to Ms Davey's express instructions) the retrospective recording of a dividend from AGL and a debit to Ms Davey's director's loan account reflecting a transfer to her of the Israeli properties. This was in connection with journal entries for the purposes of the Angel Group accounts, but Ms Davey relies upon the line in the first note as supporting her case that the Israeli properties had previously been transferred to her at a price of £5,250,000.

55. The next document in time is an email from Mr Clarke to Mr Cheung, copied to Mr French and Ms Davey, dated 2 September 2009. In it Mr Clarke informs Mr Cheung that Ms Davey had agreed various journal entries for the accounts, as set out in that email. They do not include any journal entries relating to a dividend or a transfer of the Israeli properties. By a further email to Mr French and Ms Davey of the same date, Mr Clarke states:

> "As requested, and agreed… I have NOT yet given William the journal entries regarding the dividends [on either Group or Angelic] & The Galet Tchelet properties… confirm when you want this notified please Regards Mervin".

In correspondence, Ms Davey asserted that the advice received from Mr Clarke "was obtained as part of the ongoing discussions with various numerous advisors at the time

with respect to a wider tax planning strategy". There is no later document confirming Ms Davey's wish that Mr Cheung be notified of those proposed journal entries.

56. There is then a gap in the documents until 25 January 2010, when Mr Baldwin of Vantis sends Mr French (copied to Mr Warren) a summary of the various issues surrounding the properties in Israel and the sorting out of how they should be transferred to Ms Davey personally. In an attached memorandum, Mr Baldwin set out two alternative schemes for extracting the Israeli properties from Angel London: a "loan route", acknowledging that Ms Davey had always been the beneficial owner of the properties and therefore is indebted to Angel London in relation to the purchase price, and an "acquisition now route", that accepted the accounting treatment of the properties and Trust Deeds and involved Ms Davey acquiring the Israeli properties from Angel London at a price, funded by extracting cash from the Angel Group or by declaring a dividend in specie. The note then went on to analyse the tax consequences of either route. In the covering email, Mr Baldwin advises that it would be best to involve lawyers and execute formal legal documents rectifying the position. He advises that Ms Davey needs to understand the tax consequences of both options before going ahead.

57. The reply from Mr French on 26 January 2010 was that "at the moment we do not want to do anything until the tax and immigration position is settled for Julia personally". What that referred to was Ms Davey's proposal to give up her UK residency and become resident in Israel. It was envisaged as being likely to provide tax advantages for Ms Davey, particularly in regard to any substantial dividend to be declared by the Angel Group in her favour. As later confirmed by Mr Baldwin, such dividends would not be liable to UK income tax if Ms Davey was non-resident, and Israeli residency (if confirmed) would be likely to carry with it a tax holiday. Ms Davey therefore needed confirmation that the UK tax authorities accepted that she had ceased to be UK resident and that the Israeli tax authorities confirmed her Israeli residency. In due course, confirmation of Israeli residency was obtained on 12 July 2010 and confirmation from the UK tax authorities came on 1 October 2010.

58. Clearly, May 2010 was before either of those important events had happened. It appears that, for obvious reasons, Ms Davey was waiting for them to happen before taking any steps to extract the Israeli properties. After the first event had happened on 12 July 2010, Mr Baldwin wrote to Mr French emphasising that various aspects of Ms Davey's tax and financial affairs needed to be addressed, including extracting an income from AGL via dividends rather than salary (in view of the tax exemptions in both the UK and Israel for dividends income) and sorting out the ownership of the Israeli properties, possibly by the payment of substantial dividends to Ms Davey. However, if the May 2010 company documents are genuine these events had already happened. It is necessary at this stage to summarise the contents of the May 2010 documents.

59. There are two documents dated 4 May 2010 which purport to be board resolutions of Angel Heights and of Angel Wakefield. The Angel Heights resolution resolves to pay a dividend of £4,470,435 (being the whole of that company's distributable reserves) to AGL by way of dividend. The Angel Wakefield resolution resolves to pay a dividend of £3,527,695 (being the whole of that company's distributable reserves) to AGL by way of dividend. The documents are apparently signed by Ms Davey on behalf of Angel Heights and Angel Wakefield.

60. A further AGL document purports to record a resolution that various properties, which were subject to declarations of trust between AGL and Ms Davey dated 30 April 2007 and 3 April 2008, be formally transferred back to Ms Davey at specified cost figures. The properties are described as Angel America properties, with a transfer figure of £9,224,497; Angel Israel properties, with a transfer figure of £6,972,290, and Angel Cyprus properties with a transfer value of £565,818. The document further states that AGL declares that a transfer is both lawful and will not affect its solvency, and that Ms Davey agrees to assume responsibility for any ongoing mortgages on the transfer properties. The document is signed by Ms Davey on behalf of AGL and dated 11 May 2010. As will be seen, these transfer figures, which include debits relating to the financial year ended 30 April 2010, were not finalised by the Angel Group accountants until 9 June 2011.

61. There are then four further documents all dated 11 May 2010: minutes of a board meeting of AGL, at which the accounts for the year ended 30 April 2010 were tabled, resolving to propose a final dividend of £11,000,000; notice of a general meeting of the company on that day to consider the directors' recommendation for a dividend of £11,000,000; a signed consent to short notice for the holding of a general meeting on 12 May 2010; and minutes of a general meeting held on 11 May 2010 at which it was resolved to approve the final dividend set out in the notice of general meeting. The documents are all dated 11 May 2010 and signed by Ms Davey.

62. In so far as the documents record a proposal to declare a dividend of £11,000,000 (out of available reserves of £13,000,000) and to transfer the Angel Israel properties, they are clearly inconsistent with the 2009 company documents that purport to declare a dividend of £7,200,000 out of distributable reserves of just over £11,000,000 and the transfer of the Israeli properties for consideration of £5,250,000 with effect from 30 April 2009. Subsequent documentation establishes (and Ms Davey now accepts) that the suite of company documents dated 4 and 11 May 2010 was not in fact created until June 2011.

63. Following the confirmation of change of residency on 1 October 2010, Ms Davey's Israeli tax advisor asked Mr Baldwin whether, if dividends were distributed in the tax year 2009-2010, there would be tax to pay in the UK. Mr Baldwin replied, on 4 October, that in order to be doubly safe it was better to wait until the following tax year (by which was meant 2010-2011) before actually declaring or paying any dividends, and that he would be liaising with Ms Davey and Mr French in relation to extraction of profits from the Angel Companies.

Ms Davey's case on the April 2009 and May 2010 transactions

64. Ms Davey's case is that:

i) The 2009 company documents correctly record resolutions that were actually passed on 30 April 2009 and that the minutes of the meeting of the board of directors and members of AGL on 30 April 2009, signed by Ms Davey on behalf of AGL sometime after 17 July 2009, is the necessary writing signed on behalf of AGL to effect a transfer of the beneficial interest in the Israeli properties (for the purposes of section 53(1)(c) of the Law of Property Act 1925).

ii) On 11 May 2010, AGL resolved to declare a dividend of £11,000,000 in her favour and to transfer all the Properties to her at the cost figures specified in the board resolution dated 4 May 2010, and that the document of that date subsequently produced constituted the necessary writing signed on behalf of AGL to effect the transfer of the Properties.

65. As for the case based on the alleged resolutions made on 30 April 2009, the only evidence on which Ms Davey relies is the company documents dated 30 April 2009, but which were produced and signed at least two and a half months later, and the emails of Mr Clarke dated 21 July 2009. But everything that happened subsequently to the date of those emails is inconsistent with the notion that resolutions were made by AGL on 30 April 2009.

66. In my judgment, there was no meeting of the board of directors, nor a meeting of the board and the members of AGL, on 30 April 2009. The unravelling of the Trust Deeds was clearly in contemplation by Ms Davey and her advisors in June 2009 and possibly earlier. Such documents as exist indicate that the issue was far from resolved at that time. It is inconceivable, in my judgment, that AGL, whether formally or informally, decided on 30 April 2009 to declare a huge dividend and sell the Israeli properties to Ms Davey before the most suitable means of doing so had been properly considered by AGL and its advisors. 30 April 2009 was the last day of AGL's accounting year. But there is nothing in AGL's 2009 accounts to support the contention that such a dividend was declared and that the Israeli properties were transferred. The following year's accounts note that AGL declared dividends of £11,000,000 after 30 April 2010. Mr Clarke's email of 2 September 2009 appears to confirm that effect was not being given to the proposed dividends and transfers in 2009.

67. I have considered whether it is probable that the 2009 company documents were produced in July 2009 and signed at that time by Ms Davey, thereby having some legal effect in July 2009. Despite the content of Mr Clarke's memorandum of 20 July 2009. I cannot be satisfied on the balance of probabilities that that is so: there is no evidence from Ms Davey or anyone else to confirm the making of any resolution or signature of the company documents at that time. If the documents had been signed at that time, AGL's files and records would very likely have contained a copy or some record of the signed documents. It is more likely that, from about June 2009, Ms Davey was in the process of seeking advice as to what exactly could and should be done in her best interests (not AGL's best interests) and that that process continued throughout 2009 and in the following year. Further, Ms Davey's original case, based on the 2010 company documents and expressly disavowing reliance on the 2009 documents as evidence of any transaction, supports the Claimants' case that no such transaction occurred in 2009 and that the 2009 documents were probably not signed until a much later time. It is not necessary for me to speculate about when or in what circumstances the documents were signed: it is sufficient that I find, as I do, that they were probably not signed in 2009. As the documents from the following year show, the resolution of the "problem" of the Trust Deeds needed careful tax planning and accounting advice.

68. So far as the claim based on the events of May 2010 is concerned, Ms Davey now accepts that there were no formal meetings on 4 or 11 May 2010, as the 2010 company documents purport to record. Her case is that she informally decided, as the sole director of AGL and the only person with voting power as shareholder, to declare a dividend of £11,000,000 and to effect the transfer of all the Properties to herself. The 2010 company

documents are said, retrospectively, to record accurate events and effect the transfer of the beneficial interest in the Properties, albeit there were no formal board or company meetings.

69. The difficulty with that argument, apart from the fact that there is no evidence in support of it other than the company documents themselves, is that the company documents contain precise cost figures for the Properties that did not come into existence as figures until June 2011. They also refer to the accounts for the year ended 30 April 2010, which were not produced by McBrides until July 2011. So, if there was an informal decision actually taken in May 2010, it was not taken in terms that are represented by the 2010 company documents. In what terms was it then taken? There is no evidence from Ms Davey, of course. In this regard, she is only able to rely on two documents to assist her. The first is a handwritten note of a meeting on 27 May 2011 between Mr French, Mr Warren and Mr Baldwin. The note records that the position of the Angel Group in relation to the Bank and the Home Office contracts was discussed, and that Mr Baldwin offered to introduce Mr French to a firm called FRP Advisory for insolvency advice and protection for Ms Davey and AGL. The note also states:

> "Jack [French] to provide documentation re: April 10 dividend in specie of Israeli properties".

70. The second document is a compilation made by Mr Warren of some or all of his notes of his various meetings, including the same meeting on 27 May that Mr Baldwin noted. There is nothing in Mr Warren's document equivalent to Mr Baldwin's note about an April 2010 dividend in specie. The document also contains a note of a meeting on 3 June 2011 with Mr French and Mr Kurash. An issue is noted about the legality of the Trust Deeds and it is suggested that legal advice be taken. (The document records that the following week Mishcon de Reya advised that a bare trust had been created.) The note then continues under the heading relating to the meeting of 3 June 2011 :

> "JF indicated that Julia had "bought" certain properties back from the company which were held in her name under trust – primarily the Israeli ones and the large US property. There had also been a dividend subsequently to reduce her DLA. This all happened in May 2010."

71. In my judgment, the 27 May 2011 note of Mr Baldwin is ambiguous and does not support Ms Davey's case. It is equally consistent with an understanding that Mr French was to provide documentation to support an assertion that a dividend in specie had been declared in April 2010. In any event, there is no claim that a dividend in specie was declared in April 2010, and if such a claim had been made by Mr French it would very likely have appeared in Mr Warren's own notes of that meeting. If Mr Warren's note of the 3 June 2011 meeting is accurate, it provides some support for Ms Davey's case, though she maintains that a resolution had been made to transfer all the Properties to her. In my judgment, any conclusion that might be drawn from the note of 3 June 2011 is heavily outweighed by the circumstances in and after May 2010. It is inconceivable, when a real question about how and when the properties might be extracted from AGL had been identified in January 2010 and a decision made to await the outcome of the tax residency decisions, that Ms Davey would have proceeded regardless in May 2010 to transfer all the Properties into her name and declare a dividend of £11,000,000. The thinking in that regard was still evolving on 2 November 2010, when Mr Baldwin sent

Mr French an email following a meeting the previous day, which makes it absolutely clear that no dividend had by then been declared and no properties had been transferred. The relevant parts of the email are the following:

> "At our recent meeting you asked us to obtain some informal insolvency advice in respect of the possible transfer of the Israeli properties from Angel Group to Julia by way of dividend in specie.
>
> It is anticipated that the properties have a book value and market value of around £8m and there are/will be distributable reserves in Angel London and Angel Group of around £10-11m at the time of the transactions. Therefore the dividend would be legal under the Companies' Acts…
>
> The informal advice I have received is that if the Angel companies subsequently became insolvent it is unlikely that your banks could invalidate the dividend or successfully claim against the directors simply because the group/companies did not have agreed bank facilities in place at the time…"

72. What then happened between November 2010 and June 2011 is unclear, save that (as recorded in Mr Warren's notes) dialogue with Bank had become strained and Companies House was putting pressure on the Angel group to file its April 2010 accounts. The position was that two out of the three Home Office contracts that AGL enjoyed had been terminated as of April 2011, which had a significant impact on AGL's cash flow. The Bank was very concerned. It had been seeking a meeting with Ms Davey and her advisors for some time, which Ms Davey and Mr French had been seeking to put off for as long as possible. It appears that the Angel Group was seeking advice from FRP Advisory and from lawyers about its position vis-à-vis the Bank as well as insolvency advice. On 1 June 2011, Mr Baldwin had an initial discussion with Louise Bell of Gateley and told Mr French that he had agreed to send her the charge documentation, in order to determine whether the Israeli properties were covered, and the Trust Deed for a view of its efficacy. All the while the meeting with Bank was being put off. It is an obvious inference that Ms Davey wished to sort out the transfer of the Israeli properties (at least) before any frank discussion of AGL's finances with the Bank took place.

73. Thus far, I have rejected Ms Davey's claims that AGL in fact declared dividends and resolved to transfer some or all of the Properties to her by resolutions made on 30 April 2009 or 4 and 11 May 2010. Those events did not take place. What happened instead, in both cases, was that documents were produced, specifying those dates, which were intended to evidence the making of resolutions on those dates. As alleged by the Claimant companies, those documents in my judgment were produced on behalf of Ms Davey and signed by her to give the impression that such events did occur at those times. It was not until June 2011 that the 2010 company documents were produced and signed. The circumstances in which they were produced and signed demonstrate that they were deliberately produced in order to give the impression to the Bank, creditors and any future office-holder of AGL that a dividend had been declared and properties transferred at a time when those transactions could not be challenged on the ground of impending insolvency of AGL and its group companies.

74. I have considered carefully whether I should make an express finding of dishonesty against Ms Davey in this regard. It was pleaded by the Claimants from the outset and they did not shrink from making the allegation at trial. I remind myself that I have not heard Ms Davey's explanation. However, that has been a matter of her choice, having failed inexplicably to seek relief against sanctions and prepare a witness statement. I also remind myself of the legal test for making any finding of dishonesty, namely on the balance of probabilities but taking account of the seriousness of the charge and the unlikelihood of respectable people of good character being dishonest in weighing the balance. Having done that, there is in my view no escaping the conclusion that the 2009 and 2010 company documents were prepared for and signed by Ms Davey dishonestly, as deliberately false records of events that did not take place, with the intention of deceiving those who might read them.

75. I turn now to Ms Davey's alternative case that the 2010 company documents, when produced in June 2011, took effect as valid resolutions of the companies at that time, even though the documents purported to record events of May 2010. The success of this alternative case depends also on Ms Davey proving that AGL was neither insolvent nor at real risk of insolvency on the date on which the documents were signed. Ms Davey accepts that if AGL were insolvent or at real risk of insolvency, the dividend declared and the transfer effected in June 2011 would be breaches of fiduciary duty by her, as a director of AGL, in that the dividend and transfer were plainly contrary to the interests of the creditors of AGL, whose interests should have been considered as paramount in such circumstances: Liquidator of West Mercia Safetywear Ltd v Dodd (1987) 4 BCC 30 at 33, per Dillon LJ, and Colin Gwyer & Associates Ltd v London Wharf (Limehouse) Ltd (2003) BCC 885 .

The production of the 2010 company documents in 2011

76. On 2 June 2011, Jo Heywood, the Angel Group client contact at the Bank, prepared a note for (presumably) her senior managers. This recorded that, owing to the non-renewal of the Home Office contracts, the group's turnover had fallen from £31,000,000 in 2009 to £17,000,000 in 2010 and to an estimated £10,000,000 in 2011. It records that interest cover was extremely tight, at just over one times, and that although this was covenant compliant "all existing facilities are in default to either LTV breaches or expired maturity dates". The group, in this note, is AGL and Angelic together. The LTV breach appears to have been attributable to Angelic, whereas it was AGL's facility that had expired in 2009. The note records that the Bank was seeking to restructure its lending to the Angel Group. The note makes clear that the Bank had resolved to place pressure on AGL by taking action in relation to the active AGL account. It indicates that the Bank had been made aware that Ms Davey was trying to extract the Israeli properties and one Californian property but believed that she could not do so without Bank consent. The note does not give any indication that the Bank was aware of impending insolvency.

77. On 7 June 2011, Mr French discovered that AGL's bank account had been frozen. Ms Heywood informed him that afternoon that the Bank was exercising its right of set-off under the AGL facility documents, pending agreement with AGL on how to proceed. The following morning, Ms Davey protested to Ms Heywood that the Bank was risking crippling AGL's business and insisted that the stop on the accounts was immediately

removed. Ms Heywood sent Ms Davey an email on 7 June 2011 stating that the Bank was extremely concerned that the cash position of the group was deteriorating and income reducing, without any update or further information from AGL. A meeting fixed for 15 June 2011 was noted.

78. On 8 June 2011, the Bank sent a letter expressing disappointment at the lack of engagement and its concern about the position of the group. The credit balances in the account were to be made available to AGL, on terms, pending the 15 June 2011 meeting. On the same day, a formal letter was sent by the Bank to AGL identifying events of default that had occurred and stating that the Bank was considering its options for enforcement. The letter reminded AGL that its directors' duties extended to all stakeholders including in particular the Bank in its capacity as senior secured lender. In other words, the Bank was asserting that it considered that there was a risk of insolvency and that the directors' fiduciary duties required them to take into consideration the interests of creditors.

79. At about the same time, Mr French received an email from Companies House informing him that prosecution for failure to file accounts for year ended 30 April 2010 would be deferred until 21 June 2011.

80. On 8 June 2011, Mr French emailed Mr Warren telling him that legal guidance (expected to be received that day) was awaited and that he would then call Mr Warren in the morning. The following day, Mr Warren sent Mr French by email schedules showing the balances on the various WIP properties (which provided the figures that were included as the transfer figures for the American, Israeli and Cypriot properties in the board resolutions dated 4 May 2010) and the figures for the up to date reserves in AGL, Angel Wakefield and Angel Heights (which provided the exact figures that were inserted in the board resolutions of Angel Wakefield and Angel Heights dated 4 May 2010). On the following day, Mr Warren sent Mr French, in response to his request, templates for documents required in connection with the declaration of dividends, both director-decided and member-approved dividends. The member-approved dividend templates were used to produce the 2010 company documents dated 11 May 2010. Mr French then forwarded all these materials to Mr Kurash on 13 June and asked him to get the paperwork prepared as soon as possible. Mr Kurash dealt with the drafts immediately and sent them back to Mr French with the necessary details inserted, and with a date of 4 May 2010 for a resolution of Angel London to transfer the Properties in lieu of a dividend of £11.2 million and a date of 12 May 2010 for the company meetings. Mr Warren told Mr French on 14 June 2011 that a lawyer's opinion should be sought on the appropriateness of the draft documents.

81. On the following day, 15 June 2011, the meeting took place between representatives of AGL (including Ms Davey) and the Bank. AGL and Angelic had to agree to fund a review of their businesses to be undertaken by KPMG.

82. On 17 June 2011, Mr French sent Mr Warren the final versions of the 2010 company documents. The date of the meetings of AGL was changed to 11 May 2010, except on the draft consent to short notice for the general meeting, which remained as 12 May 2010. At the same time, Mr French and Mr Warren were finalising the remaining information to be included in the 2010 accounts of Angel Group. The 2010 company documents for AGL were signed by 17 June. The resolutions for the group subsidiaries were prepared on 24 June 2011 and signed by 5 July 2011. All these documents

contained the valuation and figures that had been produced by Mr Warren for the first time on 9 June 2011.

83. KPMG reported in two phases. The first was a short term cash flow forecast, which indicated the need for significant and immediate funding. That report was dated 22 July 2011. The second part was an independent business review dated 8 August 2011. This identified a significantly falling level of trade and profitability and the need (as yet not achieved) to restructure the business. Their treatment of the WIP part of the business reported the transfer of properties by AGL to Ms Davey connected with a £11,000,000 dividend between the year ends of 2010 and 2011. It is therefore evident that KPMG were unaware of the backdating of the 2010 company documents.

84. On 19 August 2011, the Bank wrote to AGL and Angelic expressing concern at the potentially significant additional funding requirement and identifying various concerns for the future business. It expressed keenness to understand the background and rationale for the transfers of the WIP properties and shares in Developments, given the restrictions in the Bank's loan documentation and "the distressed situation the Group finds itself in". It renewed its requests for details of the transfers by letter dated 16 September 2011. Nevertheless, it indicated that it intended to continue to refrain from exercising its enforcement rights.

85. The first question in this context is whether or not there were resolutions made by AGL on or about 17 June 2011 to declare a dividend of £11,000,000 or to transfer the Properties to Ms Davey. In my judgment, it is clear that there were no such resolutions. What was done on and leading up to 17 June 2011 was to prepare and sign documents that deliberately were intended to have effect as resolutions of AGL (and its subsidiaries) made on 4 May and 11 May 2010. Those dates were carefully inserted into the blank documents by Mr Kurash and then later adjusted, though subject to one mistaken reference to 12 May 2010 that remained. The documents themselves were deliberately not intended to have effect on 17 June 2011. Had that been intended, the documents would have been dated 17 June 2011. There was no difficulty in so dating the documents if resolutions on that date were acceptable to Ms Davey and her advisers. But resolutions on that day were not acceptable.

86. The reason why resolutions on 17 June 2011 were not acceptable to Ms Davey was that by then there was a serious risk that AGL's financial circumstances would deteriorate further resulting in its insolvency. There was no certainty that that would happen: the company's business was proposed to be restructured (though it had not yet happened) and the Bank were for the time being supportive, at least to the extent of holding off demanding immediate repayment, which it was fully entitled to do. Nevertheless, the Angel Group was at the mercy at the Bank, as Ms Davey must have known, albeit the Bank was keen to be able to restructure and syndicate the existing loan rather than demand repayment, if it possibly could. I will return in the next part of this judgement to the issue of the risk of insolvency. For present purposes, it suffices that the intention of Ms Davey, Mr French and the Angel Group's advisors was to backdate the dividend and transfer to a time after the end of the 2010 tax year (so that Ms Davey would not be taxed on the dividend) but otherwise well before the financial difficulties that the group started to experience in April 2011. There is nothing to indicate why the particular dates of 4 and 11 May 2010 were selected. As I have found, these dates were not selected because any company resolutions were actually made then.

87. This was not a case of resolutions having been made and documented in June 2011 but, by mistake, the documents contained the wrong dates. In such circumstances, the resolutions would have been effective on the dates on which they were made, notwithstanding the documentary error, which could be corrected. In this case the only thing that Ms Davey did was to sign documents that had been prepared for her deliberately bearing the dates of 4 and 11 May 2010. The documents were a false record of events that did not happen in 2010, not a record of events that happened in June 2011. From as early as 25 June 2009, Ms Davey's attitude was, apparently, that she wanted to make sure that the Bank did not get access to the WIP properties. Mr Baldwin's email to Mr French of 2 November 2010 clearly had in mind that the transfer of the Properties should be effected in such a way that, if the companies subsequently became insolvent, the Banks would not be able to treat the dividend as unlawful or make a claim against the directors. I find that it was always Ms Davey's intention to extract the Properties (or, initially, the Israeli properties) from AGL or Angel London in a way that the Banks could not challenge and that would be as tax efficient for her as possible. Declaring a dividend and transferring the properties in June 2011 would have been inimical to those objectives. Preparing documents that apparently showed that the dividend and transfer occurred in May 2010 satisfied those objectives, if the documents were taken at face value.

88. Accordingly, I find that there was no dividend declared in June 2011, nor was there a transfer of the beneficial interest in the Properties signed and effective in June 2011. In case I am wrong on that conclusion, I proceed to consider whether or not, if such a transaction did take place in June 2011, it amounted to a breach of the fiduciary duties of the director. If so, Ms Davey now accepts that the Claimant companies have a proprietary claim against the remaining assets or their proceeds of sale and a claim for damages for breach of fiduciary duty.

89. The fiduciary duties of a director of a company which is insolvent or bordering on insolvency differ from the duties of a company that is able to meet its liabilities. The director's duty in the former case is to have proper regard for the interests its creditors and prospective creditors: Bilta (UK) Ltd (in liquidation) v Nazir (No.2) [2015] UKSC 23; [2016] AC 1 at [123], per Lord Toulson and Lord Hodge JJSC. The principle is recognised in the terms of section 172(3) of the Companies Act 2006.

90. But what is meant by "bordering on insolvency"? The relevant authorities were reviewed in Re HLC Environmental Projects Ltd (in liquidation) [2013] EWHC 2876 (Ch); [2014] BCC 337. The different formulations there rehearsed are "where the company is insolvent or even doubtfully solvent", "where a company is insolvent or of doubtful solvency or on the verge of insolvency and it is the creditors' money which is at risk", and "to the knowledge of the directors there is a real and not remote risk of insolvency". The judge in that case said that the underlying principle was that "directors are not free to take action which puts at real (as opposed to remote) risk the creditors' prospects of being paid without first having considered their interests rather than those of the company and its shareholders".

91. It is not suggested by the Claimant companies in this case that in June 2011 AGL was insolvent. What they say is that it is evident from the recent change in its circumstances and from what was said and done between November 2010 and June 2011 that there was a real risk of insolvency, such that Ms Davey was bound to put the Bank's and the creditors' interests before the shareholders' interests. What is relied upon is:

i) In early November 2010, Mr Baldwin passed on insolvency advice informally obtained by him in respect of the possible transfer of the Israeli properties by way of divided in specie;

ii) In January 2011, the profit/interest ratio required by the banking covenants was only met by inclusion of the amount of AGL's claim against the UK Border Agency;

iii) Internal Angel Group documents in January and February 2011 indicate concern about the group's fall in income and difficulty with meeting banking covenants and about the need for the group to sell assets, defer expenses and adopt other measures in order to comply;

iv) The non-renewal of two of AGL's three UK Border Agency contracts in April 2011, resulting in a very substantial drop in its income and necessitating a restructuring of the business;

v) Mr Baldwin's procuring of insolvency advice and protection for Ms Davey and AGL from FRP Advisory on and immediately following 27 May 2011; and

vi) The Bank's freezing of AGL's bank accounts on 7 June 2011 in exercise of its rights of set-off and the formal letter notifying default and threatening enforcement dated 8 June 2011, which included an express requirement to take account of the creditors' interests.

AGL's facility had expired and there had been events of default, so the Bank was entitled to demand immediate repayment at any time, although it was forbearing on doing so. At any moment, the Bank could have demanded repayment and AGL would not have been able to pay its £50,000,000 debt to the Bank.

92. I find that, when insolvency advice was sought, in May 2011, it was not limited to questions of whether the Israeli properties were subject to Bank's security. Advice was sought because of the risk of future insolvency and the possible impact of that on the substantial dividend that was about to be declared and the transfer of AGL's interest in the Properties. In fact, as revealed by the internal memoranda, the Bank was concerned about the group's financial position but did not consider that there was an immediate risk of AGL's insolvency. Nevertheless, the test is not what the Bank actually thought but whether the directors of AGL knew or should have realised that there was a real risk of insolvency. After the Bank's exercise of its right of set-off by freezing AGL's account, Ms Davey must have believed that there was an immediate risk. As a result of the KPMG review, the Bank did in fact agree to lend AGL more money, though this was to get it over its cash flow difficulties, i.e. to keep it afloat. Without that £1.2 million overdraft facility, agreed on 1 March 2012, the obvious inference is that AGL would have been unable to pay its debts as and when they fell due.

93. For these reasons, even if as a matter of fact and law the preparation and signature of the 2010 company documents could amount to resolutions of AGL on 17 June 2011, a resolution to pay a dividend to Ms Davey of £11,000,000 at that time to fund the transfer of the Properties would have been the clearest possible breach of Ms Davey's fiduciary duty, being contrary to the interests of AGL's creditors. That, indeed, was the reason

why the documents attempted to give the impression that the relevant resolutions had been made in May 2010.

94. It follows that Ms Davey was in breach of trust in selling the Properties between 2012-2017, either because the Properties remained held on trust for AGL or Angel London pursuant to the Trust Deeds, as I have held, or alternatively because any transfer of the beneficial interest in the properties in 2011 was a breach of fiduciary duty and so Ms Davey thereafter held the Properties as a constructive trustee. In either case, any remaining properties or their proceeds of sale belong to AGL and Angel London. To the extent that the Properties had been sold and the proceeds of sale dissipated, the Defendant is liable in damages for breach of trust.

Quantum of damages

95. On the basis of my conclusions above, it is common ground that the starting point for the date of assessment of the damages is the date of trial. This is because the duty of the defaulting trustee, Ms Davey, is to make good the trust funds: Target Holdings Limited v Redferns [1996] AC 421 at 432-439. I heard evidence from expert valuers called by the Claimant companies in relation to the current value of the Israeli, Californian and Cypriot properties. For reasons that will become clear, I will deal first with the Israeli and Californian properties.

96. Mr Opher Barzilay MRICS gave evidence that the current value of Plot #37 was ILS 12,530,000 (the sterling equivalent at approximately the date of trial is £2,529,043). He considered that the value of Plot #39 at the date of trial was ILS 27,810,000 (sterling equivalent £5,613,143). The two Israeli properties were in fact sold by Ms Davey on 15 June 2015 and 29 November 2016 respectively. The sale prices were ILS 13,639,100 for Plot #37 (sterling equivalent: £2,276,806) and ILS 26,555,201 for Plot #39 (sterling equivalent £5,114,899). Mr Barzilay said that he saw nothing to suggest that the sale prices obtained did not reflect the then market values. Mr Barzilay considered that since about June 2015 the value of Plot #39 would have increased, but he was less sure that the value of Plot #37 (being on a site half the size of Plot #39) would have increased. Although, oddly, Mr Barzilay considered that the sale prices actually achieved in 2015 and 2016 should not be used as any evidence of current market value, Ms Davey did not in the end dispute Mr Barzilay's valuation.

97. Mr Brian Alex Bregman MAI gave evidence in relation to the current values of the Californian properties. His opinion was that the current value of Vista Del Mar was $11,000,000 (sterling equivalent: £7,844,606); 2775 Matera Lane was $685,000 (sterling equivalent: £488,505); 2702 Piantino Circle was $620,000 (sterling equivalent; £442,151); and that 2642 Matera Lane and 2779 Matera Lane each had a current value of $555,000 (sterling equivalent: £395,796).

98. The sale prices in fact achieved by Ms Davey, with their dates of sale and sterling equivalents at the time, are the following:

Vista del Mar (12 January 2017) - $11,000,000 (£9,002,373)

2775 Matera Lane (9 October 2012) - $549,000 (£343,125)

2702 Piantino Circle (23 April 2015) - $550,000 (£365,351)

2642 Matera Lane (18 January 2013) - $419,000 (£264,153)

2779 Matera Lane (28 December 2012) $419,000 (£259,153).

Mr Bregman confirmed that there was nothing to suggest that the actual sales prices did not reflect market values at the times of sale. Once again, Ms Davey did not dispute the accuracy of Mr Bregman's valuations.

99. Ms Davey disputes that the Claimant companies' losses are represented by the current market value of these properties (less the outstanding mortgages). That is on the basis that the properties would have been sold in any event by the administrators or liquidators of AGL and Angel London had they not been wrongly appropriated and sold by her. This is because Mr Edwards accepted in cross-examination that the properties would probably have been sold by the administrators, and if not sold would have been sold by the liquidators of AGL and Angel London, who took office in December 2015. But he was understandably unable to say when each of the properties would have been sold and no particular or approximate dates were put to him for his consideration.

100. The Claimant companies' case throughout these proceedings has been that damages should be assessed and so the Properties should be valued by the expert witnesses at the date of trial. No different position has ever been pleaded on behalf of Ms Davey or raised in correspondence, or otherwise. The first suggestion that a different date was appropriate came in Ms Davey's outline opening submission filed on 14 May 2018, after the Claimants had opened their claim and Mr Edwards' evidence had been heard. That identified the date of the actual transfer of Properties, alternatively the date of insolvency, alternatively the date on which a distribution would have been made to the Claimants' secured creditor following a sale of each property. In those circumstances, the expert valuers did not address any other valuation date in their reports, nor was there any evidence of the values of the Properties on different dates except the values represented by the sale prices achieved on each respective date of sale.

101. Ms Davey relies on a case called in Re: Bell's Indenture [1981] 1 WLR 1217 for the proposition that damages for breach of trust are limited to the value of properties on an earlier date if they would have been sold by that date in any event. In that case, Vinelott J accepted an argument that, on the facts, the land sold in breach of trust would in any event have been sold at a later time but well before the date of trial. He said:

> "It is difficult to see how the court could enter into an enquiry into what might have happened to the proceeds of sale of the farm if it had been retained and properly sold with a view to the re-investment of the proceeds. I can see that the court might well be slow to accept evidence that an investment sold with a view to the application of the proceeds of sale in breach of trust would have been sold at a later date if it had not been sold in breach of trust, but in view of the admission made by Mr Gidley Scott, this difficulty does not arise in the present case. "

102. It is an obvious inference that, at some stage, the administrators or the liquidators would have sought to realise the Properties for the benefit of the secured creditors of AGL and

Angel London. It is very likely that this would have occurred before the date of trial, but it is impossible to say when they would have been sold. In this regard, it is notable that Vista del Mar had been placed on the market by Ms Davey for some years before it eventually sold on 12 January 2017, which itself was over a year after the liquidators were appointed. Plot #39 was sold almost a year after the liquidators were appointed. In practical terms, the only alternative valuation date available to be taken is the individual date of the actual sale of each Properties. By failing to plead or raise any alternative valuation date before the trial, Ms Davey cannot be allowed to prevent an award of damages on the basis that the relevant valuation evidence is not before the court.

103. Had there been no purported transfer of the Properties to Ms Davey, the administrators would have been able to sell the Properties within a reasonable time of their being appointed, as they did with other properties. Although the three Matera Lane properties might have been sold somewhat later than their actual sale dates, which were all in the three months immediately following the administrators' appointment, any slight adjustment here would be more than compensated for by the much later sale dates for Piantino Circle, Vista del Mar and the Israeli properties.

104. In my judgment, it is clear on Mr Edwards' evidence that none of these properties would have been retained by the liquidators and probably would have been sold much earlier by the administrators if their title to do so was clear. Accordingly, the values represented by the prices achieved on the respective dates of sale is, my judgment, a more appropriate basis for calculating the compensation due to the Claimant companies in equity for Ms Davey's breach of trust. In real terms, the difference between these dates and the date of trial may not be so significant in any event, given the much more favorable US dollar/sterling exchange rate that applied when Vista del Mar was sold. The Claimant companies will additionally be entitled to interest on the sale prices (net of mortgage debts then outstanding) to compensate them for being kept out of these funds from the date of sale until the date of trial. I will hear counsel in due course on the right approach to the rate of interest and any compounding of interest.

105. Turning to the Cypriot properties, the position is different because, as became apparent only during the course of the trial, it now appears that they have not been sold but are still owned by Ms Davey. An undertaking was given on behalf of Ms Davey to the court at the stage of closing submissions not to dispose or attempt to dispose of the Cypriot properties. If the Cypriot properties are still retained, no reconstitution of the trust funds is necessary in this regard. AGL is beneficially entitled to the Cypriot properties.

106. As there remains some doubt about whether the Cypriot properties are still owned by Ms Davey, I will deal with the appropriate amount of compensation payable by her in that regard if these properties have in fact been sold and their proceeds dissipated.

107. The expert valuer called by the Claimant companies was Güniz Çelen MAI, CRE, FRICS. She explained that there was no liquidity in the Northern Cyprus market for such agricultural property. There were no comparable transactions to assist her in valuing the properties, nor was it realistic to carry out a residual valuation for undeveloped plots. She explained that she had considered a range of asking prices for similar properties and interviewed brokers in Northern Cyprus about the price that the seller of marketed land would be likely to accept. Although this is an unconventional approach to valuation, the nature of the properties and the absence of a market left her

with little alternative. She valued each of the 46 plots separately. Some of the plots were coastal plots and some were inland plots. The inland plots were very fertile and relatively much more valuable than the costal plots. She placed a value on each plot individually, which came in aggregate to a sterling equivalent £2,743,401.

108. Mr Kuehne criticised Ms Çelen's evidence on various grounds. The first was that she had found no comparable sales and had adopted what was in effect a listings price comparison. In my judgment, she had little alternative. Her report shows an entirely appropriate caution at taking any such material at face value and it is clear that she gave careful consideration to it and made appropriate adjustments. Second, Mr Kuehne suggested that, in giving evidence in court, Ms Çelen was reluctant to concede obvious points, and that in those circumstances the court should be slow to accept her evidence. In my judgment, Ms Çelen was cautious on occasions, but she did ultimately accept the propositions put to her, or explain clearly why she did not accept them, and I do not find her evidence to be unreliable on that account. In my judgment, Ms Çelen's evidence is evidence on which the court can safely rely and should rely in the absence of any contrary evidence or any particular suggested adjustments to the values that she took.

109. Accordingly, if the Cypriot properties have in fact been sold and their proceeds dissipated, the appropriate value in sterling terms for which compensation should be paid is £2,743,401. There is no alternative value applicable to the Cypriot properties. In the event that the Cypriot properties are still owned by Ms Davey, no compensation for them is payable. The properties themselves will belong to AGL.

The Secretary of State for the Home Department settlement money

110. The issue here is a discrete one, namely whether £550,000 paid by the Government in settlement of a claim by AGL for monies due under the U.K. Border Agency's contracts with AGL, which was paid directly to Ms Davey at her direction, was received by her in breach of fiduciary duty, since the monies were receivable by AGL and not by her. The settlement was documented on 26 January 2012 and the monies were transferred into Ms Davey's Israeli bank account on 21 February 2012. There is no dispute as to these facts.

111. Ms Davey's case is that on 16 December 2011 she paid £600,000 to her solicitors to enable them to make a payment to British Gas plc for and on behalf of AGL. She pleads that she made the payment on AGL's behalf, on the basis that she knew that a settlement payment was to be made to AGL by the Government and that her payment was a short-term loan to be repaid from the settlement monies.

112. In light of an entry in the journal entries for AGL's accounts, the Claimant companies now accept that a loan of £600,000 was made by Ms Davey to AGL. They point to the fact that there is no similar journal entry for either £550,000 or £600,000 in February 2012 to show the repayment of the loan. Thus, they say, the loan remains outstanding; there is no connection between the loan and the settlement payment, and the obvious inference is that Ms Davey simply helped herself to £550,000 of AGL's money when it became available. Alternately, they submit that the repayment of part of an unsecured loan was a preference and a breach of fiduciary duty in circumstances of AGL's impending insolvency.

113. There are therefore two sub-issues:

i) Was there an agreement between Ms Davey and AGL that she would lend it £600,000 and be entitled to be repaid out of the proceeds of the settlement with the U.K. Borders Agency?

ii) If so, was AGL in February 2012 at risk of insolvency, such that the repayment was likely to be a preference and in any event a breach of fiduciary duty?

114. In my judgment, it is an obvious inference, and one that I draw, that a short-term loan of £600,000 was made by Ms Davey to AGL on the basis that repayment would be made from the proceeds of the imminently expected settlement. The fact that contemporaneous journal entries were not made for Ms Davey's director's loan account to this effect is not conclusive, but merely evidence of the rather chaotic financial position and internal accountancy of the Angel Group at the time. In the absence of any evidence from Ms Davey, I am prepared to reach that factual conclusion in her favour on the basis of what the documents show and inherent probability.

115. However, AGL's and the Angel Group's finances were in a parlous state in February 2012. It is accepted that the payment of £600,000 was made to British Gas plc in consideration of its agreement not to petition for AGL's winding up. AGL was clearly unable to pay that debt without the loan from Ms Davey. On 1 March 2012, the Bank agreed a one month overdraft facility of £1.2 million in order (presumably) to allow AGL for that limited period to pay further debts. No such facility was in place in February 2012 when Ms Davey received the £550,000 settlement money.

116. There clearly was at that time a real risk of insolvency of AGL and the whole of the Angel Group. It was therefore Ms Davey's duty to consider whether the repayment of her debt in preference to all other debts was in the best interests of AGL's other creditors. Objectively, that was clearly not so as at 21 February 2012, even though the loan of £600,000 had been made on the basis that it would be so repaid. Accordingly, the diversion of the £550,000 into Ms Davey's personal bank account was a breach of fiduciary duty. AGL is entitled to those monies, or what now represents them (so far as they can be traced) or alternatively to damages for breach of trust in the amount of £550,000 plus interest.