Neutral Citation Number: [2022] EWHC 89 (Ch)

Case No: BL-2019-002182

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch.D.)

Rolls Building
Fetter Lane
London, EC4A 1NL

25 January 2022

Before :

JUDGE JONATHAN RICHARDS
Sitting as a Deputy Judge of the High Court

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Between :

NORSAND CONSULTANCY LIMITED	**Claimant**
- and –	
(1) RUPON ANANDANADARAJAH	**Defendants**
(2) VOLTA INVESTMENT GROUP LIMITED	
- and –	
(3) not used	
(4) not used	
(5) CHANDRAGOWRI ANANDANADARAJAH	**Non-Cause of Action Defendant**

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PJ Kirby QC and Jaysen Sharpe (instructed by **Spector Constant & Williams**)
for the **claimant**
The defendants in person

Hearing dates: 26 November to 3 December 2021
Draft judgment circulated on 13 January 2022

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APPROVED JUDGMENT

Judge Jonathan Richards:

1. This dispute concerns allegedly unpaid commission arising out of dealings between the claimant company ("Norsand") and Imperialis Group Limited ("Imperialis"). Imperialis is controlled by the First Defendant ("Mr Anandanadarajah"). In a nutshell and without, for the time being, addressing points of difficulty in the construction of their agreements, Norsand and Imperialis entered into contracts under which Norsand agreed to introduce Imperialis to clients who might be interested buying or selling fuel, energy or other commodities. In return, Imperialis agreed to pay Norsand a commission if successful transactions resulted.

2. At the heart of the case is a factual dispute. Norsand says that transactions involving clients it introduced closed successfully, but that Mr Anandanadarajah arranged matters so that Norsand was never paid commission due to it. The Defendants say that no transactions ever closed so that no commission was due.

3. Matters are complicated by the fact that Imperialis has since been dissolved and is not party to these proceedings. Accordingly, rather than claiming the unpaid commission from Imperialis, Norsand seeks recovery from Mr Anandanadarajah in his personal capacity. It puts its claims in a variety of ways which I will analyse later in this judgment.

4. Norsand abandoned its claim against the Second Defendant ("Volta") in its closing submissions.

Procedural matters

5. Norsand was represented by both solicitors and counsel. Neither Mr Anandanadarajah nor Volta was represented, although Volta's lack of legal representation was ultimately of little significance since Norsand abandoned its claim against Volta at the end of the trial.

6. The Fifth Defendant is Mr Anandanadarajah's mother. She is a "non-cause of action defendant" in these proceedings because her bank accounts were the subject of pre-trial freezing orders (she had allowed those accounts to be used to receive sums due to Mr Anandanadarajah and Mr Anandanadarajah's accounts were themselves subject to freezing orders). She played no part in the hearing before me and did not need to given her limited role in the dispute.

7. Mr Anandanadarajah represented himself. He, therefore made submissions and conducted the cross-examination both in his own capacity and, before the abandonment of the claim against Volta, in his capacity as director of Volta. I allowed him to obtain some assistance from Mr Dye, an employee of Volta, and a witness in these proceedings. I also allowed Mr Dye to ask some questions of Mr Anandanadarajah in re-examination and to make closing oral submissions.

8. During the hearing, Norsand applied to amend its Particulars of Claim and its Reply. The Defendants did not object to the amendment of the Particulars of Claim and by this judgment, I formally give Norsand permission to amend its Particulars of Claim in the form handed up during the hearing. The amendments to the Reply were contested, as they raised a new plea of estoppel by convention, and I will deal with the application to amend the Reply later in this judgment.

9. In advance of the trial, Norsand produced a suggested List of Issues. The Defendants indicated that they broadly agreed with those issues, subject to some qualifications. However, neither side ordered their submissions by reference to this List of Issues and I have accordingly not used it as a base for my judgment.

Evidence

10. For Norsand, I had factual evidence from the following witnesses, all of whom provided witness statements and were cross-examined:

    i) Mark Pitman, a director, and sole shareholder, of Norsand. I regarded Mr Pitman as a reliable and credible witness. He gave generally clear and straightforward answers to questions Mr Anandanadarajah put in cross-examination. He was occasionally argumentative, but that did not detract materially from his credibility as I did not consider him to be making arguments in order to divert attention from questions put to him. I concluded that Mr Pitman was seeking to assist the court by giving true evidence.

    ii) Oleg Yakavitski, who had contacts of his own in the petroleum trading community who were introduced to Imperialis. Mr Yakavitski reached an agreement with Norsand to share in part of the commissions that Norsand expected to receive as a result of those introductions. Mr Yakavitski was a combative witness. He clearly felt that Mr Anandanadarajah had treated him badly and he let that show, sometimes by making statements as to Mr Anandanadarajah's perceived shortcomings rather than answering questions put to him. This detracted somewhat from the impression I formed of his evidence, but I did not consider that he was seeking to give untrue evidence.

    iii) Andy Hill, who also operates in the commodities industry and gave evidence of contacts that he passed to Mr Anandanadarajah to enable Imperialis, to enter into commodities transactions. Mr Hill was an impressive witness who gave clear answers to the questions put to him and I am sure he was giving his evidence honestly.

    iv) Veronica Tarlev, a lawyer with access to high net worth clients. She gave evidence of contacts passed to Mr Anandanadarajah to enable Imperialis to enter into transactions. Ms Tarlev gave honest and truthful evidence. She also was occasionally argumentative. However, I made allowance for the fact that she had a difficult time getting to court: she had got up early only to find her train was cancelled and she had to get a taxi a considerable distance. I did not consider that her occasionally argumentative answers represented any attempt to avoid answering questions and I am sure that she gave her evidence truthfully.

11. For the Defendants, I had factual evidence from:

    i) Mr Anandanadarajah. He gave a witness statement and was cross-examined. Because Mr Anandanadarajah had given contemporary confirmations that material sums were due to Norsand his evidence and

credibility were of central importance. I was looking for a clear and candid account that could explain why, despite those confirmations, Imperialis actually owed Norsand nothing. I did not obtain that account. Mr Anandanadarajah's evidence was on occasions inconsistent with contemporary documents, lacking in candour and in some respects untruthful. I give specific instances throughout this judgment and have concluded that his evidence on matters in dispute should be treated with caution.

ii) Paul Mendoza, who had worked with Mr Anandanadarajah. He provided a witness statement but did not attend the hearing for cross-examination. I have admitted his witness statement as hearsay evidence although it was scarcely referred to by either side.

iii) Howard Silverstein, a certified public accountant in the United States. He provided a witness statement but did not attend the hearing for cross-examination. Mr Silverstein's witness statement was more notable for the issues that it did not cover than the issues it did. Mr Silverstein had stated in correspondence with Norsand that he was about to pay $15 million to Norsand at Mr Anandanadarajah's direction. Norsand relies on this correspondence as evidence that Mr Anandanadarajah, or a company he controlled, had indeed received payments in connection with successful transactions. Mr Anandanadarajah says any sums that Mr Silverstein held for him were entirely unconnected with his dealings with Norsand. Yet despite the centrality of this issue, Mr Silverstein gave no meaningful explanation of the nature of his business relationship with Mr Anandanadarajah or of the large sums that he was apparently prepared to disburse at Mr Anandanadarajah's direction. I have admitted his witness statement as hearsay evidence, but it was of limited utility.

iv) Samuel Dye, who has worked with Mr Anandanadarajah after Volta was formed. He gave a witness statement and was cross-examined. Since Mr Dye started working with Mr Anandanadarajah after Norsand says that the various transactions completed, he was not able to give much first-hand evidence about those disputed transactions. He was, however, able to help with some aspects of Mr Anandanadarajah's and Volta's finances subsequent to those transactions and his evidence on these aspects was clear, credible and honestly given.

PART A: THE AGREEMENTS BETWEEN NORSAND AND IMPERIALIS

Background to the agreements

12. Mr Pitman had experience as a finance and foreign exchange trader and broker. He did not have much experience in trading physical commodities such as oil and gas but had made various contacts in the oil and gas industry. In May or June 2017, Mr Pitman met Mr Anandanadarajah. They agreed to discuss business opportunities whereby Mr Pitman would introduce Mr Anandanadarajah to his contacts in the energy sector with a view to Mr Anandanadarajah brokering transactions with those contacts.

13. Those discussions bore fruit and on 21 September 2017, Norsand, Mr Pitman's company, and Imperialis, Mr Anandanadarajah's company, entered into an agreement (the "September Agreement"). Both Norsand and Imperialis understood at the time they entered into the September Agreement that Imperialis was not, and was not capable of being, an actual end supplier or end purchaser of fuel, energy or commodities. Rather, Imperialis would be acting as a broker or introducer: trying to use the contacts that Norsand provided to facilitate transactions between others who were able to buy and sell physical commodities.

The wording of the September Agreement

14. In the September Agreement, Norsand was defined as the "Introducer" and Imperialis was defined as the "Supplier". The September Agreement was, as Mr Kirby QC put it, "infelicitously drafted". At the most basic level, in places, the September Agreement appeared to proceed on the basis that Imperialis was an end supplier, or end seller, of commodities. For example, Recital (B) stated:

> *"(B) The Supplier wishes to be introduced to [the Introducer's] contacts, and is willing to pay the Introducer a commission on the terms of this agreement if such contacts enters into a transactions (*sic*) with* ***it****..."*

This was infelicitous because any contacts that Norsand provided would <u>not</u> be entering into contracts for the purchase or sale of commodities with Imperialis. Rather, Imperialis would be using those contact details in an attempt to broker transactions with others.

15. Clause 2 of the September Agreement provided as follows:

> *"2. INTRODUCTIONS*
>
> *The Supplier appoints the Introducer on an exclusive basis to identify Prospective Clients for the Supplier in the Territory and for the Term and to make Introductions of such persons on the terms of this agreement."*

The "Term" was, by Clause 7, a period of 5 years and the "Territory" was defined as being "worldwide".

16. Clause 5 dealt with commissions as follows:

> *"5. COMMISSION AND PAYMENT*
>
> *5.1 The Introducer shall be entitled to Commission if a Prospective Client Introduced by the Introducer enters into a Relevant Contract.*
>
> *5.2 The amount of commission payable shall be calculated as follows:*
>
> *(a) If the Supplier can satisfactorily demonstrate that a third party (a "***Third Party***") is required in order to effect the Transaction, then the commission payable to the Introducer shall be no less than 25%*

of the total sum received by the Supplier under the Relevant Contract in relation to such Transaction; and

(b) In the event that no Third Party is required in relation to a particular Transaction, the commission payable to the Introducer shall be no less than 33% of the total sum received by the Supplier under such Relevant Contract,

*(the **Commission**)"*

17. The provisions just quoted relied on a number of defined terms:

    i) "Introduction" was, by Clause 1.1, defined as:

    *"the provision to the Supplier of the contact details of a Prospective Client or an employee at a Prospective Client (as applicable). **Introduce**, **Introduces** and **Introduced** shall be interpreted accordingly."*

    ii) A "Prospective Client" was, by Clause 1.1, defined as:

    "a person introduced to the Supplier"

    iii) "Relevant Contract" was, by Clause 1.1, defined as:

    "a contract or other legally binding arrangement entered into between the Supplier and a Prospective Client in relation to a Transaction"

    iv) "Transaction" was, by Clause 1.1, defined as:

    "a fuel, energy and/or commodities transaction entered into between the Supplier and a Prospective Client".

18. In its Particulars of Claim, Norsand pleaded that there were also two terms to be implied into the September Agreement. The Defendants admitted in their Defence that those implied terms were part of the September Agreement:

    i) Imperialis would enter into Relevant Contracts itself, rather than diverting those contracts to third parties;

    ii) Imperialis would not divert payments due under Relevant Contracts to third parties.

The meaning of the September Agreement and whether any further terms should be implied

19. Norsand's pleading of the terms of the September Agreement in its Particulars of Claim consisted largely of quoting extracts from that agreement. Apart from the implied terms mentioned in paragraph [18] above, Norsand did not suggest in its pleadings that the agreement had anything other than the ordinary and natural meaning of the words used. The only aspect of interpretation of the September Agreement on which the Defendants joined issue related to the concept of a "Capable Client" (see paragraph [29] below).

20. Therefore, apart from the concept of "Capable Clients" on which the parties were not agreed, the parties were largely agreed on the meaning of the September Agreement with the result that some oddities in the drafting of that agreement were not explored in the pleadings served before the trial. For example:

    i) Given the nature of Imperialis's business, any sums that Imperialis received from a Prospective Client would necessarily be in the nature of commission for brokering a transaction, rather than a purchase or sale price payable for fuel or commodities. As a matter of ordinary language it is not entirely clear how commission that Imperialis received was received "under" a Relevant Contract so as to trigger Imperialis's own obligation to pay commission under Clause 5. The definition of "Relevant Contract" appears to presuppose the existence of a "Transaction" (a fuel, energy or commodities transaction between a Prospective Client and Imperialis) although the Relevant Contract only needed to be "in relation to" that Transaction, potentially embracing a relatively loose relationship. Yet Imperialis's business did not straightforwardly appear to involve it entering into any "fuel energy or commodities transactions" with Prospective Clients.

    ii) If Imperialis introduced a Prospective Client (introduced by Norsand) to a counterparty (not introduced by Norsand) and the counterparty paid Imperialis commission, but the Prospective Client did not, it is open to question whether a literal reading of Clause 5 of the September Agreement required Imperialis to pay any commission to Norsand. In this scenario, the Prospective Client would not have entered into any agreement with Imperialis.

21. I raised these issues with the parties during the hearing. As regards the point in paragraph [20.i)], Mr Kirby QC submitted that it could be inferred that any commission Imperialis received from a Prospective Client would be received "under" some kind of contract since businesses could scarcely be expected to pay sums gratuitously. He submitted that, applying a fair reading of the September Agreement that took into account the factual matrix within which it was concluded, the receipt of such sums would trigger an obligation on Imperialis to pay commission to Norsand. The Defendants did not address this point in either their written or oral submissions. Nor, with the exception of the points on "Capable Clients" to which I will come later, did the Defendants argue that the September Agreement, was defective in that it failed to provide Norsand with an entitlement to commission in circumstances where Imperialis received commission relating to transactions effected by Prospective Clients with counterparties other than Imperialis.

22. In construing the September Agreement, I will apply the following summary of the law set out by Popplewell J in paragraph 8 of *Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd (The "Ocean Neptune")* [2018] EWHC 163 (Comm):

> *"The court's task is to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement. The court must consider the language used and ascertain what a reasonable person, that is a person who has all the*

> *background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. The court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to the objective meaning of the language used. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other. Interpretation is a unitary exercise; in striking a balance between the indications given by the language and the implications of the competing constructions, the court must consider the quality of drafting of the clause and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest; similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated. It does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each."*

23. Applying that approach, I have concluded that the quality of the drafting in the September Agreement is relatively low not least since it does not obviously take into account a key aspect of Imperialis's business: namely that it could not itself purchase or sell fuel or commodities and so necessarily had to broker such transactions involving others. Since that was the nature of Imperialis's business, any absence of an obligation on Imperialis to pay commission to Norsand if Imperialis itself received commission from a Prospective Client was not a "negotiated compromise". Indeed, a conclusion that Imperialis had no obligation to pay commission to Norsand in such circumstances would be at odds with "business common sense" since, viewed objectively, it must have been envisaged that Imperialis would be using Norsand's contacts to broker transactions and receive commission. It would make no sense for Norsand to be left unremunerated if Imperialis successfully did precisely what was intended with Norsand's contacts.

24. Moreover, it is possible, without unduly stretching language, to conclude that Imperialis had an obligation to pay Norsand under Clause 5 if it received commission from a Prospective Client, as distinct from a price payable under a contract for the sale and purchase of physical commodities. As Mr Kirby QC observed, such commission would be unlikely to be paid gratuitously and so there would be some "contract or other legally binding arrangement" requiring a Prospective Client to pay commission. That commission contract could fairly be regarded as a "fuel, energy or commodities transaction" since it related to fuel, energy or commodities. In short, Imperialis's receipt of commission from a Prospective Client can fairly be said to involve that Prospective Client entering into a Relevant Contract with Imperialis and making a payment to Imperialis

under that Relevant Contract. Given the commercial background to the September Agreement, that interpretation is to be preferred.

25. As regards the point in paragraph [20.ii)] above, the Defendants confirmed in their oral submissions that, if (i) a Prospective Client entered into a fuel, energy or commodities transaction with anyone, and (ii) Imperialis received commission from anyone in relation to that transaction then (iii) Imperialis had a contractual obligation to pay Norsand commission under Clause 5 of the September Agreement. The Defendants, therefore, were not arguing that the September Agreement treated commission that Imperialis received from a Prospective Client differently from commission it received from the Prospective Client's counterparty.

26. That therefore leaves the question of what kind of person was capable of constituting a "Prospective Client" for the purposes of the September Agreement. The parties were agreed that, if Norsand provided Imperialis with the contact details of a person who was able itself to enter into a contract for the purchase or sale of physical commodities (to whom the Defendants referred as a "Capable Client"), that constituted the "Introduction" of a "Prospective Client". They differed, however, in the analysis of what were referred to during the trial as "chains" of introductions. I will address this issue in the context of a hypothetical chain with 3 links, although it could be longer. Norsand might provide Imperialis with contact details of X (thereby effecting an "Introduction"). X might be a broker who was not itself able to purchase or sell commodities, but X might provide contact details of Y, another broker. Y in turn might provide contact details of Z who was an end user or supplier of commodities. Z would be at the end of the chain of introductions emanating from Norsand and might enter into a contract of purchase or sale of commodities with CP, a counterparty not introduced by Norsand.

27. This issue could perhaps usefully have been explored more in the pleadings exchanged before trial. It was not, partly because Norsand set out verbatim extracts from the September Agreement in its Particulars of Claim, thereby glossing over some difficulties raised by the drafting of those extracts. However, both parties' positions as set out in their closing submissions were tolerably clear and neither side said that they had insufficient opportunity to meet the case put by the other in closing, although Norsand does argue that the Defendants' position involved them in resiling from admissions made in their Defence.

28. Norsand's position, pleaded in paragraph 6(a) of its Reply, was that, in the situation set out at [26] above, all of X, Y and Z were "Prospective Clients" whom Norsand had "Introduced". In practice, it might be thought unlikely that brokers such as X and Y would pay any commission to Imperialis (indeed X and Y might feel that Imperialis should pay them commission for introducing Imperialis to Z). However, Norsand's position was that if any of X, Y or Z paid any commission to Imperialis, that triggered the operation of Clause 5, obliging Imperialis to make a payment to Norsand. Although the point was not explored in great detail, the logic of Norsand's position was that, if CP paid commission to Imperialis, that too would trigger Imperialis's obligation to pay commission under Clause 5.

29. As I have noted, the Defendants accepted that Imperialis's receipt of commission from X, Y, Z or CP was in principle capable of triggering Imperialis's obligation to pay commission under Clause 5. However, they argued that whether the obligation under Clause 5 was actually triggered depended on the type of client that Norsand introduced and how many intermediate links in the chain there were between that client and a "Capable Client". As I understood it, the Defendants put their case in two ways:

    i) There was an implied term of the September Agreement to the effect that any person that Norsand introduced to Imperialis had to be either (i) a Capable Client or (ii) a broker or introducer who could introduce Imperialis directly to a Capable Client without needing to involve another introducer or broker.

    ii) Clause 5 of the September Agreement is triggered only if a Prospective Client "Introduced" by Norsand enters into a Relevant Contract. That required Norsand itself to provide the contact details of that Prospective Client. In the hypothetical example given, Z was not "Introduced" by Norsand; it was "Introduced" by Y and so Clause 5 is not triggered. (The Defendants appeared to acknowledge that the position would be otherwise if the "Capable Client" was at most two steps in the chain away from Norsand. So, if Y was a "Capable Client" in the Defendants' terminology, then the Defendants would accept that Norsand "Introduced" both X and Y to Imperialis).

30. Mr Kirby QC argued that the second of the Defendants' arguments (and possibly also the first) involved the Defendants' resiling from the admission in paragraph 8 of their Defence to the effect that "pursuant to the terms of the Agreements, from about September 2017, Norsand identified Prospective Clients (as defined in the Agreements) to Imperialis and/or made introductions of the same to Imperialis." I do not agree. Paragraph 8 of the Defence certainly contained an admission that some "Introductions" were effected. However, paragraph 7 of the Particulars of Claim, to which paragraph 8 of the Defence was responding, did not set out a full list of all parties said to have been "Introduced" and so the admission does not have the breadth for which Mr Kirby QC argued. Moreover, both paragraphs 8 and 9 of the Defence referenced expressly the Defendants' assertion that averred introductions might not count except to the extent they were of "Capable Clients".

31. In deciding whether there is an implied term in the contract as set out in paragraph [29.i)], I will follow the approach set out by Lord Hughes in paragraph 7 of his judgment in *Ali v Petroleum Co of Trinidad and Tobago* [2017] UKPC 2:

> *"It is enough to reiterate that the process of implying a term into the contract must not become the re-writing of the contract in a way which the court believes to be reasonable, or which the court prefers to the agreement which the parties have negotiated. A term is to be implied only if it is necessary to make the contract work, and this it may be if (i) it is so obvious that it goes without saying (and the parties, although they did not,* ex hypothesi, *apply their minds to the point, would have rounded on the notional officious bystander to say,*

> *and with one voice, 'Oh, of course') and/or (ii) it is necessary to give the contract business efficacy. Usually the outcome of either approach will be the same. The concept of necessity must not be watered down. Necessity is not established by showing that the contract would be improved by the addition. The fairness or equity of a suggested implied term is an essential but not a sufficient pre-condition for inclusion. And if there is an express term in the contract which is inconsistent with the proposed implied term, the latter cannot, by definition, meet these tests, since the parties have demonstrated that it is not their agreement."*

32. I do not consider that the implied term for which the Defendants argue is "necessary" in the sense set out above. I acknowledge the Defendants' point that it would be much easier for Imperialis to broker a transaction if it was provided with a direct introduction to a Capable Client. However, even without the implied term suggested, the September Agreement works perfectly well. The September Agreement imposed no positive obligation on Imperialis to deploy any particular effort with any contacts that Norsand introduced. Accordingly, if Norsand only introduced brokers at some remove from a "Capable Client", Imperialis would be entitled to decline to invest any time in working its way down a lengthy chain in order to find a "Capable Client" at the end of it.

33. In a similar vein, I do not consider that the parties would have rounded on an officious bystander with a testy "Oh, of course!" if that bystander had suggested that the Defendants' proposed implied term should be incorporated in their written contract. The proposed term is far from obvious. It would have the surprising result that, if Imperialis decided that because the prospects of finding a Capable Client at the end of a chain of introductions were so good, or if the possible commercial rewards were so high, that it would be worth its while following through the links in that chain, it would have no obligation to pay Norsand anything even if a successful transaction resulted.

34. Furthermore, the September Agreement provides expressly that <u>any</u> person that Norsand introduced to Imperialis would fall within the definition of "Prospective Client". The implied term which the Defendants propose is, accordingly, inconsistent with the express provisions of the Agreement, a further reason why the implication of that term should be rejected.

35. That leads to the Defendants' arguments set out in paragraph [29.ii)] above which are based on the express terms of the contract rather than any implied term. I acknowledge that there is a highly literal reading of the September Agreement to the effect that, in the example under discussion, Z was "Introduced" by Y and not by Norsand with the result that, if Z paid Imperialis commission, Clause 5 of the September Agreement was not triggered. The question is whether, applying the kind of iterative approach described in *The Ocean Neptune*, that literal interpretation truly reflects the intention of the parties as it would appear to a reasonable person.

36. In support of their interpretation, the Defendants point out that Clause 5 of the Agreement deals only with the situation where "a third party" is needed in order to effect a transaction (Clause 5.2(a)) and the situation where no such third party

is needed (Clause 5.2(b)). That, they submit is consistent with their interpretation since it indicates that the situation where multiple third parties were required was outside the parties' contemplation. Moreover, they argue that, if it was intended that Imperialis would be obliged to make a payment under Clause 5 after following through a chain containing a large number of participants, Clause 5 would have provided for a "sliding scale" of commission based on the length of that chain and not a binary choice between a commission rate of 33% or 25% of the amount that Imperialis received. The Defendants note that just such a sliding sale was set out in a draft contract between Norsand and Volta which was sent to Norsand for approval after Imperialis was put into liquidation and so was incapable of continuing to perform the September Agreement. They argue that the absence of such a "sliding scale" from the September Agreement, when such a scale was set out in the draft agreement with Volta, is telling.

37. I reject the Defendants' submissions as based on the draft agreement involving Volta. I do not consider that a draft agreement that was never signed sent to Norsand after the September Agreement was concluded sheds much, if any, light on the interpretation of the September Agreement.

38. I agree with the Defendants that the dichotomy in Clause 5.2 between situations when the commission is 33% and those when it is 25% provides some support for their interpretation. It might be thought slightly odd that, if Imperialis had to deploy significant time in effort in following through a chain of, say, 10 contacts, it had to pay Norsand the same amount of commission on a successful transaction as it would if there only 3 links in the chain. However, I regard this indication as relatively slender. As I have noted, Imperialis had a choice as to whether to pursue introductions through lengthy chains of brokers. Acting rationally it would only choose to deploy its effort if there was a reasonable prospect of a return on that effort. Therefore, Imperialis could reasonably be expected to follow through lengthy chains only if it thought that doing so would be in its commercial interest. If it was correct, and a successful transaction resulted, it is entirely reasonable to expect that it should have to pay commission to Norsand and, in the absence of a more fine-tuned agreement as to commission, that commission should be payable at the rate of 25%. That conclusion is not inconsistent with business common sense.

39. Moreover, I consider that the Defendants' construction of the September Agreement has the potential to produce results inconsistent with business common sense. On the Defendants' interpretation, if Norsand gave Imperialis a broker contact and Imperialis reasoned that it was worth following through the various links in the resulting chain because there was a good prospect of a profitable transaction resulting, Norsand would be left completely unremunerated even if Imperialis's commercial judgement was correct. That interpretation would fly in the face of the clear purpose of the contract which was for Norsand to provide Imperialis with contacts that might (without any guarantees) lead to successful transactions and be remunerated only if successful transactions resulted. The witness evidence made it clear that both Imperialis and Norsand were operating in a business sector where successful transactions were the exception, rather than the rule. It would make no commercial sense for Norsand

to be completely unremunerated when that comparative rarity, a successful transaction, resulted directly or indirectly from someone Norsand had introduced.

40. The Defendants counter that their interpretation of the September Agreement should be preferred because Mr Pitman represented that the persons he introduced would be Capable Clients or introducers at most one step removed from Capable Clients. Mr Pitman denied making any such representation. I prefer Mr Pitman's evidence which is consistent with the fact that, in a WhatsApp message sent on 10 April 2019, Mr Anandanadarajah told Mr Pitman that in future contacts provided by Mr Pitman needed to be sent to "Danny" for pre-vetting because "Too many times I [Mr Anandanadarajah] have wasted my time". Mr Pitman queried this procedure with the clear implication of his query being that it was something new. If Mr Pitman truly had represented that he would only introduce end users or suppliers, or persons one step removed, Mr Anandanadarajah would have complained much earlier than April 2019 since it would have been apparent to him from the autumn of 2017 that some of Mr Yakavitski's contacts would involve him in chasing down relatively lengthy chains of referrals (see paragraph [51] and paragraph [52] below).

41. Having considered the aspects on which the parties were agreed, and those on which they were not, I have concluded that the September Agreement operated as follows in the context of the chain set out in paragraph [26] above:

    i) All of X, Y and Z would be "Introduced" by Norsand to Imperialis.

    ii) If Imperialis received any commission under a contractual obligation owed to it by any of X, Y, Z or CP as a consequence of Z entering into a fuel, energy or commodities transaction with CP, Imperialis had an obligation to pay commission to Norsand under Clause 5 of the September Agreement.

    iii) The conclusion is not altered by the fact that, using the Defendants' terminology, neither X nor Y were "Capable Clients".

42. It is convenient at this point to deal with Norsand's application to amend its Reply so as to introduce a pleading of estoppel by convention. That amended pleading sought, in essence, to argue that even if Norsand had not actually "Introduced" third parties (which I took to be a reference to persons who were not end users or suppliers) within the meaning of the September Agreement there was a common assumption that such introductions would "count" for the purposes of that Agreement and would be treated as such. My conclusion in paragraph [41] above means that Norsand does not need to rely on an estoppel. However, for completeness, I refuse Norsand's application to amend its Reply. Until Norsand made its application to amend, on the last day of the hearing, the question whether there was a <u>common</u> understanding as to how indirect referrals would be treated had not featured materially in the evidence, although Mr Anandanadarajah had said that he was prepared, from his own <u>personal</u> perspective, to treat such referrals as counting for the purposes of the September Agreement because of his friendship with Mr Pitman. In a similar vein the evidence was not prepared in the knowledge that there would need to be an examination of whether Mr Anandanadarajah bore sufficient responsibility for the parties operating under any shared assumption. It would, in my judgment, not be fair for the court, at a late

stage of proceedings, to seek to piece together the existence or otherwise of an estoppel by convention, when the evidence had not been prepared with that issue firmly in mind.

Other agreements between Norsand and Imperialis

43. To an extent, Norsand was "teaming up" with others in providing contacts to Imperialis. For example, Norsand introduced Imperialis to contacts of Ms Tarlev and of Mr Yakavitski as described below. Ms Tarlev evidently required some direct contractual entitlement to a commission should her introductions yield fruit. That was achieved by Tarlev and Partners Limited (Ms Tarlev's personal company), Norsand and Imperialis entering into an agreement dated 20 January 2018 (the "Tarlev Agreement") which gave Ms Tarlev's company rights directly against Imperialis. The terms of the Tarlev Agreement were similar to those of the September Agreement. No party suggested that the Tarlev Agreement was of any significance and it was not suggested that it mattered whether commission due to Norsand arose under the September Agreement or the Tarlev Agreement.

44. Mr Yakavitski was also teaming up with Norsand by providing Imperialis access to his own contacts. However, Mr Yakavitski did not require an agreement similar to the Tarlev Agreement. He reached an agreement with Mr Pitman that he would be paid 50% of anything that Norsand received from Imperialis by way of commission on contracts generated with Mr Yakavitski's contacts.

PART B: FINDINGS OF FACT

The Four Transactions

45. In closing submissions made on behalf of Norsand, Mr Kirby QC focused Norsand's claim on four transactions (the "Four Transactions") which he submitted could be shown, on a balance of probabilities, to have closed successfully and resulted in a payment of commission, whether to Imperialis, Mr Anandanadarajah or another entity under Mr Anandanadarajah's control.

46. With one exception, I was not shown any contracts or invoices said to evidence the Four Transactions. It follows that, in most cases, it is not possible to set out the precise entities said to have been party to those transactions, the nature of the commodities to be delivered, or the contract price. Norsand's case is based, to a large extent, on the proposition that the existence of the Four Transactions can be inferred from confirmations that Mr Anandanadarajah gave contemporaneously, consisting primarily of emails and messages over the WhatsApp platform to the effect that the Four Transactions had closed and had resulted in Imperialis receiving payment so as to trigger a corresponding obligation on Imperialis to make a payment to Norsand.

47. The Defendants do not accept that the Four Transactions existed in the sense of being completed transactions, although they do accept that Imperialis made some attempts to broker them. I will deal with that contention later in this judgment. For the time being, I will summarise what Norsand claims the Four Transactions

involve and the nature of the confirmations that Mr Anandanadarajah gave at the time in relation to them.

48. Because of the lack of certainty as to their precise counterparties and terms, I will describe the Four Transactions using the terminology used in Mr Anandanadarajah's contemporaneous confirmations as follows:

    i) CST 380. Norsand says that this covers two transactions for the sale of CST 380 fuel, destined in both cases for the ultimate use of Daewoo, a South Korean company. One transaction was said to involve a direct sale to Daewoo by Adaxco. One transaction was said to involve a sale to a company called GTL Petroleum (Pty) Limited, a South African company ("GTL") which GTL was going to sell on to Daewoo. Norsand says that both components of the CST 380 transaction closed between October and December 2017.

    ii) Adaxco – FedEx. Norsand says that this was a sale of fuel to FedEx which took place prior to March 2018. There is some uncertainty in the evidence as to the identity of FedEx's counterparty, if the transaction took place. Mr Anandanadarajah's description of the transaction obviously suggests that the counterparty would have been Adaxco, a company known to Mr Yakavitski. However, Mr Hill's witness statement suggests that he at least thought that Shell was supplying fuel to FedEx.

    iii) Adaxco – CSP. Norsand says that this was a sale of jet fuel effected by Adaxco which took place prior to March 2018. It is not clear whether the counterparty to the transaction is a company called "CSP" or whether "CSP" was a description of the type of fuel said to be sold.

    iv) Shell – Cathay Pacific. Norsand says that this was a sale of jet fuel by Shell to the airline Cathay Pacific. It took place some time between March 2018 and May 2018.

Introductions effected insofar as relevant to the Four Transactions

49. I set out below my findings as to the extent and identity of Norsand's introductions only insofar as they could be of relevance to the Four Transactions, if they took place. Norsand effected other "Introductions" pursuant to the September Agreement, but I do not need to make findings on those to the extent they do not relate to the Four Transactions.

Introductions relevant to the first alleged transaction: CST 380

50. Shortly after signing the September Agreement in Autumn 2017, Mr Pitman, acting on behalf of Norsand, introduced Imperialis to Mr Yakavitski. Mr Yakavitski was, at material times, the managing director of Lukoil the UK. Lukoil is a large company that conducts a significant worldwide operation involving fuel and commodities. However, although Mr Anandanadarajah and Imperialis were no doubt pleased to be introduced to someone with such a prominent role in their chosen business sector, it was not suggested that Mr Yakavitski would be enabling Imperialis to broker transactions with Lukoil. Rather, Mr Yakavitski was

introduced in his capacity as director and shareholder of Samson Brothers and Sons Limited, a consultancy business with which Mr Yakavitski was involved separately from his role at Lukoil. As well as providing Mr Anandanadarajah with Mr Yakavitski's contact details (which resulted in Mr Anandanadarajah and Mr Yakavitski corresponding with each other by WhatsApp), Mr Pitman attended various face-to-face meetings involving both Mr Yakavitski and Mr Anandanadarajah.

51. Mr Yakavitski knew a Mr Alfie Yunus who had contacts of his own in the commodities and fuel industry. Mr Yakavitski provided Mr Anandanadarajah with Mr Yunus's contact details, as demonstrated by the fact that Mr Anandanadarajah and Mr Yunus exchanged WhatsApp messages.

52. Mr Yunus provided Mr Anandanadarajah with the contact details of Mr Rommel Haque, commodities broker or trader. Mr Haque in turn provided Mr Anandanadarajah and Imperialis with the contact details of a director or employee of GTL. The Defendants accepted that these introductions took place in an email dated 13 January 2020.

Introductions relevant to Adaxco – FedEx

53. As noted in paragraph [50], above, Norsand introduced Imperialis to Mr Yakavitski. Mr Pitman said in paragraph 18 of his witness statement that he and Mr Yakavitski introduced Imperialis to a global energy company called "Adaxco". That statement was not challenged in cross-examination and therefore I conclude that Norsand and/or Mr Yakavitski provided Imperialis with the contact details of one or more employees at Adaxco in or around Autumn 2017.

54. To the extent that the seller of the fuel was Shell (as Mr Hill indicated in his witness statement), I deal with the chains of referrals leading to Shell in paragraphs 57 to 59 below.

55. It was not suggested that Norsand effected any introduction to FedEx. Mr Hill's unchallenged evidence in his witness statement was that Mr Anandanadarajah himself had a pre-existing relationship with FedEx.

Introductions relevant to Adaxco - CSP

56. The claim in relation to this contract is made on the basis that Norsand introduced Imperialis to Adaxco and I have already concluded, at [53] above, the means by which that introduction was effected.

Introductions relevant to Shell – Cathay Pacific

57. Mr Hill's witness statement set out evidence of a process by which Imperialis was introduced, through a chain of brokers, to employees at Shell. Mr Hill's evidence was that these introductions were effected in the course of discussions with Mr Anandanadarajah and Imperialis with a view to securing fuel for use by FedEx and Mr Hill does not mention a possible transaction with Cathay Pacific. Later in this judgment, I will consider the significance or otherwise of this. For the time

being, I will simply set out Mr Hill's unchallenged evidence as to the introductions that did take place, which I accept.

58. Ms Tarlev provided Mr Anandanadarajah and Imperialis with Mr Hill's contact details. Mr Hill in turn provided Mr Anandanadarajah and Imperialis with the contact details of Mr Darley, a broker in the commodity and energy sector. Mr Darley provided Mr Anandanadarajah and Imperialis with contact details for another broker, a Mr Nicolas Tornay. Mr Tornay provided Mr Anandanadarajah and Imperialis with contact details for a gentleman known only as "Solomon" and Solomon provided Mr Anandanadarajah and Imperialis with contact details for employees at Shell.

59. In places, Mr Hill's witness statement was not entirely clear as to whether contact details were handed over at the various stages identified in paragraph [58] above, or whether meetings took place between Mr Anandanadarajah/Imperialis and various members of the chains. The distinction is important because the mere attendance at a meeting is not an "Introduction" for the purposes of either the September Agreement or the Tarlev Agreement whereas the provision of contact details is. I have concluded that contact details were handed over because (i) I saw an email dated 5 April 2018 from Mr Anandanadarajah to Mr Tornay, Mr Darley, Mr Hill and Ms Tarlev demonstrating that Mr Anandanadarajah had their contact details; and (ii) Mr Hill's unchallenged evidence in paragraph 14 of his witness statement was that Mr Anandanadarajah had said that he (Mr Anandanadarajah): "was not happy moving forward with the people he had been in contact with for the Shell fuel deal, which Solomon had put him in contact with".

Contemporaneous confirmations from Mr Anandanadarajah

60. A striking feature of this case is that Mr Anandanadarajah gave a number of contemporaneous confirmations to the effect that (i) transactions (including the Four Transactions) had closed successfully and that (ii) funds were sitting in one or more bank accounts out of which payments could be made to Norsand. The Defendants do not dispute that such confirmations were given, although there are some instances in which they suggest that the meaning of those confirmations is somewhat different from the meaning ascribed to them by Norsand. In this section, therefore, I will simply make findings as to the nature of the confirmations and resolve disputed questions of interpretation of them. In a later section I will consider whether the Four Transactions actually took place and the extent to which Mr Anandanadarajah, Imperialis or other entities controlled by Mr Anandanadarajah received payments in connection with those transactions.

<u>Confirmations that the Four Transactions had **closed** and that Imperialis intended to make payments to Norsand</u>

61. On 21 December 2017, Mr Anandanadarajah sent a WhatsApp message to a group he had set up that included Mr Pitman and Mr Yakavitski. In that message he gave a "transaction update" as to various transactions in the pipeline that included the following:

"CST380: payment in account awaiting release of funds to UK. I assume early next year worst case."

62. On 22 January 2018, Mr Anandanadarajah sent Mr Pitman an email asking Mr Pitman (on behalf of Norsand) to issue two invoices to Imperialis each for £315,000 quoting Imperialis's references CSTIMPDAX1 and CSTIMPDAX2 respectively. The email did not state expressly that it related to the CST380 transaction, but I have concluded that this was implicit from the use of the letters "CST" in Imperialis's reference. The second invoice was expressed to be "for the second lift" – i.e. the second shipment of fuel. Mr Anandanadarajah wrote:

"… the contract length is 6 months and will be reviewed at month 3. After 6 months it is my opinion they will extend for 6 months more".

63. Mr Anandanadarajah also invited Mr Pitman to send a third invoice for £100,000 "to make up the 750,000" (which I take to be an arithmetic error since two invoices of £315,000 plus £100,000 would add up to £730,000). The additional £100,000 was said to be the "shared contract bonus we got on the contract kicking in and is a one-off payment".

64. This was just an early example (relating only to the CST 380 transaction) of what came to be several categorical assurances that all of the Four Transactions had completed successfully. Mr Anandanadarajah does not deny giving assurances and it is therefore not necessary to set them all out. A flavour will suffice.

65. After requesting an invoice in respect of the CST380 transaction, some conversations ensued over WhatsApp about difficulties Mr Anandanadarajah said he was encountering in making payment due to Mr Pitman and Norsand. I will deal with those communications in the next section, but in broad summary in those communications, Mr Anandanadarajah cited difficulties with banks' processes relating to anti-money laundering and "know your client" (KYC) compliance.

66. On 27 March 2018, Mr Anandanadarajah sent an email to Mr Pitman and Mr Yakavitski providing an update on, among others, three of the Four Transactions (but not dealing with the Shell – Cathay Pacific transaction):

"Dear Gents

I hope you are both well and in good health please find below a list of the current transactions we are working on and a brief description on all

Adaxco – CSP Jet A1

Near completion of first lift.

…

Daewoo – Adaxco CST

Completed money to be released end of first week of [a] April

….

Adaxco – Fedex Jet A1

Payment waiting for release end of first week of April"

67. I have concluded that this email should be read as an unequivocal confirmation that three of the Four Transactions had closed successfully between the principals. I take the reference to Adaxco – CSP Jet A1 being "near completion of first lift" as indicating that a contract was in place between the principals, with the first "lift", or delivery under that contract, to take place imminently.

68. On 1 May 2018, by which time there had been further discussions over WhatsApp about what Mr Anandanadarajah said were continued problems with banks' payment processes, Mr Anandanadarajah sent another email to Mr Pitman alone that dealt with all the Four Transactions as follows:

"Dear Mark

This is to confirm that you (Mark Pitman) of Norsand Consultancy are due a commissions payment on the following contracts that will be paid monthly fourth duration [sic] of the contracts.

CSP380-Daewoo

Adaxco-Fedex

CSP-Adaxco

Shell- Cathay Pacific

These deals make a total payout of 5.2 million. First payment will be made by end of May. Please be assured that the payout will increase as most of these are extended contracts."

69. This email contained a specific confirmation that all of the Four Transactions had closed and had resulted in Imperialis receiving commission, triggering an obligation on Imperialis to pay Norsand "5.2 million" albeit in an unspecified currency.(It was agreed that the reference to "CSP380" was intended to be to "CST380"). I have concluded that the currency was sterling since on 31 May 2018, Mr Anandanadarajah sent Mr Pitman a WhatsApp message confirming that £5.1 million would be sent to him shortly. Mr Anandanadarajah's witness statement also references an intended payment of £5.1m (although Mr Anandanadarajah characterises that as a voluntary offer to buy out future entitlements rather than a payment in respect of crystallised liabilities). The figures and timescales are sufficiently close for me to infer that they are referring to the same intended payment.

70. This is just a small sample of a number of emails in similar terms each confirming that one or more of the Four Transactions had closed successfully with the principals to them entering into binding contracts. Since Mr Anandanadarajah does not deny sending these emails or, in most cases, dispute their apparent meaning (subject to the points I address below), it is not necessary to set out the

detail of all these emails. However, it is worth noting some further correspondence relating to the Shell - Cathay Pacific transaction specifically. On 16 August 2018, after further correspondence and discussions over WhatsApp about payment, Mr Anandanadarajah sent an email to Ms Tarlev, Mr Hill, Mr Pitman and Mr Darley. That email included the following:

> *"Shell – I apologise for the the time it has taken to organise this correctly. Due to structural changes and a number of irritating compliance details to pay this out correctly it has taken time. However on the 3rd of September this will be released to your account with the next payment."*

71. It is of significance that this email was sent in August 2018 since Mr Anandanadarajah's evidence in his witness statement was that he knew by the beginning of May 2018 that Imperialis would not be receiving any commission payment in respect of the Shell contract.

Confirmations that Imperialis had **received** payments of commission in respect of the Four Transactions

72. Unsurprisingly, as soon as Mr Anandanadarajah invited Mr Pitman to invoice him in respect of the CST 380 transaction (see paragraph [62] above), Mr Pitman did so. Mr Pitman chased up payment when it was not made by 29 January 2018 prompting Mr Anandanadarajah to send Mr Pitman a WhatsApp message saying:

> *"Money is being organised. Just taking a bit of time due to [bullshit] kyc etc".*

73. This was to be the beginning of protracted exchange of messages lasting well into 2019 in which Mr Anandanadarajah indicated that funds were sitting in bank accounts somewhere but various compliance issues related to, among other matters, the sheer size of the payments, KYC and anti-money laundering checks, were holding up payment. The Defendants do not deny that such messages were sent. I will therefore give only a flavour of the more significant confirmations.

74. On 31 January 2018 and 5 February 2018, Mr Anandanadarajah indicated that payment was being dealt with by "the accountants". This was a reference to Mr Howard Silverstein, an accountant by profession, who practised in California. Mr Anandanadarajah indicated that the size of the payments was causing some difficulties.

75. In the WhatsApp exchange on 5 February 2018, Mr Pitman asked what the hold-up with payment was because he understood that the money was sitting in "your Barclays account". Mr Anandanadarajah replied:

> *"Mate I know you have questions but let me sort it. Nothing to do with it being in my Barclays account or not. There is a lot more than you involved … with this. Just need a little bit of patience to get all sorted! Thanks."*

76. In cross-examination Mr Anandanadarajah said that he was not saying to Mr Pitman that there was money in Mr Anandanadarajah's Barclays account, just that

there was money tied up in someone's Barclays account. He said he was just relaying information, that he had received from the very contacts that Mr Pitman had introduced, to the effect that transactions had closed successfully and there was money sitting in a Barclays account ready to pay commission to everyone (including Imperialis and Norsand) who had facilitated those transactions. I will deal in the next section with this aspect of the Defendants' case in more detail. However, for the time being I will simply conclude that Mr Anandanadarajah's interpretation of the assurances given in respect of a Barclays account is at odds with a fair reading of the WhatsApp communications as a whole. It is true that the conversation I have quoted above does not state expressly that Mr Anandanadarajah or Imperialis had an account with Barclays. However, the implication is quite clear and was made express in later discussions. For example, on 7 February 2018 Mr Pitman sent a WhatsApp message to Mr Anandanadarajah. Mr Pitman was clearly being put under pressure by some of his contacts as to when money would be forthcoming and Mr Pitman said:

> *"It's killing me. Please show something re funds. Even a screen shot."*

Mr Anandanadarajah offered to call the person in question to put his mind at rest. That prompted Mr Pitman to write "I just [need to] know what to say to him. Is the monies in Barclays that I can 100% confirm please". Mr Anandanadarajah replied, 27 seconds later:

> *"We have [monies] in Barclays".*

I reject Mr Anandanadarajah's assertion that it was significant that he referred to "we" rather than "I" here. Mr Pitman was clearly looking for assurance that Mr Anandanadarajah had the money in a Barclays account to which he had access. Mr Anandanadarajah gave that assurance.

77. In a similar vein, on 12 February 2018, Mr Pitman sent a message to Mr Anandanadarajah asking Mr Anandanadarajah to "concentrate on Barcs". Mr Anandanadarajah responded:

> *"Barcs? If you mean Barclays we concentrate on it everyday. It's in the bank's hands now completely. I have done everything [now]. All with bank compliance".*

78. On 20 March 2018, Mr Pitman sent a WhatsApp message to Mr Anandanadarajah asking "How was Barclays today?". Mr Anandanadarajah replied:

> *"Still going will call afterwards"*

The clear implication of this exchange was that Mr Anandanadarajah was at that very point in a meeting with Barclays to try to secure release of funds. It cannot be sensibly read as suggesting that money was sitting in a Barclays account controlled by persons other than Mr Anandanadarajah; if that was the position, Mr Anandanadarajah could scarcely be attending a meeting to secure the release of that money. That conclusion is only reinforced by the fact that, on 9 May 2018, in response to a question from Mr Pitman over WhatsApp about how things were progressing with Barclays, Mr Anandanadarajah wrote:

"I'm not sure until I have a meeting later today"

79. In the same WhatsApp conversation on 9 May 2018, Mr Anandanadarajah said that "My priority is getting everyone paid". The clear implication of this statement is that Imperialis (or Mr Anandanadarajah) had already been paid commission and that he was seeking to ensure that Norsand and others received their appropriate shares of that commission. If Mr Anandanadarajah was seeking to explain that neither he nor Imperialis had been paid yet, the discussions about Barclays would have been framed differently.

80. Reading the exchanges about Barclays as a whole, I am in no doubt that they were conveying the impression that Mr Anandanadarajah himself, or possibly a nominee or company under his control, held an account with Barclays, money was sitting in that account ready to be sent to Mr Pitman and Norsand, but that Barclays' compliance processes were holding matters up. Mr Anandanadarajah's position, that the exchanges could be read as referring to money sitting in a Barclays account to which he had no access, flew in the face of the ordinary meaning of the words used. Of course, it does not follow that, just because Mr Anandanadarajah said that money was sitting in a Barclays account to which he had access, that the money was actually there. It was open to him to explain why his contemporaneous confirmations to this effect were incorrect and I will consider this issue further below. However, at this stage I simply note that Mr Anandanadarajah's attempt to do this in relation to the confirmations about money in the Barclays account have an unpromising start. Rather than acknowledging the natural meaning of the confirmations he gave about the money in the Barclays account, and seeking to explain why those confirmations were wrong, Mr Anandanadarajah instead engaged in an unrealistic attempt to argue that the confirmations bore something other than their ordinary and natural meaning. That has affected my assessment of the credibility of his evidence on this issue particularly given his evidence, set out in paragraph [92] below, that he, or Imperialis did have a Barclays account at the time.

Confirmations of impending payment from Mr Silverstein

81. A change in the course of dialogue came on 11 June 2018. On that date, Mr Anandanadarajah forwarded to Mr Pitman a letter from Mr Silverstein to whom Mr Anandanadarajah had previously referred in the WhatsApp exchanges as "the accountant" or "my accountant". The precise relationship between Mr Anandanadarajah and Mr Silverstein is unclear with matters not helped by the fact that, despite giving a witness statement, Mr Silverstein did not make himself available for cross-examination. I have concluded that Mr Silverstein did not act as an accountant to Mr Anandanadarajah or Imperialis in the sense of keeping books for them or providing them with professional advice. Rather, in the course of carrying on his accounting profession in the US, Mr Silverstein had become acquainted with wealthy individuals. Mr Silverstein would periodically engage Mr Anandanadarajah to provide unspecified "consulting services". Mr Silverstein would use those "consultancy services" for the benefit of his clients. Since Mr Silverstein wished to keep control of his relationship with his own clients, he did not typically allow Mr Anandanadarajah to provide his consultancy services direct to his clients. That relationship meant that Mr Silverstein would, from time

to time come under an obligation to pay Mr Anandanadarajah fees for the consultancy services given.

82. The letter that Mr Anandanadarajah forwarded to Mr Pitman read, so far as material, as follows:

> *"Dear Rupon*
>
> *Reference: Transfer1045Mark*
>
> *I will be transferring directly 15 million USD (fifteen million US dollars) in total to the following coordinates as requested by you:*
>
> *[the details of Norsand's Metrobank UK account were given]*
>
> *This was instructed by you two weeks ago and the total will be sent this week without fail. Thank you.*
>
> *Kind regards*
>
> *[a signature appeared reading "Howard M Silverstein" but Mr Anandanadarajah's name appeared under this signature, perhaps because the author of the letter had "cut and pasted" from a document that Mr Anandanadarajah had prepared]"*

83. The transfer referred to in Mr Silverstein's letter did not take place and Mr Pitman sent Mr Anandanadarajah a message expressing his concern. Mr Anandanadarajah responded:

> *"It doesn't concern me at all to be honest as he has got all others out and payments have landed with others. He explained last night that he did what was necessary but it takes time to move money of that size, to repeat the money has been organised to be sent, it just hasn't left the account yet."*

84. On 26 June 2018, Mr Anandanadarajah forwarded Mr Pitman a further letter from Mr Silverstein which confirmed that USD 15m was indeed being sent to the Metrobank UK account, but that this had taken longer than expected because of the size of the sums involved. Mr Anandanadarajah suggested in his evidence that Mr Silverstein's letters could be read as being equivocal. I reject that. They amounted to an unqualified assurance that money was being sent and did not suggest that the transfer of the money was contingent on any other event.

85. Norsand received no payment from Mr Silverstein. On being pressed, Mr Anandanadarajah's response was to offer still more payments. On 16 August 2018, just 6 days before the court ordered that Imperialis should be wound up for failure to pay a debt of £15,000, Mr Anandanadarajah sent an email headed "Update: Transactions, payment and breakdown" to Mr Pitman:

> *"… The following is the breakdown of the funds being sent direct to your Metro accounts.*

> *First tranche or 20 million dollars includes money from the following transactions with the codes these are complete payments on the contracts and payouts."*

There then followed a series of references, many of which can be readily reconciled with specific transactions said to have been undertaken, for example:

> *"Jet 1265, Jet 1265*2, Jet 1265*3, Jet 1265*4… CST1, CST1*2, CST1*3, CST1*4, CST1*5, CST 1*6"*

The email closed:

> *"The secondary tranche will be 5 million dollars paid directly after the initial tranche that represents two major projects coming to fruition. Thank you."*

86. The Defendants, relying in part on this email, argue that there was a clear understanding between Mr Anandanadarajah and Mr Pitman that sums payable to Norsand were (i) in respect of anticipated sums that it was hoped Imperialis would receive in the future (ii) were offered as a goodwill gesture and not because Imperialis owed Norsand any money and (iii) were in any event contingent on Mr Anandanadarajah's receipt of "unrelated personal income" from Mr Silverstein. I reject that broad contention although I accept that this email does demonstrate that some part of the USD $25m that Mr Anandanadarajah was promising in this specific email was in respect of anticipated future receipts, rather than in respect of obligations that had already crystallised.

87. I accept that some of the $25m figure referenced in the email of 16 August 2018 related to commission that had not yet been received. That was clearest in relation to the "second tranche" of $5m which was expressed to be in respect of "major projects coming to fruition". During the hearing, I understood the Defendants to be saying that some of the transaction codes containing asterisks referenced "lifts" yet to take place. In his response to the draft judgment, Mr Anandanadarajah explained that this understanding was mistaken: his point was rather that certain of the transactions with asterisks referenced transactions that he had been told had closed, but on which Imperialis had not yet received commission. Whatever the correct interpretation of the asterisks, Mr Anandanadarajah strained credulity when he said in paragraph [22] of his witness statement that there was a common understanding between him and Mr Pitman that everything Norsand was to receive would come out of Mr Anandanadarajah's unrelated personal income. It was simply not consistent with the WhatsApp messages read as a whole for Mr Anandanadarajah to assert that Mr Pitman was asking for "updates on [Mr Anandanadarajah's] personal transaction proceeds" or that it was so clearly understood that Norsand was to be paid out of the proceeds of unrelated contracts that it was unnecessary for Mr Anandanadarajah to say so. On the contrary, the WhatsApp messages demonstrate that Mr Pitman clearly thought, because Mr Anandanadarajah had told him, that Mr Anandanadarajah or Imperialis had received some sums by way of commissions on deals effected by Prospective Clients and that, accordingly, Imperialis was under a contractual obligation to make payments to Norsand.

88. The Defendants also argue that the involvement of Mr Silverstein, with whom Mr Anandanadarajah had a professional relationship that stood separate from his dealings with Norsand, demonstrates that any payment to Norsand was to be funded out of Mr Anandanadarajah's unrelated personal income. I reject that. On 11 June 2018, Mr Anandanadarajah sent Mr Pitman a WhatsApp saying "I'm using mostly my America guy for paymaster stuff". That can only have been a reference to Mr Silverstein. I have concluded from the witness evidence that a "paymaster" in this context was a person who would channel payments of commission to the various persons who had earned it. The use of the term "paymaster" indicates a clear link between Mr Silverstein's activities and the receipt by Mr Anandanadarajah, or a company he controlled, of commission in respect of energy transactions. Read as a whole, the correspondence indicates that Mr Silverstein would pay Norsand, and others, the commission they were due out of funds beneficially owned by Mr Anandanadarajah, or a company under his control.

89. The Defendants also point to statements that Mr Anandanadarajah made in conversations with Mr Pitman in October 2019 (which Mr Pitman recorded without Mr Anandanadarajah's knowledge). In those conversations, Mr Anandanadarajah said that he was trying to "attach" Mr Pitman to deals with which Mr Pitman had no involvement as a device to justify the making of payments to him. I reject the Defendants' argument that this demonstrates a clear understanding that payments to Mr Pitman were entirely gratuitous. That interpretation of the conversation ignores the whole continuum of dealings between Mr Pitman and Mr Anandanadarajah. By October 2019, Mr Pitman had been promised large sums of money over a long period of time but received virtually nothing. He was understandably chasing Mr Anandanadarajah for payment. In the recorded conversation Mr Anandanadarajah was offering a means of channelling payments to Mr Pitman in respect of liabilities that had already accrued. He was not offering to make entirely gratuitous payments.

Mr Anandanadarajah's visit to the United States to "unblock" the money

90. In October 2018, Mr Anandanadarajah flew to the United States for the stated purpose of "unblocking" money and allowing it to be released to Norsand. On 10 October 2018, Mr Anandanadarajah sent a WhatsApp to Mr Pitman saying:

> *"Got a final meeting with the bank and Howard today! Will let you know but looking very good".*

91. Mr Anandanadarajah's answers to questions in cross-examination on this, and related WhatsApp messages, were confused and, in places misleading. Mr Anandanadarajah initially said that the meetings with banks were with a view to opening accounts. However, that was so at odds with the tenor of the messages that he quickly retreated from that position. Next he said that the accounts in question were in Mr Silverstein's sole name (although they contained money due to Mr Anandanadarajah) so that Mr Silverstein alone was visiting the banks. That also was at odds with the clear wording of the messages. Mr Anandanadarajah's oral evidence was that he had told Mr Pitman that he would be attending the meeting to "inflate his position" and make him seem more important than he was. Later in this judgment, I will address Mr Anandanadarajah's claims that he was

"inflating his position". For the time being, I simply note that the ordinary and natural meaning of the WhatsApp messages sent while Mr Anandanadarajah was seeking to "unblock" funds, when read in context, was that (i) commission that Imperialis had received on the Four Transactions was sitting in accounts to which Mr Silverstein had access and (ii) Mr Anandanadarajah had sufficient interest in those sums and accounts to be able to play a meaningful role, by attending meetings and otherwise, to secure the payment of those funds to Norsand. I have concluded that communications sent while Mr Anandanadarajah was in the United States seeking to "unblock" money were inconsistent with there being any common understanding that Norsand was to receive entirely gratuitous payments funded out of "unrelated personal income".

Mr Anandanadarajah's bank accounts

92. Mr Anandanadarajah's initial oral evidence was that, in 2018, his only bank accounts were two accounts at the Halifax and an online account with a bank called N26 which he used to pay expenses associated with his businesses. However, that evidence was shown to be untrue in cross-examination. In answers to Part 18 requests for information about Mr Anandanadarajah's "unrelated personal income", Mr Anandanadarajah said that he had received some £160,000 from Mr Silverstein in 2018 as payment for consultancy services. Mr Anandanadarajah accepted that these sums did not appear in statements for the Halifax or N26 accounts. That prompted Mr Anandanadarajah to say that there was also a Barclays account in existence at around this time, but that it had been shut down in 2018 and that maybe the £160,000 had been paid into that account.

93. During the trial itself, Mr Anandanadarajah did not contradict the point, put to him in cross-examination, that he had not previously disclosed the existence of this Barclays account. However, after the trial, in response to the draft judgment, he referred to a letter sent on 16 December 2019 from Mr Dye to Norsand's solicitors, explaining that Imperialis used to hold a Barclays account, that the sort code and account number could not be identified but that it was thought it had been closed following Imperialis' liquidation with a nil balance. I am not in a position to make a finding as to whether the Barclays account was indeed in Imperialis's name, whether it was indeed closed following Imperialis's liquidation or whether the £160,000 was paid into that account. However, I do accept Mr Anandanadarajah's belated explanation that the possible existence of a Barclays account was disclosed prior to trial.

94. In 2019, Mr Anandanadarajah organised a business trip to Africa with colleagues employed by Volta. Volta's Tide account showed payments of expenses associated with hotel stays and similar items. However, Mr Anandanadarajah was unable to explain which account was used to pay for air fares. I have inferred that the payment must have been made out of some other account, not disclosed in the course of these proceedings, to which Mr Anandanadarajah had access.

95. In 2020, Mr Anandanadarajah's mother received payments from Mr Silverstein into her bank account and made payments out of that account to Mr Anandanadarajah. For example, on 9 April 2020, Mr Silverstein paid Mr Anandanadarajah's mother £11,691.64. On the same day, her account shows a payment of £10,000 being made to "Rupon". However, no corresponding receipt

appears in any of the bank statements for the accounts that Mr Anandanadarajah has disclosed. I have concluded that this payment was made into an account that Mr Anandanadarajah possesses but has not disclosed.

96. In his evidence, Mr Anandanadarajah frequently stated that, if Norsand needed more information about his bank accounts and financial position it should have approached banks, or Mr Silverstein, to obtain third party disclosure, obtaining court orders as necessary. Of course, it would have been open to Norsand to do this, though it might well have cost a significant sum since it would have involved Norsand seeking disclosure from persons outside the jurisdiction. However, I concluded that in saying this, Mr Anandanadarajah was not just saying that there was a legal course open to Norsand, but as indicating that he did not feel obliged to give particularly accurate information on his personal finances, since the onus was on Norsand to discover the true position. I regarded that position as unrealistic and as calling into question the reliability of his evidence on financial matters, particularly given my conclusion that he has accounts whose existence he has not previously disclosed, even taking into account his explanations after the hearing about the Barclays account. Only Mr Anandanadarajah would have known where he held accounts. Absent disclosure from Mr Anandanadarajah, Norsand could only have discovered the existence of accounts that he did not disclose by obtaining orders requiring all providers of bank accounts in the UK to disclose whether Mr Anandanadarajah had an account with them. I regarded Mr Anandanadarajah's approach to this issue as indicative of a lack of candour.

97. In January 2018, Mr Anandanadarajah referred in a WhatsApp conversation with Mr Pitman to his plan of opening a bank account in Dubai. In 2018 and 2019, Mr Anandanadarajah submitted applications to open offshore bank accounts in the name of Volta with Petrus Private Bank in St Lucia. The application form to Petrus Private Bank in October 2019 indicated that it was expected that Volta would be receiving $500,000 to $1,000,000 per month into that account. Mr Anandanadarajah also submitted an application to Bank Frick in Liechtenstein for an account in Volta's name, indicating on that form that Volta's turnover in Year 1 of operation of the account would be $250,000,000 and that he expected to pay $5,000,000 into the account four times a month.

98. In March 2019, Mr Anandanadarajah approached Ms Tarlev for help with setting up offshore accounts. She said that she could potentially help with setting up accounts in, for example, Labuan, Lebanon and Tunisia. On 26 March 2019, Mr Anandanadarajah sent her a WhatsApp message saying that her help was not needed after all because "it seems we have a solution for offshore accounts but may come back to this." On 13 May 2019 Mr Anandanadarajah sent a WhatsApp message to a group including Mr Pitman and Mr Yakavitski indicating that payment of the "large funds" due to them was in hand, writing:

> *"The time line set for the large funds is 8 weeks for completion and movement of those funds to a offshore account for our usage with all available for my company and me."*

99. On 2 July 2019, Volta received an invoice for USD25,000 for setting up a "segregated portfolio" in the Cayman Islands. That invoice was issued by Lazarus Asset Management Limited, referenced a "Cayman SP Set Up Fee" and provided

bank details into which the USD25,000 should be paid. Mr Anandanadarajah's evidence was that this was an estimate for work to be done and that Volta never proceeded with the work. I did not believe that explanation. The document was described as a "tax invoice", not as a quotation and it did not seek to justify the fee proposed in the way a quotation would. While the invoice does not refer to offshore bank accounts, it does demonstrate that Mr Anandanadarajah and Volta were seeking to establish some sort of activity in the Cayman Islands and, moreover, that Mr Anandanadarajah sought to obscure that by giving a misleading explanation of the nature of the document.

100. In his evidence, Mr Anandanadarajah said that the attempts to set up offshore bank accounts were unsuccessful partly because he had previously been made bankrupt. He said that in some of the exchanges I have mentioned he was "inflating" his sense of importance by boasting of what he saw as trappings of success which he did not actually possess. Those explanations were not inherently implausible, and I have considered them carefully. However, given (i) Mr Anandanadarajah had accounts in the UK that he has not previously disclosed, (ii) the lack of candour I have identified in relation to his bank accounts (iii) the other instances referred to below where I regarded Mr Anandanadarajah's evidence as either lacking in candour or untruthful and (iv) the contemporaneous references to accounts having been successfully set up, I have concluded that it is more likely than not that Mr Anandanadarajah established an offshore account, either in his own name or on behalf of a company he controlled.

101. On 25 November 2019, Mann J issued a freezing injunction against both Mr Anandanadarajah and Volta in connection with these proceedings. That freezing injunction was in the usual form and prohibited both Mr Anandanadarajah and Volta from in any way disposing of, dealing with, or diminishing the value of assets up to the value of £3,900,000. Normal exceptions were made permitting Mr Anandanadarajah to spend up to £1,000 per week on ordinary living expenses and permitting both Mr Anandanadarajah and Volta to deal with, and dispose of, assets in the ordinary and proper course of business. The freezing injunction was, by successive orders of the court, continued until after trial.

102. Despite the freezing injunction, Mr Anandanadarajah opened an account with Monzo in January 2020 and transferred sums out of that account to a further account in Mr Anandanadarajah's name with another bank called Revolut. The Monzo account was closed on 14 July 2021. In the 18 months it was open, £450,155 passed through it.

103. Mr Anandanadarajah's evidence was that the Monzo account fulfilled a number of functions. He acknowledged that it was, to an extent, his personal account and that some of the personal expenditure going through it represented a breach of the freezing injunction. For example, on two separate days in September and October 2020, Mr Anandanadarajah spent £6,400 on dental treatment: each of which was more than the £1,000 weekly limit. Mr Anandanadarajah acknowledged the breaches of the freezing injunction but effectively said that complying with it would have been impossible because of the COVID situation. Had he not opened a separate bank account, he would have had to visit a branch of Halifax in person to make his £1,000 per week permitted withdrawals from that account and he was

unwilling to do this because he was, at the time, living with his elderly parents who would be at significant risk if he had contracted COVID.

104. The Monzo account was also, he said, an account out of which an investment in licensed bars in North Wales was financed. That investment was, he said, made by Coastal Companies Limited, an investment vehicle owned by a Mr Ryan McWaters and a Mr Patrick Markey. Because Mr Markey is a Canadian citizen it would have been difficult to open a business account for that investment vehicle, particularly given the COVID epidemic. Following the failure of Imperialis, Mr Anandanadarajah said that he wished to work in a different line of business: developing bars and restaurants of which he had some experience when younger. He made the Monzo account available to Coastal Companies Limited. There were four signatories to the account and the funds paid in comprised a mixture of Mr Anandanadarajah's personal remuneration and sums needed to get the bars and restaurants up and running.

105. I accept that elements of Mr Anandanadarajah's explanation of the Monzo account were true. I can believe that it would have been difficult for Mr Anandanadarajah to visit a Halifax account in person to withdraw £1,000 a week for his living expenses. His concern for his elderly parents struck me as genuine. I can understand that there might be a temptation to cut corners by using a personal Monzo account as a business account. That is not to condone Mr Anandanadarajah's actions: if, as appears likely, the freezing order was breached, that is a serious matter, but aspects of Mr Anandanadarajah's motivation in doing so struck me as plausible. However, I have concluded that aspects of Mr Anandanadarajah's explanation of the Monzo account were both untrue and misleading by omission.

106. £294,725.68 paid into the Monzo account came from H&L Capital Markets Limited ("H&L"). A director of H&L, Mr Barry Heath said, in a witness statement given in connection with the freezing order proceedings, that Mr Anandanadarajah had introduced H&L to Mr Silverstein and Mr Silverstein had agreed to invest around £400,000 with H&L on terms that he would receive 5% interest and a 5% return of capital each month. Once the investment had been made, Mr Heath's evidence was that Mr Silverstein directed some payments of principal and interest to be made, not to Mr Silverstein himself, but to others including Mr Anandanadarajah's mother, and to Mr Anandanadarajah's Monzo account. An analysis of H&L's bank statements shows that between May 2020 and August 2021, H&L paid £29,624 to Mr Anandanadarajah's mother and £334,725.68 to Mr Anandanadarajah.

107. While Mr Anandanadarajah accepted that H&L had made the above payments to him and his mother, he did not accept that they emanated from Mr Silverstein. I have concluded, however, that Mr Heath's explanation of the arrangement between H&L and Mr Silverstein was correct, after making due allowance for the fact that it was not tested in cross-examination, for the following reasons:

    i) Mr Heath's witness statement contained a detailed month-by-month breakdown of sums H&L paid and received in accordance with his arrangement with Mr Silverstein. That account is entirely consistent with H&L's bank statements, which were in evidence and which revealed that

there was indeed a business relationship between H&L and Mr Silverstein as both were making payments to each other. The pattern of payments was consistent with Mr Heath's account.

ii) I could see no reason why Mr Heath would wish to advance an untrue account of his dealings with Mr Silverstein. By contrast, Mr Anandanadarajah had an obvious self-interest in downplaying the links between payments to himself and his mother and Mr Silverstein.

iii) Aspects of Mr Anandanadarajah's alternative explanation struck me as implausible. In cross-examination, Mr Anandanadarajah was asked why H&L had paid his mother £29,624. He said that H&L owed him that amount by way of commission and that he asked H&L to pay his mother instead to discharge a debt he owed his mother who was supporting him while the freezing order was in place. In his closing submissions, Mr Kirby QC characterised this explanation as a "lie on the hoof". I agree. Not only was Mr Anandanadarajah's explanation inconsistent with Mr Heath's account, but Mr Anandanadarajah had not previously indicated that he was entitled to receive any commission from Mr Heath or H&L and I was not referred to any documentary evidence indicating that Mr Anandanadarajah had such an entitlement.

108. I have concluded that there was some underhand arrangement in place between Mr Anandanadarajah and Mr Silverstein designed to ensure that Mr Anandanadarajah could access and spend sums that Mr Silverstein was holding on Mr Anandanadarajah's behalf despite the existence of the freezing orders. That arrangement included, but may well not have been limited to the following:

i) Mr Silverstein paid sums to Mr Anandanadarajah's mother. Some of these payments were made by Mr Silverstein himself and some were paid by H&L at Mr Silverstein's direction. In pursuance of this arrangement, Mr Silverstein himself paid £34,329.98 into Mr Anandanadarajah's mother's account between 4 March 2020 and 28 May 2020. Between 1 May 2020 and 26 August 2020, Mr Silverstein directed H&L to pay £29,624 to Mr Anandanadarajah's mother in pursuance of the arrangement. That arrangement was underhand because Mr Anandanadarajah's mother's account was not frozen and Mr Anandanadarajah knew that he had another account into which she could transfer sums that she received so that Mr Anandanadarajah would have access to them.

ii) H&L paid £294,725.68 into the Monzo account at Mr Silverstein's direction. That arrangement was underhand because the existence of the Monzo account was not disclosed until the Claimants found out about it.

109. Mr Kirby QC invited me to conclude that Mr Anandanadarajah was the beneficial owner of the bars in North Wales that were funded out of the Monzo account. I will not make that finding because I have not heard from Mr Markey, Mr McWaters or Coastal Companies Limited who might have an interest in those bars. I am prepared to accept that <u>some</u> of the money passing through the Monzo account might have been used to fund the refurbishment of bars in which Mr Anandanadarajah had no beneficial interest. However, to a large extent, the

Monzo account was used to further the arrangement that I have described in paragraph [108] above.

Conclusions

The Defendants' case on the contemporaneous communications

110. The Defendants accept that Mr Anandanadarajah gave various contemporaneous confirmations to the effect that (i) the Four Transactions closed successfully and that (ii) Imperialis had received commission in respect of those transactions with the result that (iii) Mr Anandanadarajah acknowledged an obligation to pay sums to Norsand. However, they say that this does not demonstrate that Imperialis actually owed anything to Norsand under the September Agreement for all or any of the following reasons:

    i) Mr Anandanadarajah was misled by others into thinking that transactions had closed when they had not and that Imperialis would receive commission in connection with those transactions. He passed on that good news to Mr Pitman and others. Indeed, Mr Pitman specifically asked him to confirm that large sums were due because Mr Pitman needed those confirmations to keep his own creditors at bay. Ultimately, however, the good news proved to be incorrect with the result that Imperialis never owed Norsand anything.

    ii) Mr Anandanadarajah's offers of payment were gestures of goodwill and friendship. They amounted to a gratuitous offer to buy out Norsand's contingent right to receive commission in the future. Those offers were themselves dependent on Mr Anandanadarajah receiving sufficient "unrelated personal income". They do not demonstrate any legally binding obligation on Imperialis to make payment.

    iii) If Mr Anandanadarajah had received large sums by way of commission between 2017 and 2018, it would make no sense for him to tell Mr Pitman and others of those sums but then fail to make any payment to Norsand. That would simply be giving advance notice of his intention to deprive them of their money. The sheer implausibility of that, argue the Defendants, demonstrates that Mr Anandanadarajah had received no such large sums.

    iv) Norsand has produced insufficient evidence to discharge its burden of proving even that the Four Transactions closed successfully, still less that Mr Anandanadarajah, or a company under his control received commission. Norsand has not shown that Imperialis, Mr Anandanadarajah or any other entity he controlled received any material funds. Indeed there is evidence of a lack of funds: Imperialis was wound up for failure to pay a small debt and Mr Anandanadarajah ran his businesses on a shoestring.

111. As regards the argument in paragraph [110.i)], the Defendants are correct to note that some of the chains of introductions were quite lengthy. However, they were not all lengthy. Mr Yakavitski was just two steps removed from contacts at Adaxco and his evidence, which I accept, was that he introduced Mr Anandanadarajah to Mr Rommel Haque, who in turn introduced employees at Adaxco. I conclude, therefore, that any "good news" that Mr Anandanadarajah

received on transactions involving Adaxco came either from Adaxco itself or were relayed through Mr Rommel Haque. The chains leading to Shell and to the parties to the CST380 transaction were much longer. However, Mr Anandanadarajah was not reliant on news being relayed down through every single layer of that chain. Mr Anandanadarajah was sending and receiving emails direct to and from Mr Nicolas Tornay (who was himself a good way down the chain of referrals in the Shell chain). Mr Anandanadarajah was also in direct email contact with Mr Rommel Haque (a good way down the chain of referrals leading to Shell).

112. Nevertheless, because there were multiple links in these chains, it was conceptually possible that Mr Anandanadarajah was taking at face value assurances given by others and passing on those assurances without himself verifying their accuracy. Mr Anandanadarajah was correct to observe that there were instances of Mr Pitman himself doing something similar. For example, in July 2018, Mr Pitman showed a friend an email from Mr Anandanadarajah setting out sums that Mr Pitman was owed which caused the friend to believe that Mr Pitman had ready assets and approach him for a loan. However, I have concluded that Mr Anandanadarajah's characterisation of his actions as simply "passing on good news" is simply not an accurate description of the communications. Read as a whole, Mr Anandanadarajah's assurances were not phrased as relaying news he had received from others. He did not simply state that he had been told that transactions between principals had closed; he said that the transactions had closed. Moreover, he was not just saying that transactions had closed, he was saying that there was money sitting in accounts that he, Mr Anandanadarajah, controlled that was available to be paid to Norsand, subject only to compliance with money-laundering and KYC rules. The letters he procured from Mr Silverstein can only sensibly be read as conveying an assurance that transactions had closed successfully and that Mr Anandanadarajah had access to the money.

113. It is therefore not accurate for Mr Anandanadarajah to say that he was simply passing on "good news" that he had received from others. His behaviour was not consistent with someone doing this. He was being put under sustained pressure from a number of people, including Mr Pitman, Mr Yakavitski and Ms Tarlev, to make payments of substantial sums of money they thought had been promised. If he really was simply passing on confirmations received from others, he would have said so at some point in the protracted WhatsApp exchanges as a means of reducing the pressure being placed on him. Mr Anandanadarajah complains that he is hampered by an unfortunate inability to produce documents in support of his case because he lost access to Imperialis's email account in late 2018 because he failed to keep up the payment to Google after Imperialis went into liquidation. He also says that he has changed his mobile phone and so he has no access to WhatsApp messages that he sent. I will accept those statements. However, even if Mr Anandanadarajah could not subsequently access emails or WhatsApp statements, I would have expected at least some reference to "good news" he said he received from others in the emails or WhatsApp messages he sent to Mr Pitman. But the WhatsApp messages in particular contain almost no references to confirmations from others. They read, quite strikingly, as confirmations of matters within Mr Anandanadarajah's own knowledge.

114. Moreover, there was an inconsistency in Mr Anandanadarajah's claim to be "passing on good news". On his account, he was passing on good news to the effect that the Shell - Cathay Pacific deal had closed in August 2018 despite having claimed that he realised this transaction would not be proceeding in May 2018.

115. The Defendants invite me to conclude that some of the "good news" that Mr Anandanadarajah was passing on was actively solicited by Mr Pitman with its reliability correspondingly reduced. I will not make such a finding. Mr Pitman was himself coming under some pressure, particularly from Mr Yakavitski, to secure payment from Mr Anandanadarajah as Mr Yakavitski was entitled, under the terms of his arrangement with Mr Pitman or Norsand, to a share of those commissions. Certainly there were occasions on which Mr Pitman asked Mr Anandanadarajah to tell Mr Yakavitski that payment was imminent as a means of defusing the pressure being put on him (Mr Pitman). But I am not satisfied that Mr Pitman was asking Mr Anandanadarajah to make untrue or even embellished statements. He was simply asking Mr Anandanadarajah to confirm to others what he had already said to Mr Pitman. Mr Pitman certainly did not ask Mr Anandanadarajah to represent that funds were sitting in Mr Anandanadarajah's own bank accounts knowing that there were no such funds.

116. Of course, the fact that Mr Anandanadarajah said between 2017 and 2019 that transactions had closed and that he had money sitting in accounts that was available to pay commission to Norsand does not mean that this was actually the case. However if, in fact, there was no money in accounts he controlled, Mr Anandanadarajah must have been lying at the time when he said there was. I am not prepared to accept that Mr Anandanadarajah took on trust assurances from third parties as to amounts standing to the credit of his own accounts, or accounts to which he had access. I therefore agree with Mr Kirby QC that either Mr Anandanadarajah was lying from 2017 to 2019 when he said that he had the money or he is lying now in saying that he did not.

117. I will not find that Mr Anandanadarajah was lying from 2017 to 2019 when he said he had the money because he has given no sufficiently good explanation as to why he would wish to lie in this way. On the contrary, he has sought to put forward an unrealistic interpretation of the contemporaneous communications as indicating that money was sitting in some other account with Barclays controlled by unspecified persons "higher up the chain". I have already given my reasons for rejecting that interpretation of those communications.

118. I have, however, paused to consider how plausible it is that Mr Anandanadarajah might have generated such large sums in commission within just a few months of Norsand handing over contact details for Prospective Clients. It might legitimately be wondered whether Mr Anandanadarajah or Imperialis truly did have much value to add to a transaction under which, for example, a natural seller of jet fuel such as Shell was dealing with a natural buyer of fuel such as Cathay Pacific. I have wondered, particularly given Mr Anandanadarajah's oral evidence that he was at times "inflating his position" in his communications with Mr Pitman and others, whether he was something of a fantasist, imagining that he had a much bigger role in brokering large transactions in commodities than he actually had and trying to convey that impression to others.

119. The difficulty, however, is that this is not the account that Mr Anandanadarajah has put forward. He has not said that he realised that he was an extra in the world of commodities trading who sought to give the impression that he was a leading actor. On the contrary, he has said that he had a genuine belief that he was a leading actor, though he now realises that he was mistaken. While he has said that he was "inflating his position" in particular communications on particular issues, he has not said that he was doing so throughout his dealings with Norsand. Throughout the trial, Mr Anandanadarajah emphasised the strength of his friendship with Mr Pitman at the time and the WhatsApp messages bear that out. He knew that Mr Pitman was making financial decisions based on assurances that Norsand was due large sums in commission from Imperialis. I do not consider that Mr Anandanadarajah would have practised such a deception on Mr Pitman simply to increase Mr Anandanadarajah's feelings of self-worth.

120. There is also ample evidence that Mr Anandanadarajah was able to earn significant sums of money in the oil and gas sector. Mr Silverstein paid him over £400,000 in 2018 and said in his witness statement that he valued Mr Anandanadarajah's expertise in that sector.

121. Moreover, Mr Anandanadarajah has taken steps which suggest that he had received material sums by way of commission on the Four Transactions between 2017 and 2019 and had sought to cover his tracks. He has, I have found, concealed the existence of bank accounts, including offshore accounts, to which he had access from the Claimants. He has entered into an underhand arrangement with Mr Silverstein under which Mr Silverstein provided him with access to funds despite the freezing orders to which Mr Anandanadarajah was subject. In his closing submissions, Mr Anandanadarajah complained that the Claimants are seeking to earmark any funds with some connection to Mr Silverstein as belonging to them. However, that is to miss the point. Mr Anandanadarajah himself raised the prospect that Mr Silverstein had access to funds that were due to Norsand. When Norsand went unpaid, but Mr Silverstein continued to channel funds to Mr Anandanadarajah in an underhand way, that raises the possibility that Mr Anandanadarajah was seeking to obtain use of sums that should have been paid to Norsand. It was open to Mr Anandanadarajah to give a much fuller account of his dealings with Mr Silverstein, but he chose not to.

122. I have, therefore, concluded that Mr Anandanadarajah was telling the truth from 2017 to 2019 when he said that Imperialis, he, or another company which he controlled, had received material payments of commission. In my judgment, it is more likely than not that he is lying now in saying that he received no such commission.

123. I have, in paragraphs [86] to [89], given my reasons for rejecting the Defendants' arguments on the point set out in paragraph [110.ii)].

124. As regards the point in paragraph [110.iii)], I do not consider that the matter can simply be resolved by reference to assertions of competing probability. I recognise the point that the Defendants make. However, it is also implausible that Mr Anandanadarajah should, despite not having received anything himself by way of commission, have assured Mr Pitman and others that he had received large sums and would shortly be making payment. I also regard it as implausible that

Mr Anandanadarajah would, despite having received no commission himself, volunteer to make *ex gratia* payments of up to $25m to Mr Pitman. The WhatsApp messages revealed that Mr Anandanadarajah and Mr Pitman were, at the time, good friends. However, they had only met a few months before signing the September Agreement. Mr Anandanadarajah said in his evidence that he was a generous man, but that would have been generosity well outside the norm.

125. The Defendants also point, as part of their arguments summarised in paragraph [110.iv)], to what they argue is an absence of evidence demonstrating either that the Four Transactions closed successfully or that Mr Anandanadarajah, or a company he controlled, received any payment by way of commission. That significantly overstates matters. Mr Anandanadarajah's own contemporaneous confirmations are evidence which, of themselves, show a strong *prima facie* case that Imperialis received commissions from others so as to trigger an obligation to pay Norsand.

126. The Defendants submitted that Norsand had made a conscious decision not to seek disclosure from, for example, the principals said to have concluded the Four Transactions because of a concern that such investigations would shatter Norsand's case theory and reveal that there was no good claim. Much of the Defendants' cross-examination of Norsand's witnesses was related to this issue. However, I saw no real force in the point. First, Norsand has made some enquiries of its contacts. It got in touch with Mr Rommel Haque who provided them with some information in relation to the CST380 transaction, including the pro-forma invoice I deal with in paragraph [128] below. However, Mr Haque's interests were not wholly aligned as he was himself seeking to recover sums from Mr Anandanadarajah and so the information he gave was limited. The Defendants place weight on the fact that Norsand has made few, if any, enquiries of Shell, FedEx or Daewoo. However, Mr Pitman gave a reasonable explanation for this: he would not even have known who to contact at FedEx, his only contacts with Shell were in the UK operations and there was no evidence that the Shell-Cathay Pacific transaction had been entered into by Shell in the UK and seeking disclosure from Daewoo would potentially have involved a difficult foray into courts in South Korea. I also accept Mr Hill's evidence that he, Mr Pitman, Ms Tarlev and Mr Yakavitski "gave the reins to Mr Anandanadarajah". They handed over contacts to him and left it to him to try to broker transactions. Having handed over the reins in this way, it would have been difficult for them to identify the precise individuals at multinational enterprises who could have given information about the Four Transactions. Still less could they have been confident that any answer to those enquiries would be forthcoming.

127. Mr Pitman also explained that principals to commodities transactions would not be prepared to give information on those transactions in response to enquiries from Norsand where they did not consider that they had any business relationship with Norsand. That, said Mr Anandanadarajah, was true of his enquiries. He too had made enquiries of principals and had been rebuffed demonstrating that neither he nor Imperialis could have had a business relationship with them. This point would have carried more weight if I regarded Mr Anandanadarajah's evidence as more reliable than I have. However, he has been inconsistent in his claims as to the extent of his relationship with principals. In an email sent to Harjit

Birdwood on 27 November 2018, as part of a pitch to sell Volta, Mr Anandanadarajah claimed:

> *"As a company I am registered with BP, Shell and ENI trading".*

He said in cross-examination that this statement was untrue. However, that only left me with the impression that Mr Anandanadarajah was prepared to lie to Mr Birdwood when it suited him by claiming a close relationship with Shell (a counterparty to one of the Four Transactions), raising the suggestion that he might equally be prepared to lie to the court in denying such a relationship for the purposes of these proceedings.

128. Moreover, it is not correct to say that there was no independent documentary evidence relating to the Four Transactions. I was shown a pro-forma invoice dated 18 December 2019 that appeared to evidence a delivery of $18,000,000 of CST380 Fuel Oil from Blue Whale Worldwide LLC/BIG TNZ S.L. to GTL Petroleum (Pty) Limited. That document was by no means conclusive, not least because I had no witness evidence to speak to it since the document appears to have been obtained by Mr Rommel Haque who was not a witness in these proceedings. The document bore a stamp of the selling companies, but not of the purchaser. There were obvious questions about why a pro-forma invoice should be generated in December 2019 evidencing a transaction said to have taken place over two years previously. However, despite these questions, the document was of some interest because it at least suggested that there was a transaction involving GTL in October 2017 which chimed with contemporaneous text messages from Mr Anandanadarajah to Mr Yunus in which he said:

> *"Sorting out lpg stuff for Rommel so [bear] with [me]. Also have two CST deals sorting out. One direct wit Daewoo and other is through GTL. You get paid on both."*

129. There was also an invoice from Mr Rommel Haque addressed to Imperialis and Volta for $135,000 in respect of the CST380 transaction. Mr Haque has not been cross-examined as to this document and so I have not given it great weight. However, the document does suggest that Norsand is not alone in concluding that this transaction closed and resulted in Imperialis receiving commission.

130. The Defendants are correct to say that Norsand has not demonstrated that particular sums were paid into specific accounts of Imperialis, Mr Anandanadarajah or other companies that he controlled in connection with the Four Transactions. However, I regard that as being of little significance given my conclusion set out in paragraphs [94], [95] and [100] to the effect that Mr Anandanadarajah has not informed Norsand of all relevant accounts.

131. I acknowledge that there was evidence that Mr Anandanadarajah ran his businesses on a shoestring. I accept Mr Dye's evidence that, after he started work at Volta in September 2019 he was asked to purchase second-hand computer equipment for Volta. As Mr Dye observed in his evidence, equipping his company in this way is not necessarily the action of a multimillionaire. However, the impact of that point is somewhat diminished by evidence suggesting that Mr Anandanadarajah clearly did have access to some material sources of funds. He was able to pay Mr Darley commission he claimed to be owed. In the email to Mr

Birdwood to which I have referred in paragraph [127] above, Mr Anandanadarajah wrote:

> *"I had an old company in which a lot of our contract funds went into America which we are now moving to the UK to prop up Volta Investments…"*

Therefore, ultimately I regarded the evidence of Volta's impecuniosity as being of little weight since there was countervailing evidence suggesting that Mr Anandanadarajah had access to other funds together with evidence of other bank accounts that had not been disclosed. In a similar vein, I do not consider it matters greatly that Imperialis was wound up because it failed to pay a debt of £15,000. That is not inconsistent with Mr Anandanadarjah diverting payments due to Imperialis elsewhere.

The Claimants' positive case on the facts

132. Those are my reasons for rejecting the Defendants' explanation of the contemporaneous communications. Recognising that Norsand has the burden of proving its case, I have reached the following factual conclusions:

    i) Norsand "Introduced" (within the meaning of the September Agreement) each person in each of the chains of contacts leading to Adaxco, GTL and Shell. Each person in those chains was, accordingly, a Prospective Client within the meaning of the September Agreement.

    ii) Adaxco, GTL and Shell were parties to the Four Transactions which were transactions relating to fuel energy or commodities.

    iii) Imperialis entered into contracts with some of the Prospective Clients Norsand had introduced under which Imperialis would be paid commission if the Four Transactions closed. Those were Relevant Contracts.

    iv) The Four Transactions all closed resulting in Imperialis having a contractual right to receive sums under those Relevant Contracts. The amount due would, if paid to Imperialis, have entitled Norsand to receive a payment of £5.2m pursuant to Clause 5.1 and 5.2 of the September Agreement.

    v) Mr Anandanadarajah arranged for sums due to Imperialis under the Relevant Contracts to be diverted in the sense that those sums were not paid into any account owned or controlled by Imperialis but were, instead, paid into other accounts, either of Mr Anandanadarajah or other companies of which he had control.

    vi) Sums were actually paid into those other accounts in pursuance of the arrangements to divert payments away from Imperialis.

133. My conclusion in paragraph 132.i) follows from my conclusions on the meaning of the September Agreement and the introductions that Norsand effected set out in paragraphs [49] to [59] above.

134. I recognise that little documentary evidence emanating from third parties has been given demonstrating the precise contracting parties to the Four Transactions. However, Mr Anandanadarajah said that the contracting parties were those set out in paragraph 132.ii) in his contemporaneous communications with Mr Pitman and others. Since I have concluded that he was telling the truth in those contemporaneous communications about transactions that had closed successfully, it follows that I have concluded that the contracting parties were as Mr Anandanadarajah described.

135. I have already given reasons for much of my conclusion set out in paragraph 132.iii). I have inferred that the contracts under which commission was received were legally binding because they represented commercial arrangements and I do not consider that they would be made gratuitously. I have inferred that the contracts were with Prospective Clients introduced by Norsand because that was consistent with Mr Anandanadarajah's own evidence that the "good news" that he was receiving and passing on came from Norsand's own direct and indirect introductions. Therefore, the Defendants' concession, referred to in the last sentence of paragraph [25] above was not ultimately of great significance since the commission payable to Imperialis was due from Prospective Clients themselves.

136. I have inferred that the contracts would have been entered into with Imperialis specifically because:

    i) That was the company that Mr Anandanadarajah was using at the time for much of his commodity related business and the company that Mr Anandanadarajah invited Mr Pitman to invoice. Moreover, Mr Anandanadarajah would frequently send emails from an "imperialis.co.uk" email address and would frequently end those emails with a signature describing himself as "Managing Director – Imperialis Group". Since it was Imperialis who was party to contracts with Norsand and others for the payment of commission, I have concluded that it was similarly Imperialis that was party to contracts for the receipt of commission from Prospective Clients.

    ii) Mr Anandanadarajah did not seek to assert that anyone other than Imperialis was party to contracts with Prospective Clients for the receipt of commission. Rather, his case was that no commission was received at all.

137. I have already explained my conclusions in paragraphs 132.iv), 132.v) and 132.vi) above. Mr Anandanadarajah told Mr Pitman and others that the transactions had closed successfully. He also told them that commission had been received into accounts he controlled and had triggered an obligation on Imperialis to pay commission to Norsand of £5.2m. I reject the Defendants' case that no commission was received. Mr Anandanadarajah has not sought to establish that commission was received and retained by Imperialis. His case was that no commission was received at all. Since Imperialis had the contractual entitlement to receive commission, and since no commission has been found in any of the accounts whose existence Mr Anandanadarajah has disclosed, I have inferred that Mr Anandanadarajah diverted those sums into other accounts that he controlled.

No evidence has been put forward to suggest that these other accounts were controlled by Imperialis and I have inferred that they were not.

138. I have considered whether the figure of £5.2m to which I have referred in paragraph [137] should be reduced to take into account that the evidence as to successful closing of some of the Four Transactions was stronger than the evidence on others. For example, there was some external corroboration as to the CST 380 transaction in the form of the pro-forma invoice from Blue Whale Worldwide LLC and the invoice from Mr Rommel Haque. By contrast, the Shell – Cathay Pacific transaction was not mentioned in Mr Hill's witness statement and Mr Hill thought that Shell was the supplier of fuel to FedEx whereas contemporaneous documents referred to Adaxco as the supplier. The Defendants' case throughout was that no commission was received in respect of any of the Four Transactions. They did not, in their submissions, invite me to conclude, as a fallback argument, that some of the Four Transactions resulted in Mr Anandanadarajah or a company under his control receiving commission, but some did not. Since I have rejected the Defendants' case that Mr Anandanadarajah was mistaken in giving his confirmations as to the Four Transactions, I have decided to accept those confirmations as accurate. Since the confirmations relate to all of the Four Transactions and specify the aggregate figure of £5.2m as the commission payable to Norsand, I will therefore accept that figure without reduction.

PART C: DISCUSSIONS OF THE CLAIMS

139. In his closing submissions on behalf of Norsand, Mr Kirby QC confirmed that the claim against Volta is no longer pursued and that Norsand's claims against Mr Anandanadarajah were pursued only in the following respects:

    i) A claim in the tort of inducing, or procuring, Imperialis's breach of contract.

    ii) A claim in the tort of misusing confidential information.

Inducing or procuring breaches of contract

Ingredients of the tort

140. The written submissions of Mr Kirby QC and Mr Sharpe contained detailed submissions on the law. Mr Anandanadarajah made no submissions on the law in this area.

141. I have taken it to be common ground that Mr Anandanadarajah would have committed an "economic tort" if he knowingly and intentionally procured Imperialis to break its contract with Norsand to the damage of Norsand without reasonable justification or excuse. As explained in *OBG Ltd v Allan* [2007] UKHL 1, this is a tort of accessory liability.

142. I also took it to be common ground that the ingredients of this tort can be summarised as follows:

i) There must actually have been a breach of contract by Imperialis. As Lord Herschell put it in *OBG Ltd v Allan* "one cannot be liable for inducing a breach unless there has been a breach. No secondary liability without primary liability".

ii) Mr Anandanadarajah must have performed an act that amounted to "inducing" or "procuring" Imperialis to breach its contract with the Claimant. Since Imperialis was Mr Anandanadarajah's personal company, some rigour is needed to distinguish between (i) acts that Imperialis itself performed so as to breach its own contract acting through the agency of its director, Mr Anandanadarajah and (ii) acts that Mr Anandanadarajah performed to induce or procure Imperialis's breach of contract.

iii) Mr Anandanadarajah would have to know that he was inducing a breach of contract requiring both the requisite knowledge that the contract existed and that the actions in question would result in a breach of that contract.

iv) Mr Anandanadarajah would need to have the requisite intention to procure a breach of contract. In appropriate cases it will be necessary to distinguish between "ends, means and consequences" as Lord Hoffmann put it in *OBG Ltd v Allan*. Thus, if procuring that Imperialis breached its contract was Mr Anandanadarajah's end in itself, or if it was a means to some other end that Mr Anandanadarajah sought, the requisite intention would be present. The position might be otherwise if a breach of contract by Imperialis was merely a "foreseeable consequence" of Mr Anandanadarajah's actions.

143. It follows from my conclusions summarised in paragraph [132] above, that Imperialis did breach the September Agreement. The Four Transactions closed successfully. Imperialis had entered into Relevant Contracts with Prospective Clients entitling it to receive commission from those Prospective Clients. If Imperialis had received the commission from Prospective Clients, it would have been obliged to pay Norsand £5.2m in commission under the September Agreement. However, Imperialis did not receive the commission from Prospective Clients, in breach of the implied term, which both parties agreed to form part of the September Agreement, to the effect that receipts would not be diverted away from Imperialis.

144. In their closing submissions, the Defendants referred to Clause 5.11 of the September Agreement which required any "dispute … as to the amount of Commission payable" by Imperialis to Norsand to be referred to Imperialis's auditors for binding determination. It was not clear if they were suggesting that, in the absence of such a referral, Imperialis could not have been in breach. If they were, they had not pleaded Clause 5.11 as a defence to Norsand's claim with the result that I have had no evidence as to the extent of compliance with Clause 5.11. I will not grant the Defendants permission to amend their pleadings, on a point which would have required factual evidence to make it good, in closing submissions. In any event, the Defendants' reliance on Clause 5.11 is misplaced. The breach of the September Agreement was constituted by the fact that sums due under Relevant Contracts were diverted so as to be received by someone other than Imperialis, rather than by a dispute as to the amount of commission due.

145. The above breach of contract was induced and procured by Mr Anandanadarajah requiring Prospective Clients who had an obligation to pay commission to Imperialis to pay that commission, not to Imperialis, but either to Mr Anandanadarajah or to other companies that he controlled.

146. Mr Anandanadarajah was, at material times, the sole director of Imperialis. In *Said v Butt* [1920] 3 KB 497 McCardie J made the following *obiter* comment:

> *"I hold that if a servant acting bona fide within the scope of his authority procures or causes the breach of a contract between his employer and a third person, he does not become liable to an action of tort at the suit of the person who contract has thereby been broken. I abstain from expressing any opinion as to the law which may apply if a servant, acting as an entire stranger, wholly outside the range of his powers, procures his master to wrongfully break a contract with a third person"*

147. That *obiter* statement has been followed in subsequent cases. It follows that, if Mr Anandanadarajah was acting "bona fide within the scope of his authority" when he procured Imperialis's breach of contract, he would have no personal liability to the Claimants. Following the judgment of Lane J in *Antuzis v D J Houghton Catching Services Ltd and others* [2019] EWHC 843 (QB), Mr Anandanadarajah's "bona fides" or otherwise are to be assessed by reference to his duties to Imperialis (see paragraph 114 of the judgment).

148. Mr Anandanadarajah's actions resulted in Imperialis being deprived of sums to which it was contractually entitled. I have concluded that Mr Anandanadarajah acted as he did so as to advance his interests at the expense of both Imperialis and Norsand. There is no suggestion that Imperialis received anything in return for the commission it forwent. I am satisfied that Mr Anandanadarajah was not acting "bona fide within the scope of his authority" in reducing Imperialis's assets in this way.

149. Mr Anandanadarajah admitted in his Defence and his closing submissions that he had full knowledge of the existence and terms of the September Agreement. I raised with the parties at the start of the hearing what level of knowledge Mr Anandanadarajah would need to have in circumstances where the breach is of an implied term rather than an express term. However, Mr Anandanadarajah did not make any submissions on this issue and did not suggest that he lacked the requisite degree of knowledge.

150. I have concluded that Mr Anandanadarajah had the requisite intention. His actions in diverting sums away from Imperialis were a means to an end: Mr Anandanadarajah wished to ensure that he personally benefited from those sums and that Norsand did not.

151. Norsand has established that Mr Anandanadarajah is liable to it in the tort of inducing a breach of contract.

Loss and damage

152. Had Mr Anandanadarajah not acted as he did, Imperialis would have received commission from Prospective Clients, would have been obliged to pay Norsand £5.2m and would have had funds available to it to meet that obligation. Because of Mr Anandanadarajah's actions, Norsand has not received and retained payment due to it. Therefore, Mr Anandanadarajah's actions have caused Norsand loss. Mr Anandanadarajah's case has been no commission was received and so Imperialis could never have had any obligation to pay Norsand £5.2m. He has not, however, argued that if I rejected that argument, and find him liable for procuring Imperialis's breach of contract, that Norsand's loss would be anything other than £5.2m. Mr Anandanadarajah has not suggested, for example, that any discount should be made to that figure to reflect the fact that, absent his tortious acts, Norsand's claim would have been against a limited company. He has not suggested any reason why Imperialis might not have been able to meet the claim in full. In those circumstances, I quantify Norsand's loss at £5.2m. Some allowance should, however, be made for the fact that during the course of their relationship, Mr Anandanadarajah made some payments to Mr Pitman which I consider should be treated as reducing the amount of Norsand's loss. Mr Pitman quantified the amount of payments he received as "around £23,000" in his witness statement. I will ask the parties to agree a precise amount as part of the process of agreeing an order to implement this judgment.

Misuse of confidential information

153. In its Particulars of Claim, Norsand pleaded that the relevant confidential information was the contact details of Prospective Clients. It pleaded in paragraph 26 that the misuse of that confidential information took the following form:

> *"c. To the extent that the contracts with clients introduced to Imperialis by Norsand were not entered into by Imperialis, but were instead entered into by Mr Anandanadarajah personally, or by other corporate vehicles within his control, Mr Anandanadarajah without consent acted in breach of the said duty of confidence. To the extent that he entered into the contracts himself, he misused the information. To the extent that he procured that the contracts be entered into by other corporate vehicles, he misused the information and/or disclosed the same."*

154. Therefore, the claim for misuse of confidential information was pleaded on the basis that Relevant Contracts were entered into with a person other than Imperialis. Since I have found that the Relevant Contracts were entered into by Imperialis, but the price payable under those contracts was diverted, the claim as pleaded is not made out.

Disposition

155. There will be judgment for the Claimant on the claim for inducing a breach of contract. Damages are quantified at £5.2m less amounts paid to date. I will hear the parties at the hand-down hearing on the form of order and consequential matters.