



Neutral Citation Number: [2023] EWHC 320 (Ch)

Case No: BL-2021-MAN-000115

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 16 February 2023

Before:

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

Between:

PAUL CLEMENTS

Claimant

- and -

ADAM FRISBY

Defendant

Hugh Jory KC and Elisabeth Tythcott (instructed by **Clarke Willmott LLP**) for the
Claimant
Giles Maynard-Connor KC and Stephen Connolly (instructed by **TLT LLP**) for the
Defendant

Hearing dates: 16-20 January 2023

Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.00 am on Thursday 16 February 2023 by circulation to the parties or their representatives by email and by release to The National Archives.

HHJ CAWSON KC:

Contents

<u>Introduction</u>	1
<u>Relevant individuals</u>	10
<u>Factual narrative</u>	11
<u>Inception of the idea behind In The Style in 2013</u>	12
<u>The establishment of the business of In The Style</u>	43
<u>Further events going into 2014 and up to the 2020 LBA</u>	64
<u>The 2020 LBA and subsequent events</u>	75
<u>Relevant events following the issue of the present proceedings</u>	81
<u>Mrs Devine’s evidence as to Mr Clements seeking to bribe her</u>	90
<u>Mr Clements’ case</u>	109
<u>Legal basis of the claim</u>	110
<u>Mr Clements’ case on the facts</u>	123
<u>Mr Frisby’s case</u>	139
<u>Correct approach to the evidence</u>	158
<u>Is Mr Clements’ case established on the facts?</u>	171
<u>Overall conclusion</u>	221

Introduction

1. The central issue in this case concerns whether the Defendant, Adam Frisby (“**Mr Frisby**”), has made unlawful misuse use of a business plan alleged to have been conceived in 2013 by the Claimant, Paul Clements (“**Mr Clements**”), for the sale on-line of cheap ‘*fast fashion*’ items to younger women through collaboration with reality TV celebrities and the use of social media such as Instagram (“**the Alleged Business Plan**”).
2. The business in question, alleged to have been established and carried on through the misuse by Mr Frisby of the Alleged Business Plan, is known as ‘*In The Style*’. Until a floatation in March 2021, the business was carried on by Mr Frisby through a company incorporated on 27 November 2013 with company number 08792519, known as In The Style Fashion Limited (“**the Company**”).
3. The share capital of the Company is now held by The Style Group Plc (“**TSG**”). TSG was incorporated on 4 March 2021 and admitted to the Alternative Investment Market (“**AIM**”), shortly thereafter and contemporaneously with a public offer of shares therein which raised approximately £125 million.
4. The formal announcement of intention to float on AIM dated 1 March 2021 included the following description of the business of the Company attributed to Mr Frisby, who was described as “*Founder and Chief Executive Officer of In The Style*”:

“I am so proud of the business In the Style has become. We are a fast-growing e-commerce womenswear fashion brand with an innovative influencer collaboration model. Since our launch back in 2013, we have strived to do things

differently by ensuring we empower our customers to be brave, embrace body confidence and, most of all, love themselves for who they are. We work closely with social media influencers and celebrity partners who align with our brand values to design and launch authentic collections that are then sold through our proprietary In the Style app, e-commerce website, and selected B2B partners. Our collaboration model creates a strong customer connection, drives highly efficient customer acquisition marketing metrics, and gives us exposure to a broad range of customers.”

5. Mr Clements’ case is that the Alleged Business Plan was revealed by him to Mr Frisby in confidence, and that Mr Frisby effectively conspired, together with a friend, Jessica Devine (née Ward) (“**Mrs Devine**”), to steal the idea behind the Alleged Business Plan from Mr Clements, and to then mislead Mr Clements as to what he and Mrs Devine were up to and to cover their tracks by creating a false narrative as to the circumstances behind the establishment of the In The Style business to be relied upon if Mr Clements should assert a claim.
6. The essence of Mr Clements’ case is that:
 - i) In early 2013, he conceived and developed the Alleged Business Plan and came up with the name “*In the Style*” for the business, which it was intended would be incorporated in a company to be formed by Mr Clements.
 - ii) Through the involvement of Mrs Devine, Mr Frisby was introduced to Mr Clements, who engaged Mr Frisby in the task of testing and activating the Alleged Business Plan.
 - iii) Mr Clements committed money to the venture in the sum of approximately £10,000, which was paid in cash to Mrs Devine to be invested in the remuneration of Mr Frisby (£200 per week), the acquisition of cheap fashion wear from suppliers and the creation of a website.
 - iv) Mr Clements orally and fully disclosed the Alleged Business Plan to Mr Frisby as an essential element in the exercise with which Mr Frisby was entrusted, including the business name, the ideas for advertisement, promotions and marketing and the identity of potential suppliers.
 - v) Mr Frisby, through Mrs Devine, falsely or wrongly told Mr Clements that the Alleged Business Plan had no future as a result of which he did not concern himself with what Mr Frisby might have been up to, and it was only in late 2016 that he discovered the misuse that had been made of the Alleged Business Plan by Mr Frisby, before intimating a claim in correspondence in December 2020 that Mr Frisby had taken advantage of the position obtained by him and developed the Alleged Business Plan through his own company rather than in accordance with what had been agreed.
7. Mr Frisby, on the other hand, contends that the claim itself is a fraudulent and dishonest claim based upon a false narrative that Mr Clements knows to be untrue. The essence of his case is that:

- i) In or around May 2013, he and Mrs Devine were inspired by, amongst others, *‘Want That Trend’*, an online business which sold women’s clothing online through a website, and discussed doing something similar.
 - ii) From about June 2013, Mr Frisby has worked tirelessly in the creation, development, growth and success of the Company and its business and has done so without any input or involvement of Mr Clements.
 - iii) Mr Frisby met Mr Clements only once when he and Mrs Devine approached Mr Clements to ask if he would consider investing £10,000 in their venture, but he was not interested. Mr Clements did not invest, did not speak to Mr Frisby ever again and did not discuss the venture in any great detail with Mrs Devine after the meeting.
 - iv) Nothing was heard from Mr Clements until December 2020 when he first asserted his false and fraudulent claim after the proposed floatation of the business had been mentioned in the press.
8. This judgment is concerned with issues of liability as directed to be tried by the Order of HHJ Cadwallader dated 10 June 2022.
9. Mr Clements was represented by Mr Hugh Jory KC and Ms Elisabeth Tythcott, and Mr Frisby was represented by Mr Giles Maynard-Connor KC and Mr Stephen Connolly. I am grateful to them for their helpful written and oral submissions and for their assistance during the course of the trial.

Relevant Individuals

10. The following individuals are of particular relevance to the factual narrative:

Name	Description
Turgay Ayanoglu (“ Mr Ayanoglu ”)	A businessman and alleged clothing supplier to Mr Clements. He made a witness statement on behalf Mr Clements dated 11 August 2022 that was not ultimately relied upon following technical difficulties in him giving remote evidence.
David Bell (“ Mr Bell ”)	A jeweller with alleged celebrity connections and friend of Mr Clements.
Darren Clarke (“ Mr Clarke ”)	Director of Malbern Windows and husband of Mrs Clarke. Known to both Mr Clements and Mrs Devine, and a witness on behalf of Mr Clements having made a witness statement dated 22 November 2022.
Leila Clarke (“ Mrs Clarke ”)	Wife of Mr Clarke and friend of Mrs Devine.
Mr Clements	The Claimant. Mr Clements gave oral evidence, and made witness statements dated 4 November 2022 and

	22 November 2022, the latter witness statement being updated on 9 December 2022 with additional contents.
Jamie Corbett (“ Mr Corbett ”)	Partner of Mr Frisby, and employee of the ‘ <i>In The Style</i> ’ business.
Charlotte Crosby (“ Ms Crosby ”)	Reality TV celebrity (Geordie Shore) and clothing collaborator with ‘ <i>In The Style</i> ’
Mrs Devine	Friend and initial business partner of the Defendant in ‘ <i>In The Style</i> ’. In a personal relationship with Mr Clements until late 2013. Witness for Mr Frisby, having made witness statements dated 1 November 2022 and 25 November 2022.
Chloe Ferry (“ Ms Ferry ”)	Reality TV celebrity (Geordie Shore). Ms Ferry made a witness statement dated 25 November 2022 on behalf of Mr Frisby, but was not called as a witness.
Mr Frisby	The Defendant. Mr Frisby gave oral evidence, and made witness statements dated 31 October 2022 and 17 January 2023.
Neil Hamilton (“ Mr Hamilton ”)	Chauffeur to Mr Bell. Gave evidence on behalf of Mr Clements having made a witness statement dated 2 November 2022.
Chris Jones (“ Mr Jones ”)	Businessman and alleged clothing supplier to Mr Clements. Made a witness statement on behalf of Mr Clements dated 25 October 2022, which was not challenged by Mr Frisby.
Victoria Molyneux (“ Ms Molyneux ”)	Businesswoman and founder of ‘ <i>Want That Trend</i> ’. Witness summoned by Mr Clements to give evidence, but not ultimately called to do so.
Gareth Todd (“ Mr Todd ”)	Friend of Mr Frisby and early investor in ‘ <i>In The Style</i> ’ in February 2014.
Leigh Wright (“ Mr Wright ”)	Criminal Solicitor of Mr Clements and partner in the firm of Tuckers, Manchester. Gave evidence on behalf of Mr Clements having made a witness statement dated 3 November 2022.

Factual Narrative

11. It is necessary to consider the factual narrative and the parties’ respective contentions in respect of it in some detail.

Inception of the idea behind In The Style in 2013

12. Mr Clements was in 2013, and remains, a businessman engaged in enterprises which include property investment and development through a company known as Elegant Homes Estates Ltd (“**Elegant Homes**”).
13. However, in 2012, Mr Clements was convicted of an offence of money laundering, and in January 2013 sentenced to 5 months’ imprisonment, of which he served eight weeks. Relating to this offence, on 8 August 2011, the Crown Court sitting at York had made a restraint order against Mr Clements and one other under the Proceeds of Crime Act 2002, albeit that this restraint order was subsequently varied so as to permit Mr Clements to carry out his business activities, including through Elegant Homes. A confiscation order was subsequently made on a joint and several basis against Mr Clements and the other individual subject to the restraint order in a sum of £100,000. It is right to note that Mr Clements maintains that he was wrongly convicted, and he says that his case is being reviewed by the Criminal Case Review Commission.
14. It was Mr Clements’ evidence that he had been in a relationship with Mrs Devine (then Jessica Ward) for some years prior to 2013. He described the relationship as being essentially a sexual one, without him regarding Mrs Devine as his girlfriend.
15. Prior to December 2012, Mr Frisby had been employed by People Plus, where he had met and become close friends with Mrs Devine. In late 2012, Mr Frisby was made redundant by People Plus and received a redundancy payment of £10,765.52, which was credited to his bank account on 21 December 2012. In early 2013, he took up employment with Work Solutions, a not-for-profit company which provided employment, recruitment, and skills services. He remained employed by Work Solutions until November 2013, when he left this employment in the circumstances that I will return to. Mr Frisby’s bank statements show his salary from Work Solutions being paid into his account from 30 April 2013, with the last monthly payment in an amount of £2,085.72 being credited to his account on 29 November 2013.
16. Mr Frisby’s bank statements and a number of important WhatsApp communications that I shall refer to were only disclosed during the course of the week immediately prior to the trial.
17. In early 2013, Mr Frisby was 25 years old, in a personal relationship with Mr Corbett and from approximately April 2013 employed by Work Solutions. Whilst he had previously worked at Burger King, his evidence was that this was some years ago, when, aged 17, he was employed as a supervisor.
18. Mr Clements’ case was first articulated in a letter before action dated 22 December 2020 sent by his previous solicitors, Davis Blank Furniss (“**The 2020 LBA**”). His case was subsequently articulated in his Particulars of Claim served after the commencement of the present proceedings on 21 December 2021. The evidential basis of Mr Clements’ case has been further articulated in his first witness statement prepared for trial.
19. Mr Clements’ pleaded case is that in early 2013 he conceived and developed the Alleged Business Plan to exploit the world of younger end women’s retail fashion. His case is that the Alleged Business Plan focused to an important degree upon the then newly emerging and fast developing medium of Instagram combined with the market

for cheap throwaway women's fashion, the intention being that female celebrities and social media personalities involved, in particular, in reality TV, would be engaged to post pictures and images of themselves on their Instagram pages, and through other social media, wearing the budget clothing that Mr Clements intended that the business should sell, with the clothing also being marketed through a website.

20. It is Mr Clements' case that this was a new and innovative plan, the innovation being the combination of a number of factors, in particular: the sale of cheap *'fast fashion'* clothing, the engagement of reality TV celebrities, and the use by the latter of social media to promote the clothing to younger women with a "*you can be me now*" message. Mr Clements claimed to have had connections with the relevant celebrities through, amongst other things, his friendship with Mr Bell, and the latter's contact and connection with celebrities.
21. As pleaded, and as he put matters in his first witness statement, the business idea was very much expressed as being Mr Clements' own idea, albeit that he refers to discussing his ideas with Mrs Devine, and proposing that they enter into a joint venture each making equal contributions to the seed or start-up capital required to set the Alleged Business Plan in motion, the figure of £10,000 being discussed between them as to what each should contribute.
22. However, it is to be noted that in paragraph 7 of the 2020 LBA, after having made reference to discussions between Mr Clements and Mrs Devine, reference is made to business plan that is described as that of Mr Clements and Mrs Devine, and paragraph 9 of the 2020 LBA talks in terms of Mr Clements and Mrs Devine subsequently being "*in the process of making their business proposal a reality*" [emphasis added]. Mr Clements was asked about Mrs Devine's involvement in the formulation of the Alleged Business Plan during the course of cross examination, and in response he referred to himself and Mrs Devine jointly investing, and being 50:50 partners, and he referred to Mrs Devine "*coming up with ideas*" during the course of discussions between them, and to the fact that he had "*never said*" that it had all been him.
23. It is Mr Clements' pleaded case, consistent with the way that matters had been expressed in the 2020 LBA, that in about June 2013, Mr Frisby lost his job at Burger King and contacted Mrs Devine, who he knew, to see if she had or could find any work for him. It was thus, in the circumstances and on Mr Clements' case, through the involvement of Mrs Devine, that Mr Frisby was introduced to Mr Clements who agreed to engage him in the task of testing and activating the Alleged Business Plan. Matters are put in similar terms in paragraph 6 of Mr Clements' first witness statement.
24. In the light of the evidence provided by Mr Frisby's bank statements, which Mr Clements will only have seen after he made his first witness statement, Mr Clements' was bound to accept, as he did under cross examination, that Mr Frisby had been employed by People Plus prior to December 2012, and was employed by Work Solutions at a salary in excess of £2,000 per month at all relevant times until the end of November 2013. However, his response was that he had been informed by Mrs Devine that Mr Frisby had lost his job with Burger King, and was looking for work, and, to this extent, he had been misled by both Mrs Devine and Mr Frisby. At one stage under cross examination, Mr Clements spoke in terms of Mrs Devine having "*sold*" him the benefit of Mr Frisby.

25. It is Mr Clements' case and evidence that after the fact that Mr Frisby was looking for work had been mentioned to him, a meeting was arranged and held at the Crown and Anchor, a pub in Ancoats, Manchester, between Mr Clements, Mrs Devine and Mr Frisby. It is Mr Clements' case that this meeting lasted approximately two hours, and that during the course of this meeting Mr Clements disclosed the substance of the Alleged Business Plan to Mr Frisby on a confidential basis.
26. Mr Clements accepted under cross examination that he cannot now recall whether he informed Mr Frisby that the Alleged Business Plan was being disclosed to him on a confidential basis, but Mr Clements says that the circumstances of the meeting were such that, objectively considered, the Alleged Business Plan, with what Mr Clements maintains were its unique features, was disclosed to Mr Frisby on a confidential basis. It is said that although the meeting was held in a pub, the meeting took place at a table on one side of the pub and/or in a booth, in order to enable the meeting to be conducted on a confidential basis and out of ear shot of other customers.
27. It is Mr Clements' case that there were, so far as Mr Clements can recall, two further meetings at the Crown and Anchor, and at least one meeting at, or outside, the Village Gym, Ashton, a gym attended by Mr Clements and Mrs Devine. There is some inconsistency on Mr Clements' case as to whether there were one or two meetings at or outside this gym.
28. Mr Clements says that the Alleged Business Plan, its unique nature, and how it might be put into effect were discussed at the various meetings. At paragraph 14 of his first witness statement, he says that as he and Mrs Devine had other business interests, and as Mr Frisby was, so he says he believed, looking for work, it was agreed that Mr Frisby would deal with the day-to-day hands-on aspects of the new business, and that a wage was discussed and agreed of £200 per week for which Mr Frisby would deal with the opening and managing of the new business website, manage all online orders, deal with packing and posting clothes to customers, deal with customer enquiries, and assess the market potential of the business.
29. During his cross examination, and in the light of the documentary evidence that had emerged in the form of bank statements showing Mr Frisby to have been gainfully employed by Work Solutions in 2013, Mr Clements sought to play down the proposed role of Mr Frisby in the business, which would have been incompatible with such employment, talking in terms of it being intended that he should perform "*menial tasks*", rather than assuming day to day responsibility for the business as he had described in his first witness statement.
30. It was Mr Clements' case that once matters had been agreed at the various meetings, he left it to Mr Frisby to get on with setting up the business, with Mrs Devine reporting to Mr Clements as necessary. He accepted that he did not have Mr Frisby's telephone number, and that there was no subsequent personal contact between himself and Mr Frisby, communication being with Mrs Devine. This was on the basis that a trading company would be incorporated of which Mr Clements and Mrs Devine would be "*joint owners*", with the possibility of Mr Frisby becoming a shareholder dependent upon performance.
31. It is further Mr Clements' case that he did provide the money that he says had been agreed with Mrs Devine. As pleaded in paragraph 8 of the Particulars of Claim, it is

alleged that Mr Clements entrusted Mr Frisby with the seed capital of £10,330 “*provided in cash in differing and accumulated sums over a period of approximately six months*”, to be used in part to pay Mr Frisby’s remuneration of £200 per week in cash while he set about the task of activating, testing and evaluating the Alleged Business Plan, including establishing the website.

32. However, in paragraph 29 of his witness statement, Mr Clements refers to withdrawing amounts in cash from “*my bank account*” and giving the cash to Mrs Devine, it being Mr Clements’ case at trial that Mrs Devine then used the cash provided to pay Mr Frisby and other expenses to get the business up and running, but without making any contribution of £10,000 herself. The cash withdrawals are alleged to have been made as follows: 26 June 2013 - £2,600; 12 July 2013 - £1,850; 30 July 2013 - £2,300; 16 August 2013 - £840; 23 August 2013 - £1,400; undated - £1,340. Withdrawal slips have been produced in respect of these cash withdrawals, but no bank statements have been produced to evidence the payments. At the start of his evidence, and in chief, Mr Clements sought to correct paragraph 29 of his witness statement by withdrawing reference to the final undated withdrawal of £1,340 on the basis that the relevant withdrawal slip related to a later cash withdrawal outside the relevant timescale, not for the purpose of providing cash to Mrs Devine. It emerged during Mr Clements’ cross examination that the withdrawal slips relate to an account not in the name of Mr Clements, but in the name of Elegant Homes.
33. In paragraph 17 et seq of his witness statement, Mr Clements refers to the possible future involvement of Mr Bell in the business given his connections with celebrities, and also to his contact, Mr Jones, who owned a successful manufacturing and shipping company with manufacturing contacts in China, as well as Mr Ayanoglu, from whom he says clothing would be sourced pending sourcing clothing from China with the benefit of Mr Jones’ connections. Mr Clements refers to Mr Ayanoglu as “*a key part of the plan to grow the business in the short-term*”.
34. Mr Frisby’s case, and the evidence of Mr Frisby and Mrs Devine, is very different.
35. It is Mr Frisby’s evidence, supported by that of Mrs Devine, that they remained good friends after Mr Frisby had left People Plus, that whilst they had worked together and as friends they had discussed various business ideas that might enable them to leave their employment, and become self-employed, and that it was in this context that Mrs Devine mentioned to Mr Frisby that, through a friend, she knew someone called Victoria Molyneux who had established a business called “*Want That Trend*”, which sold women’s clothing, principally to younger women, online, and through the medium of Facebook and Instagram. It is alleged that it had appeared to Mrs Devine that Ms Molyneux was earning good money doing very little more than purchasing clothes from wholesalers on Cheetham Hill Road in Manchester, and reselling them at a margin online, through the medium of Facebook and Instagram.
36. It is Mr Frisby’s case that this led him and Mrs Devine, in or around May 2013, to discuss the possibility of doing something similar, whilst, at least for the time being, continuing with their respective jobs. Mr Frisby says that he was excited at the idea because he had a general interest in fashion. He also says that he enjoyed reality TV shows and had an interest in the culture associated therewith, and that he considered that there was the potential to link fashion, and the sale of fast fashion clothing such as that sold by Want That Trend, with social media and celebrities connected with reality

TV shows such as *'The Only Way Is Essex'* (“**TOWIE**”) and *'Big Brother'*, and to use the latter, through their social media platforms, to promote such clothing.

37. Mr Frisby says in his evidence that he considered that whilst bigger retailers such as *'Missguided'* and *'boohoo'* relied upon celebrity endorsements and collaboration with celebrities, they looked down on reality TV, which Mr Frisby says that he saw as an opportunity because reality TV celebrities would attract those (younger women) to whom they were seeking to sell to through the business that he and Mrs Devine were thinking about. However, he says that this was not a new idea because there was already a celebrity on a reality TV show called *'Geordie Shore'*, namely Ms Crosby, who had just done a dress collection with a business called *'Dress Me A-List'*, a brand similar to *In The Style*.
38. On this basis, and Mr Frisby having come up with the name *"In the Style"*, it is his evidence, supported by that of Mrs Devine, that they agreed to establish a business trading under this name, to which end a number of initial steps were taken, including the following:
 - i) In paragraph 8(i) of Mr Frisby's Defence it is alleged that Mr Frisby and Mrs Devine agreed to invest £1,000 each into the venture, opened a bank account in their joint names with NatWest, and each paid £1,000 into that account. However, this is not supported by the recently disclosed bank statements. Whilst Mr Frisby's personal bank statements have been disclosed, as have the bank statements of a joint account relating to the business opened by Mr Frisby and Mrs Devine in August 2013, no bank statements have been produced by Mrs Devine, albeit that she was identified as a custodian in Mr Frisby's Disclosure Review Document. Mr Frisby's personal bank account does, however, show Mr Frisby bearing certain expenses of the business on an ongoing basis, and something of a pattern that where expenditure was required, then he and Mrs Devine would contribute to the same on an equal basis. This is shown, for example, in relation to the Trademark application referred to below. The evidence was that the latter application was paid for by Mrs Devine on her credit card, and that Mr Frisby then transferred one half of the cost to Mrs Devine, as shown on his bank statement. In explaining the position in the light of the bank statements, Mr Frisby put matters in terms of himself and Mrs Devine having agreed, essentially, to provide a facility of £1,000 each to fund the setting up of the business using earnings and/or savings and to do so on an ongoing basis.
 - ii) Mr Frisby and Mrs Devine retained the services of a very junior graphic designer, Kai Cheung, to design a logo for the venture at a cost of between £50 and £100;
 - iii) Mr Frisby and Mrs Devine purchased the domain name www.inthestyle.co.uk, and persuaded Mr Corbett's sister to design and build a website with this web address;
 - iv) Mr Frisby and Mrs Devine began to purchase small quantities of women's clothing from Cheetham Hill Road in Manchester for resale on the newly established website at a margin.

39. In the context of the above steps being taken to establish the In the Style business, and with a view to its development going forward, it is Mr Frisby's evidence, supported by that of Mrs Devine, that consideration was given to seeking investment for the business. Mr Frisby says that he had in mind his friend Mr Todd, who he says had indicated a willingness to provide support, but that Mrs Devine mentioned that she knew a businessman who had been a casual boyfriend, namely Mr Clements, who appeared to be well off and might be worth asking if he was able or willing to invest. On this basis, it was agreed that Mrs Devine would approach Mr Clements as a potential investor, which she did, and a meeting was arranged between Mr Frisby, Mrs Devine and Mr Clements at the Crown and Anchor pub.
40. It is Mr Frisby's and Mrs Devine's evidence that this meeting took place, but only lasted about 30 minutes or so. They say that at this meeting, the nature of the In The Style business, and what was proposed by them in respect of it, was discussed with Mr Clements, and he was invited to invest up to £10,000 therein. However, Mr Clements said very little, and made no commitment to invest. It is Mr Frisby's and Mrs Devine's evidence that the matter was not taken further with Mr Clements, and that there were no subsequent meetings. It is Mr Frisby's evidence and case that he had nothing further to do with Mr Clements and had no subsequent contact with him, there being no further meetings at the Crown and Anchor or elsewhere. So far as Mrs Devine is concerned, it is her evidence that she would meet Mr Clements from time to time thereafter, in particular at the gym that they both attended, and that she would mention to him how matters were progressing with the business, but without any question of Mr Clements taking up the suggestion that he might have invested in the business.
41. As to when the one meeting with Mr Clements took place, it was Mr Frisby's evidence that he is "*pretty certain*" that the meeting was later than June 2013, in August 2013, and possibly even in September 2013. Mrs Devine's evidence was that she thinks that it was around "*July/August 2013*" that she raised with Mr Frisby the question of talking to Mr Clements about investment.
42. It was Mrs Devine's evidence that she was aware of Mr Clements' conviction for money laundering at the time that she suggested to Mr Frisby that he might be a suitable party to invest in the business. In paragraph 88 of his first witness statement, Mr Frisby refers to only having become aware of the conviction as a result of the present proceedings. However, the contents of an email dated 23 January 2014 that I shall return to suggests that Mr Frisby must have been aware of the conviction by then, if a genuine contemporaneous email, because Mrs Devine refers to the conviction therein. Mr Frisby was unable, in evidence, to be any more specific as to when he found out about the conviction, but the point is taken on behalf of Mr Clements that it might be considered odd for Mrs Devine to have introduced Mr Clements to Mr Frisby as a potential investor knowing that he had a conviction for money-laundering.

The establishment of the business of In The Style

43. On Mr Clements' case, apart from paying the sums in cash that he claims that he did to Mrs Devine and receiving reports from time to time from Mrs Devine, he did not involve himself in the In The Style business until he was instrumental in instructing his accountant, Joanne Lomas ("**Ms Lomas**") of Crossley Lomas, to incorporate In The Style Ltd ("**ITSL**") on his behalf on 15 November 2013, but with the incorporation

documentation filed at Companies House showing Ms Lomas as sole director and shareholder.

44. In the 2020 LBA and in Mr Clements' Particulars of Claim the circumstances behind the incorporation of ITSL are expressed in terms of this being part of the process of incorporating the vehicle to be used for the In The Style business as discussed and agreed with Mr Frisby and Mrs Devine in the meetings held between them. Mr Clements then, in these documents, refers to his relationship with Mrs Devine having become strained, and to there being a conversation during the course of which Mrs Devine suggested that it was not a good idea to continue with the business at that time. Mr Clements further refers to a telephone call from Ms Lomas on or about 22 November 2013, when Ms Lomas is said to have told him that Mrs Devine had telephoned asking to buy ITSL. He then refers to talking to Mrs Devine not long before Christmas 2013 "*about the situation*", and to Mrs Devine having told him that she and Mr Frisby had decided not to proceed with the business because Mr Frisby was not able to live on the agreed salary, and that all the money invested by Mr Clements had been spent on wasted stock. In paragraph 24 of the 2020 LBA it is asserted that Mr Clements was not unduly concerned by this because he had incorporated ITSL, and was of the view that Mr Frisby (and/or Mrs Devine) would not be able to proceed without his agreement.
45. Matters are expressed rather differently in Mr Clements' first witness statement. In paragraph 34 et seq he explains that by November 2013 his personal and business relationship with Mrs Devine had started to become strained, that he was spending a lot of time in France and Monaco, and that Mrs Devine was no longer in regular contact with him with regard to the business. He says that there was a definite shift from being updated about the business by Mrs Devine to him having to chase for information. In his witness statement he says that he took this up with Mrs Devine and that when he did so, she said that Mr Frisby had told her that he could not live on a weekly income of £200 and that they both thought that there was no future in the business. He says that he brought up the question of money that he had invested in the business, and that Mrs Devine said that she had also lost a lot of money in the business, it was not a good idea to continue the business at that time and that she intended to focus solely on her day job.
46. Mr Clements says in his witness statement that he was not "*completely happy*" with the version of events that he had been given, and that it was this that prompted him to instruct Ms Lomas to incorporate ITSL. He says that in addition to causing ITSL to be incorporated, he also asked Ms Lomas if she could recommend a good company lawyer who could offer legal assistance if needed. He now says that it was in these circumstances that Ms Lomas, following the incorporation of ITSL, telephoned him to say that Mrs Devine and Mr Frisby had contacted her and asked if they could buy ITSL, and that they had done so without mentioning Mr Clements' name, suggesting that they were unaware that he had caused ITSL to be incorporated. Mr Clements says that he was "*shocked, surprised and taken aback*" by this.
47. Mr Clements says that he subsequently challenged Mrs Devine about her intentions in respect of the business, and that he asked her if she was being genuine about her intention not to carry on with it, or whether she and Mr Frisby were taking him for a ride. He says that Mrs Devine's response reassured him that it was not intended to take any further steps with regard to the business, and that after repeated assurances he came to take what she had told him about her and Mr Frisby's intentions at face value. He

says that his personal relationship with Mrs Devine continued to be strained, that he was having to deal with an appeal and a financial hearing, understood to be the confiscation proceedings that were by then on foot following on from the money-laundering conviction, and that: *“I did not therefore have the mental capacity to fight with them and prioritised more pressing matters at the time.”* He says that during a meeting with Mr Wright on 28 January 2014 to discuss financial matters that I will return to, Mr Wright had informed him that he should be focusing on the very serious matters concerning the criminal proceedings, rather than fighting over *“less important sums of money”*.

48. It is to be noted that although Mr Clements says that he took steps to discuss matters with Mr Bell regarding access to celebrities, and with Mr Jones and Mr Ayanoglu with regard to clothing supplies, the evidence in relation to any such discussions is vague, and there is no suggestion of anything happening over and above discussions with these individuals. As I mentioned, Mr Ayanoglu’s witness statement is not relied upon. Although Mr Jones’ witness statement is not challenged, it is extremely vague as to whether any discussions with Mr Clements with regard to supplies from China even related to clothing. Further, the evidence of Mr Hamilton, Mr Bell’s chauffeur, particularly under cross examination, was extremely vague in relation to any discussions between Mr Bell and Mr Clements with regard to celebrities, and he was unable to confirm that any such discussions related to the sale of young women’s clothing.
49. One important piece of evidence relied upon by Mr Clements relates to a note made by Mr Wright during the course of the meeting that I have referred to with Mr Clements on 28 January 2014. Indeed, Mr Jory KC, at one stage, described Mr Wright as the most important witness in the case on the basis that the note is said to provide contemporaneous evidence that Mr Clements did provide the £10,000 odd that he alleges that he did provide as seed capital for the business, thus supporting his case as a whole and undermining that of Mr Frisby. Mr Wright’s file note recorded: *“Elegant homes owns French property → may have co. asset in ITS →~ £10K”*. In his witness statement, Mr Wright says this about the file note: *“I believe this to be a short hand note for Paul having a company asset of circa £10,000 in respect of his business “In The Style”. Specifically, I understand this is a reference to an investment contribution to start-up capital of that business he had made. I was satisfied this was a business payment and therefore in accordance with the restraining order.”*
50. Under cross examination Mr Wright explained that the exercise in question recorded by the relevant file note was an exercise that involved accounting for Mr Clements’ assets and expenditure in the context of the restraint order and the proceedings for the compensation order that were on foot, and that this would have involved, amongst other things, accounting for the cash that had been withdrawn from Elegant Homes’ bank account as identified by the withdrawal slips that I have referred to. Further, Mr Wright accepted that the file note may have referred to expenditure on ITSL as opposed to, specifically, the business involving Mr Frisby and Mrs Devine.
51. I turn then to consider Mr Frisby’s version of events as from the time of the one single meeting that he maintains that he had with Mr Clements.

52. It is Mr Frisby's case, supported by the evidence of Mrs Devine, that they took the following steps, amongst others, to get the In The Style business up and running, namely:
- i) The domain name www.inthestyle.co.uk was purchased on or about 1 July 2013, and the website as designed by Mr Corbett's sister was up and running by about 26 August 2013;
 - ii) A PayPal account was opened by Mr Frisby and Mrs Devine on 1 July 2013.
 - iii) The design for the In The Style logo commissioned as referred to in paragraph 38(ii) above was received by email on 10 July 2013;
 - iv) On 29 July 2013, Mr Frisby and Mrs Devine made an application to the Intellectual Property Office (“**IPO**”) to register a trademark in respect of the expression “*In the style*” at a cost of £170, which such cost was, as I have referred to, split between Mr Frisby and Mrs Devine. The application to the IPO described Mrs Devine (then still Jessica Ward) and Mr Frisby as the owners of the mark that was sought to be registered. Whilst this application was refused, Mr Frisby places significance on the fact that the application was made in the joint names of himself and Mrs Devine, without reference to Mr Clements.
 - v) Mr Frisby, Mrs Devine and Mr Corbett leafleted in Manchester to promote the website and a launch date of the August 2013 bank holiday.
 - vi) As the bank statements show, the joint account held by Mr Frisby and Mrs Devine was up and running on 22 August 2013, in time for the August 2013 Bank Holiday weekend.
 - vii) Mr Frisby and Mrs Devine referred in evidence to making trips to Cheetham Hill Road in Manchester to source suppliers and suitable products for fast fashion sales, and to purchasing the first dresses, and sewing in the first labels. Orders are said to have been first received following the launch over the August 2013 Bank Holiday weekend.
 - viii) From August 2013, gifts of fast fashion clothing items were made to reality TV celebrities, and sales of £1,000 on one single item were first hit following Sophie Kasaei of the reality TV show *Geordie Shore* posting a picture of herself wearing the item on Instagram. Mr Frisby accepts, for example, that there were peaks and troughs of sales as the fledgling business established itself.
 - ix) By October 2013, Mr Frisby and Mrs Devine were seeking to make connections with a number of agents of celebrities who appeared in the then popular reality TV show, *TOWIE*. Ultimately, this led to Mr Frisby and Mrs Devine meeting with Lauren Pope (“**Ms Pope**”), a celebrity on *TOWIE*, and her agent in November 2013, and thereafter agreeing terms for her to collaborate and to develop a range of fashion items for sale on the website and to use Facebook and Instagram to promote that range, with the relevant collaboration agreement being finalised in March 2014.

- x) By November 2013, and with an increasing volume of sales, Mr Frisby and Mrs Devine decided to incorporate the still fledgling business. They say that in late November 2013, they instructed accountants to incorporate a company under the name “*In The Style Ltd*”, but were advised that approximately two weeks earlier someone else had incorporated a company with that name with a registered office in Glossop. Consequently, Mr Frisby and Mrs Devine incorporated the Company with the name ‘*In The Style Fashion Limited*’, of which Mr Frisby and Mrs Devine were each appointed directors, and allotted two shares.
53. So far as the incorporation of ITSL is concerned, it is Mrs Devine’s evidence that from a company search she realised from the reference to Ms Lomas, and the location of the registered office, that this had something to do with Mr Clements. She says that she was pretty furious about what she discovered and tried to telephone Mr Clements on a number of occasions to try to speak to him, but without success initially. She says that she did ultimately manage to contact Mr Clements, either by telephone or by text, and asked him whether he was connected with ITSL, which he denied. That Mrs Devine tried to contact Mr Clements at this time is said to be borne out by mobile telephone records that show her making about 20 unanswered calls to Mr Clements in the evening of 26 November 2013, and a number of further unanswered calls the following morning. There is a record of one text sent to the same number at 21:52 on 25 November 2013 but no record produced of other calls or texts at that time.
54. By October 2013, Mr Frisby had decided that he wished to leave his employment with Work Solutions, and to work for the In The Style business on a full-time basis given that he was committing all of his spare time to running the business. In these circumstances, Mr Frisby began to work for the business on a full-time basis, having left his employment in late November 2013.
55. On the other hand, by mid to late November 2013, Mrs Devine had decided to give up her share and interest in the business in favour of Mr Frisby. Insight as to the circumstances behind this is said to be provided by an email dated 18 December 2013 that Mr Frisby sent to another close friend, Rachel Smith, in which he said the following in response to Rachel Smith’s enquiry as to why Mrs Devine was “going”:
- “Gave her an ultimatum and she said she wants to go ...*
- I’m glad because she was never passionate and moaned about every little job she had to do so would only of got worse and ultimately she would have been taking 50% of profits for packing parcels. But it’s just a bit like aaaaarggghhhh Lauren’s project is well underway, i now have to sort all companies house, account staff plus secure an investment plus get £5000 worth of stock from hers to mine and sort PR for Lauren - as you can imagine....Xmas is cancelled this year. :(”*
56. The gist of Mr Frisby’s evidence as to this was that it had reached the point where he was driving the business forward, but that Mrs Devine did not have the same commitment, and the issue of her commitment having been brought to a head with Mrs Devine, she decided that she would prefer to step back from the business. Matters between them were dealt with formally by Solicitors, with the requisite share transfer and other relevant documentation being drawn up providing for Mrs Devine to transfer her shares to Mr Frisby and resign as a director of the Company. She received £2,000,

which is said to have represented the £1,000 odd that she had provided towards the set-up costs plus an additional £1,000. Although the relevant documentation was signed shortly thereafter, Mrs Devine was treated as having resigned as a director on 14 December 2013, which Mr Frisby says is the date on which she decided to leave.

57. Despite the circumstances in which Mrs Devine came to leave the business and the Company, they have remained close friends, as evidenced by the support that Mrs Devine has provided to Mr Frisby with regard to Mr Clements' claim in the present proceedings.
58. It is Mr Clements' case that the real reason why Mrs Devine left the business and the Company is because by the time that she did so, the business was, as Mr Jory KC put it, about to take off, with the deal with Ms Pope in the course of being concluded, and Mrs Devine wished to avoid becoming embroiled in the dispute that would ensue when and if Mr Clements asserted what he claims to be his rightful claim. Mrs Devine emphatically denies that this was the case.
59. It is further Mr Clements' case that, on Mrs Devine's departure, she and Mr Frisby discussed and agreed upon a false narrative, consistent with that now put forward by them in contrast to that of Mr Clements, that they would put forward and stick to if Mr Clements did ever mount a claim. Particular features of this narrative were, so Mr Clements alleges, that he had been convicted of money laundering, and was not therefore somebody whose evidence would be believed, and that Mr Clements had no documentary evidence to support his claim.
60. There has been produced by Mr Frisby a draft of an email said to have been sent to him by Mrs Devine on 23 January 2014 with a view to Mr Frisby adapting the same to send to Companies House, the covering email to Mr Frisby suggesting that he would need to add bits in, such as the registration number of the Company and address of the business.
61. The text of this draft email was in the following terms:

"To whom it concerns,

I am writing to express my concerns over a Limited company very similar to the In The Style Fashion Ltd, myself and my business partner went to register our business as In The Style Ltd on 26th November and found that this business name had already been taken just 11 days to our business application been processed which I thought was very strange at the time especially near to my home town (Glossop), when I looked into this in more depth i have found out that this is an acquaintance I know who was aware of our business plan and the content of our business who has now set up this business with no intention of trading, the name of the director is Joanne Lomas who works on behalf of a number of other companies including: Hendon Frank Legal LLP/Elegant Homes - these are all owed by a Mr Paul Clements, at this stage I do not know the intention but would like to raise my concerns as this person was charged with Money Laundering and was sentenced earlier last year at Leeds Crown Court.

When I have approached this person directly he has replied via text message "lesson in business for u" suggesting this has been done intentionally."

62. The text message from Mr Clements referred to in the email has not been produced, but it was Mrs Devine's evidence that it was sent by Mr Clements, and was accurately referred to in the email. The email is relied upon by Mr Frisby as a contemporaneous document consistent with his position that it was never agreed that Mr Clements should have any interest in, or position in respect of the In The Style business or the Company, and that his claim is a false one, and that the email demonstrates, even at that stage, an unhealthy interest in the business that Mr Frisby, with the assistance of Mrs Devine until November/December 2013, had built up.
63. In response to this, it was put to Mr Frisby in cross examination that what he and Mrs Devine were seeking to do by this email was to "*rehearse what the agreed line was going to be*" should Mr Clements maintain a claim, and it was submitted on behalf of Mr Clements in closing submissions that if this was a contemporaneous email, then it was one created to be "*kept in the drawer*" to be used if Mr Clements did maintain a claim, as he has now done. In the course of his own cross examination, Mr Clements sought to suggest that the email represented: "*somebody trying to cover their tracks*".

Further events going into 2014 and up to the 2020 LBA

64. It is Mr Clements' case that, following his meeting with Mr Wright in January 2014, he did not concern himself with the In The Style business until late 2016 when he says that he was made aware that it had been actively pursued by Mr Frisby. He says that this was when he was out socialising with a group of people, and he overheard some girls within the group discussing a social media post relating to In The Style.
65. Mr Clement says that he carried out some investigations through searches on Google and at Companies House, which revealed Mr Frisby's involvement, and until December 2013 that of Mrs Devine. Consideration was then given to bringing a claim based upon the Alleged Business Plan having been disclosed to Mr Frisby in confidence, and having been wrongfully exploited by Mr Frisby after Mr Clements had been put off the scent. He says that after taking advice from various business contacts, none of whom have been identified, he consulted several law firms during 2017 as referred to in paragraph 44 of his first witness statement. Complaining that these lawyers were not sufficiently specialist, he says that he consulted DBF in or around June 2019, who did not then progress the matter, so he says, because the latter felt that the business did not look at all valuable and did not appear to present a target worth pursuing.
66. However, ultimately, the 2020 LBA was sent on 22 December 2020, shortly after the proposal to float the In The Style business had been referred to on the Retail Gazette website on 22 November 2020, and in the Sunday Times. Mr Clements says that he had no knowledge of any intention to float until it actually took place in March 2021. It is fair to observe that the 2020 LBA makes no reference to a proposed public flotation.
67. So far as the In The Style business was concerned, and going back to late 2013/early 2014, as already mentioned, after first meeting with Ms Pope in October or November 2013, discussions and negotiations continued with a collaboration agreement ultimately being concluded to enable a collection involving Ms Pope to come out in March 2014.
68. It is Mr Frisby's evidence that it was the fact that the business appeared to be taking off, with the collaboration agreement with Ms Pope about to be concluded, that he

considered it an appropriate time to approach Mr Todd to invest in the business, which Mr Todd did in February 2014, taking a shareholding in the Company.

69. It is Mr Clements' case that the circumstances in which Mr Todd came to invest are consistent with Mr Clements having invested approximately £10,000 as seed capital in 2013 as alleged. This is on the basis that it is Mr Frisby's own evidence that he and Mrs Devine were looking for an investor in July or August, and looking at Mr Clements and Mr Todd as potential investors, but choosing to approach Mr Clements. The point is made on behalf of Mr Clements that if that is right, and nothing was concluded with Mr Clements as alleged, then one might have expected Mr Todd to have invested at that time, rather than subsequently in February 2014. However, it is Mr Frisby's evidence that Mr Todd was available as an investor as and when required to invest, but that the need did not arise until February 2014 when the Company was closing in on the agreement with Ms Pope.
70. Mr Frisby caused the Company to make at least one other application for funding, namely to Fashion Angel for a start-up loan of £25,000 made by application dated 12 January 2014. The application did not succeed because it sought more than Fashion Angel generally lent. However, reliance is placed by Mr Clements on this application in that it is said that, contrary to Mr Frisby's case, there is nothing particularly unique about the In The Style business, the application identified a unique selling point or USP, when it said: "*Our USP is value, so great items but at really low prices. Our new USP is going to be our exclusive celebrity campaign. The celebrity we have signed is very fashion orientated and the clothing will be totally exclusive to us.*" In addition, the application is relied upon as identifying the following particular niche, namely: "*Celebrity is such a huge marketing tool. Young girls idolize the celebrity look and this is why we went down collaboration route ... In addition for this we are keeping prices low which keeps customers interested.*" It is said that this matches the unique modus operandi identified by Mr Clements in the Alleged Business Plan.
71. It was after this unsuccessful approach to Fashion Angel that matters were progressed with Mr Todd, and I note that in an email dated 26 January 2014, Mr Frisby referred to an investor investing £25,000 for an equity amount, which can only have been Mr Todd.
72. In cross examination, Mr Frisby was taken to a number of newspaper and other articles in the press featuring Mr Frisby and the In The Style business. Something of a recurrent theme in these articles, including an article in the Manchester Evening News and an article in OK Magazine, is that Mr Frisby is described as having worked his way up from working at Burger King, and as having founded In The Style business with £1,000 in redundancy money or "*literally £960 in my account*". These articles were based upon interviews with Mr Frisby, and it was put to him that there are matters described therein that are not consistent with his present case. In particular, it is said that there is no reference in these articles to the role of Mrs Devine in the establishment of the business, that Mr Frisby received £10,000 odd in redundancy money and not merely £1,000, and that the bank statements produced do not show £1,000 as having been introduced into the business as such. Rather Mr Frisby and Mrs Devine are shown, at best, as providing a facility of up to £1,000 to fund business prior to the opening of the joint account.
73. Mr Frisby's response was, in essence, that too much reliance should not be placed upon the contents of newspaper and magazine articles, which will, it is suggested, have

presented their own narrative based upon an exaggerated version of events to suit their readers.

74. What is clear is that the business of the Company became increasingly successful as the years progressed, leading up to its flotation in March 2021 raising funds of around £125 million.

The 2020 LBA and subsequent events

75. Although Mr Frisby's and Mrs Devine's WhatsApp messages were only disclosed by Mr Frisby towards the end of the week leading up to the trial, they reveal a number of important conversations by WhatsApp messages and WhatsApp voice notes (sound files), in particular between Mr Frisby and Mrs Devine.
76. On 23 December 2020, shortly after the 2020 LBA was received, the following WhatsApp exchange took place between Mr Frisby and Mrs Devine:

"[23/12/2020, 14:22:17] Adam Work: Look what I've just got through the post ? Do you still speak to this guy...."

[23/12/2020, 14:22:23] Adam Work:

[Copy of 2020 LBA, or extract therefrom, is attached]

[23/12/2020, 14:23:49] Jessica Devine: Wtf is that? God no I have not seen him for years, what's it's about? Xx

[23/12/2020, 14:24:02] Adam Work: He's basically saying he started in the style

[23/12/2020, 14:24:34] Jessica Devine: Wtf... Well if you need me to act as a witness I will of course, cheeky twat!!

[23/12/2020, 14:24:59] Adam Work: Is that the guy you once had that convo with about helping? But nothing came from it ?

[23/12/2020, 14:25:29] Jessica Devine: Yep that's the wanker!!!!

Remember when the name had been registered and we didn't know who ... now it's confirmed it was him?

[23/12/2020, 14:25:42] Adam Work: I'm going through it now with legal

[23/12/2020, 14:25:55] Adam Work: But yeah that's what it is that he registered in the style ltd yeah I thought that

[23/12/2020, 14:26:08] Adam Work: Did he lend you any money at the time?

[23/12/2020, 14:26:15] Jessica Devine: I think I still have his number in my other mobile, do you want me to contact him?

Did he eck!!!!

[23/12/2020, 14:26:34] Jessica Devine: I would never take money from anyone

[23/12/2020, 14:27:17] Adam Work: [audio omitted]

[23/12/2020, 14:28:05] Jessica Devine: *Wtf..... I'm gonna call him - do you mind?*

[23/12/2020, 14:29:06] Jessica Devine: *I'd like to see any evidence of monies? Does it actually say that? X*

[23/12/2020, 14:29:20] Adam Work:

[Further extracts from 2020 LBA attached]

[23/12/2020, 14:30:19] Jessica Devine: *That's is totally bullshit.*

[23/12/2020, 14:30:43] Jessica Devine: *Well if you need me to do anything at all let me know!!!*

[23/12/2020, 14:31:05] Adam Work: [audio omitted]

[23/12/2020, 14:31:23] Jessica Devine: *Yeah we met at a bar in Manchester*

[23/12/2020, 14:31:40] Adam Work: *I can't even remember you know . Not one bit*

[23/12/2020, 14:31:44] Adam Work: *But nothing came of it did it*

[23/12/2020, 14:31:49] Adam Work: *He wasn't interested was he*

[23/12/2020, 14:32:20] Jessica Devine: *No not at all.....*

Not a penny and anyone can look at my bank accounts anytime if need be!

[23/12/2020, 14:32:56] Adam Work: *So weird, what a complete tool!*

[23/12/2020, 14:32:58] Jessica Devine: *That solicitors is based in Glossop near me as he lives in marple I think or did! Like I said I have not seen him or heard from him in years*

[23/12/2020, 14:33:21] Jessica Devine: *Happy to do what ever you need me to!!!!*

.....

[After a further extract from the 2020 LBA is sent]

[23/12/2020, 15:17:49] Adam Work: *I lost my job at Burger King and approached you for work [a laughing/crying emoji]*

[23/12/2020, 15:18:16] Adam Work: *And you told him I was looking for work and would be a good employee [three laughing/crying emoji's]*

[23/12/2020, 15:20:23] Jessica Devine: *Lol [three laughing/crying emoji's]"*

77. Transcripts of the WhatsApp voice notes shown above as “omitted” have now been provided by Mr Frisby. They are essentially consistent with the above exchanges.

78. The WhatsApp messages and voice notes are relied upon by Mr Frisby as being an honest expression as between Mr Frisby and Mrs Devine as to their reaction to the allegations made on behalf of Mr Clements in the 2020 LBA, and in particular their rejection of the basis of Mr Clements claim.
79. On behalf of Mr Clements, it is submitted that these WhatsApp exchanges represented Mr Frisby “*testing the water*” in order to see whether Mrs Devine would stick to the false narrative that they had agreed upon when Mrs Devine left the business in late 2013, and that subsequent exchanges represented Mr Frisby and Mrs Devine “*rehearsing*” the narrative that they had so agreed upon in a self-serving way rather than representing a genuine expression of what they actually recalled and believed.
80. Mr Frisby’s Solicitors, TLT LLP, responded to the 2020 LBA by letter dated 7 January 2021 setting out Mr Frisby’s case. A further letter before action was sent by Mr Clements’ present solicitors, Clarke Willmott LLP, on 23 March 2021 after they had been instructed in place of DBF. After further pre-action correspondence, the present proceedings were commenced on 21 December 2021.

Relevant events following the issue of the present proceedings

81. Mr Frisby served a Defence dated 23 February 2022, and Mr Clements a Reply dated 21 April 2022. Replies to Requests for Further Information were provided by Mr Clements on 17 June 2022 and 14 July 2022.
82. Case management directions were given by HHJ Cadwallader on 30 June 2022. Witness statements have been filed and served in accordance with these directions as recorded in the table of key participants in paragraph 10 above.
83. Mr Frisby’s second witness statement was made on 17 January 2023, the second day of the trial, and prior to him giving evidence the following day. It was made to comment on the contents of one of the WhatsApp audio voice notes that had been disclosed the previous week.
84. The audio voice note in question was timed at 20:35:22 on 19 October 2022, and followed the following WhatsApp exchange:

“[19/10/2022, 20:12:57] Adam Work: Hey Jess. Don’t suppose you have your witness statement or what you did you can send me? I can’t find it.

[19/10/2022, 20:17:25] Jessica Devine: I have a call 12-1230 so would need to be before or after?

85. Mr Frisby then made the relevant WhatsApp audio voice note, which was in the following terms:

“Hiya, yeah ok so I’ll let you know then, I’ve got a board call in the morning erm hopefully that won’t be that late, so I’ll let you know. There’s a reason really, I just wanted to go through, obviously don’t say this to Julien right, I wanted to go through [inaudible] I haven’t got the best memory of everything do you know what I mean, and I don’t want to turn around and say oh we did this and then you’re like we did this. Do you know what I mean? So, I want to make sure that’s the main

thing erm, so we'll just [inaudible] if you email me, my email is literally adam@inthestyle.com, if you just email me what you've got in there, then I can just make sure that mine is not a million miles away like I say it would never be would it because obviously we're telling the truth but I just mean in that I can't remember everything perfectly."

86. Having enquired as to the best email address to which to send what she described as "the first draft", Mrs Devine then emailed the relevant document to Mr Frisby. This may have been a draft prepared in March 2022 finalised as a witness statement dated 14 March 2022, apparently prepared in connection with a possible application for summary judgment, or a draft that TLT LLP were working on.

87. There were then the following WhatsApp exchanges between Mrs Devine and Mr Frisby:

"[20/10/2022, 05:05:27] Jessica Devine: Just emailed it over for you

Give me a call if you need anything x

[23/10/2022, 16:15:54] Adam Work: Hey hey!

Only question for me was when we started talking about ITS? I reckon it was like may/June wasnt it?

Cus we launched august bank holiday and I think met Paul in July, even though he said June.

[23/10/2022, 16:26:55] Jessica Devine: yeah May ish as the bank holiday august we did them leaflets in Manchester I am sure - looking at pictures it was 13 th august we had that black and white scuba dress and I put a label in yeah

I rek it was July ish but can't be 100% sure Xx"

88. It is relevant to note that Mr Frisby omitted from paragraph 3 of his first witness statement, which set out the documents that he had referred to in making that witness statement, any reference to reading any witness statement of Mrs Devine, or any draft thereof. A number of points are made on behalf of Mr Clements in respect of the WhatsApp exchange referred to above, and the audio voice note in particular. Firstly, it is said that it shows that Mr Frisby and Mrs Devine were colluding together to make sure that they stuck to the same story, which, on Mr Clements' case, they knew to be false. Secondly, reliance is placed upon the fact that in the audio voice note Mr Frisby had expressed concern that Mrs Devine should not inform "Julien", i.e., Mr Frisby's Solicitor, Julien Luke ("Mr Luke"), that Mr Frisby had wanted to see the draft witness statement. It is submitted on behalf of Mr Clements that this was said with a view to misleading Mr Luke, and ultimately the Court, with regard to whether Mr Frisby had seen the relevant witness statement or draft witness statement in order to refresh his memory and make his own witness statement for trial.

89. In response, under cross examination, Mr Frisby said that he was concerned that Mr Luke, if made aware of Mr Frisby's request, might think that he was not on top of the

case, and that he was concerned also that it might affect the consideration by Mr Luke of the making of an application by Mr Frisby for summary judgment.

Mrs Devine's evidence as to Mr Clements seeking to bribe her

90. There is one discrete aspect of the factual narrative which I have not dealt with in the chronological sequence above, namely Mrs Devine's evidence that Mr Clements had sought to bribe her to give evidence in his favour through Mr and/or Mrs Clarke.

91. In paragraph 43 of her first witness statement, Mrs Devine referred to becoming aware through "*a friend who has connections to a business supplying and fitting windows to domestic properties*" that Mr Clements was trying to get in touch with her, and that Mr Clements was talking quite openly "*how he was pursuing money from Adam*". Mrs Devine says in paragraph 43 that she would prefer not to name the friend, although a link to Mr and Mrs Clarke is established by the fact that Mr Clarke is involved in the type of business referred to.

92. In paragraph 44 of her witness statement, Mrs Devine then continued as follows:

"My friend told me that Paul wanted to know if I would help him and give evidence to support him in his claim against Adam and he told my friend that if I did, I could 'name my price'. I recall being told that Paul had said he would pay me something like £100k if I agreed to support him in his claim. Basically, I was told that Paul was saying he would pay whatever I wanted, as long as I agreed to support him in his claim against Adam. I made it very clear to my friend that I would never agree to do anything like that and that I didn't want anything to do with Paul because he was someone who cannot be trusted. Paul's claims are all untrue. The idea for the business was not his. He did not come up with a business plan and he did not pay us any money. I never made any 'report' to him about the business being unsuccessful. It is just simply untrue."

93. It is relevant to note that Mrs Devine's witness statement dated 14 March 2022, a copy of which was exhibited to Mr Frisby's second witness statement, included wording somewhat similar to paragraphs 43 and 44, but without making reference to £100,000. Mr Frisby also exhibited to his second witness statement an earlier draft of Mrs Devine's witness statement dated 14 March 2022 which, in the equivalent paragraphs, refers to "*a friend whose husband delivers windows to some of Mr Clements' properties*", suggesting that it was Mrs Clarke, rather than Mr Clarke, who had mentioned to her that Mr Clements wanted to know if she would help him, on the basis that she could "*name my price*".

94. In response to Mrs Devine's trial witness statement, Mr Clements made a second witness statement dated 22 November and 2022, which he subsequently revised on 9 December 2022. In this witness statement, Mr Clements accepts that he approached Mr Clarke, who he knew to be a friend of Mrs Devine, in order to see whether he would be prepared to get in touch with Mrs Devine "*and see whether she would tell the truth*". Mr Clements says that he understands that Mr Clarke did get in touch with Mrs Devine in March 2021, but that she said that she did not want to get involved. Mr Clements says that he was "*shocked*" to see what Mrs Devine had alleged in her trial witness statement, knowing that she was referring to Mr Clarke. Mr Clements says that he then contacted Mr Clarke on 7 November 2022 to ask him whether he had said what had

been alleged, which he denied. Mr Clements then refers to Mr Clarke having texted him asking for a copy of Mrs Devine's statement. Mr Clements says that he then telephoned Mr Clarke to say that he did not think that he could provide a copy. Mr Clements then goes on to "*categorically*" confirm that he did not ask Mr Clarke to offer Mrs Devine £100,000 or any money, saying that he simply asked whether she would tell the truth.

95. Mr Clarke, in his witness statement, essentially confirms this version of events, saying that he did not offer Mrs Devine any money on behalf of Mr Clements or otherwise, and that Mr Clements had not even asked him to approach Mrs Devine on this basis, saying that he only ever asked whether Mrs Devine would tell the truth, only for her to respond that she was not getting involved. Mr Clarke stood by his version of events under cross examination.
96. Mr Clements served a witness summary on behalf of Mrs Clarke, apparently having been unable to obtain a witness statement from her. I was informed that a witness summons had not properly been served upon her, and that, in the circumstances, she was not being called by Mr Clements as a witness.
97. In response to Mr Clements' second witness statement and Mr Clarke's witness statement, Mrs Devine made her second witness statement dated 25 November 2022. In this witness statement, Mrs Devine referred to the approach by Mr Clarke, made in March 2021, and confirmed that Mr Clarke had told her that Mr Clements had said that she could "*name my price*", if she would give a witness statement supporting his claim. Mrs Devine further said that Mr Clarke had, on previous occasions, told her that Mr Clements was prepared to offer her money to support him in his claim against Mr Frisby, but that on each occasion she had said that she really did not want to get involved in the case at all. However, she says that she subsequently became involved: "*after finding out from Adam the things that Paul was saying in his claim about me and about Adam ... I also felt and do feel that it was morally the right thing to do. As I have maintained throughout, Paul is completely lying and is just saying all of this to try and get some money out of Adam and it's not fair. That's why I have willingly agreed to provide statements supporting Adam.*"
98. In her second witness statement, Mrs Devine also refers to having spoken to Mrs Clarke with regard to the matter on several occasions. She says that Mrs Clarke, having heard it from Mr Clarke, told her that Mr Clements had offered something like £100,000 if Mrs Devine would give a statement supporting his claim.
99. Mrs Devine then, in this second witness statement, gives a detailed explanation of events and of her contact with Mr and Mrs Clarke between 7 and 11 November 2022, as follows:
 - i) On 7 November 2022, Mrs Devine received a text message from Mrs Clarke saying that Mr Clarke had come home reporting that Mr Clements had been in to see him with Mrs Devine's witness statement, and had asked Mr Clarke to side with him and speak to his solicitor. In response, Mrs Devine asked Mrs Clarke to ask Mr Clarke to call her.
 - ii) Mrs Devine says that after this text exchange, she spoke to Mrs Clarke on the telephone, during the course of which conversation Mrs Clarke informed her that Mr Clements had gone into where Mr Clarke worked with a copy of Mrs

Devine's witness statement and had offered Mr Clarke money to give him a statement "*which would go against what I had said in my first witness statement.*"

- iii) Mrs Devine subsequently texted Mr and Mrs Clarke asking that Mr Clarke call her. In a text sent to Mrs Clarke on 8 November 2022, she said this: "*Hi cocka, I know Dazza [Mr Clarke] is busy at work but not heard back from him, is he avoiding me because Paul has offered him money to lie for him. Tbh he need to not get involved as it's very stressful x.*"
- iv) Mrs Clarke responded to this last text by saying: "*Hi love he is probably busy at work. X*"
- v) The following text exchange then took place between Mrs Devine and Mr Clarke on 9 November 2022:
 - a) Mrs Devine texted Mr Clarke saying: "*Hi Darren, I feel like your avoiding me because Paul has offered you money to lie, I really need to speak to you as this has been stressing me out for over a year now even though I'm doing the right thing. X*"
 - b) Mr Clarke responded saying: "*I have been busy at work, although I didn't need to be brought into a witness statement either as he isn't daft and knows who it is.*"
 - c) Mrs Devine replied saying: "*Sorry Darren, I have had to tell the truth from the start Darren and that's what happened. I'm doing what morally right as Paul is a con man and trying to rip someone off who has done well for himself.*"
 - d) Mr Clarke then said: "*You did not make me aware though as a friend that isn't correct. You could of said no to the witness statement and Paul would have had to prove otherwise.*"
 - e) Mrs Devine then said: "*Sorry I don't know what you mean I've told Leila [Mrs Clarke] all along what's been going on and telling the truth of exactly what's happened. Why would I say no when he is trying to rip a friend off, surely you would do that for a friend if it's all a lot of rubbish and conning someone? You know how dodgy Paul is anyway. Sorry if that's got you involved and I obviously didn't want Paul getting you involved. I told my solicitor yesterday that you don't want to be involved.*"
 - f) Mrs Devine followed up that text later in the day by asking whether Mr Clarke could talk yet.
- vi) Mr Clarke did call Mrs Devine on 11 November 2022 on his way to a job. In paragraph 14.6 of her second witness statement, Mrs Devine said that Mr Clarke made clear in this call that he did not appreciate Mrs Devine having mentioned in her witness statement about "*him/Leila*" having passed on the message about Mr Clements being prepared to pay for support for his claim. She says that she

got upset, but explained that morally she considered that she was doing the right thing. She says that she then said to Mr Clarke on this call words to the effect of: “you know that Paul said that I could “name my price” when this all started”, and also “Leila told me that Paul offered you money to give a statement for him hasn’t he”. She says that rather than denying this, Mr Clarke changed the subject.

vii) Following this call, Mrs Devine texted Mr Clarke in the following terms:

“Thanks for calling I do appreciate it and sorry for getting upset, I would expect you to be telling Paul do one as you have know me for years and he is some con man who buys the odd window off you, disappointed you have actually entertained him and actually believe anything what has come out of this guys mouth over someone who has been to your wedding and vice Versa, I am sorry I didn’t tell you but I honestly didn’t think all would be knocking on your door as he shouldn’t be doing that and genuinely didn’t think he would. I’ve had a solicitor on but I have told them you don’t wish to get involved. Happy to show you both mine and Paul statements any time to show you what he has been saying about me and all the lie.”

100. There are further observations that I should make with regard to WhatsApp messages concerning this issue.

101. Firstly, there was a WhatsApp exchange in March 2021 which shows that Mrs Devine had informed Mr Frisby at that time that Mr Clarke had approached her with regard to assisting Mr Clements. This exchange included the following:

“[23/03/2021, 15:10:46] Jessica Devine: I’ve had a call from Darren Leila’s husband to ask a few questions and would I speak to Paul!

[23/03/2021, 15:45:05] Adam Work: What did you say?

[23/03/2021, 16:20:20] Jessica Devine: Long story but Darren asked if he had given us some money, I was like he defo didn’t and trying to have you over. I just said tell him I didn’t answer as I wanted to check with you how to play it

[23/03/2021, 16:22:05] Adam Work: Oh so he’s telling Darren it’s true

*[23/03/2021, 16:23:09] Jessica Devine: Basically yeah- Darren knows he is full of S**t but let him just carrying on telling him”*

102. Reliance is placed by Mr Clements on the fact that Mrs Devine did not, at least in these exchanges, raise with Mr Frisby that Mr Clarke (or Mrs Clarke) had told her that Mr Clements was prepared to pay her money to assist him.

103. Secondly, on 23 December 2021, in the context of other WhatsApp exchanges, Mr Frisby sent to Mrs Devine the following WhatsApp voice note:

“What erm, what did you say to Darren then in the end? Like, what, I don’t understand so is, is Paul saying he wants to have a chat with you? So basically, he must be telling everyone around that its true because obviously he wouldn’t want it to get out that its wrong and then I’m guessing when he speaks to you he’ll, well

obviously you know it's a load of shit, he'll obviously tell you it's a load of shit and be like right come on board then and I'll give you some money kind of thing. Erm, I just can't believe it, it's just a joke."

104. On behalf of Mr Clements, it is submitted that the origin of the idea that Mrs Devine be paid to provide evidence on behalf of Mr Clements was not anything said by Mr Clarke to Mrs Devine, but rather was the suggestion made by Mr Frisby in this voice note that Mr Clements would offer her money in order to get her onside.
105. Thirdly, there were WhatsApp exchanges between Mr Frisby and Mrs Devine following the telephone conversation between Mrs Devine and Mr Clarke on 11 November 2022, and after Mr Frisby had informed Mrs Devine 2022 that Mr Clarke had made a witness statement on behalf of Mr Clements. Mrs Devine immediately responded: *"I have text messages"* and *"OK can't believe it x."*
106. There was then the following important exchange between Mrs Devine and Mr Frisby after Mrs Devine had provided Mr Frisby with copies of the relevant text messages:

"[23/11/2022, 19:35:59] Jessica Devine: Louise [Mr Frisby's Solicitor] wants to chat to me tomorrow, I have sent all messages over to her which proves a lot.

Also it was through Leila from Darren who offered money to side with him.

[23/11/2022, 19:36:54] Adam Work: What do you mean through Leila ?

[23/11/2022, 19:39:05] Jessica Devine: Leila was the one saying to me directly a few years ago he will pay you want ever you want to side with him through Darren

[23/11/2022, 19:40:31] Adam Work: Yeah I remember you saying

[23/11/2022, 19:41:21] Jessica Devine: Also it was Leila who told me Paul offered to pay Darren to lie for him a few weeks ago to go against my statements so that's why I sent messages to prove it and they didn't say anything back which if someone sent me them messages I would reply 'what you going on about '

[23/11/2022, 19:43:27] Adam Work: Yeah totally

[24/11/2022, 09:32:25] Jessica Devine: I've never been so stressed in all my life but you find out in things like this who your true friends are!

[24/11/2022, 09:34:09] Adam Work: I know. Well easier said that done but try not to be too stressed about it. You're only telling the truth at the end of the day and you can't lose the case or anything if you get me you've just done the right thing by speaking the truth. Xx

[24/11/2022, 09:34:51] Jessica Devine: Exactly x"

Need a holiday"

107. It was argued on behalf of Mr Clements that the WhatsApp message sent at 19:41:21 on 23 November 2022, and the reference therein to having sent messages a few weeks ago, i.e. the texts sent to Mr and Mrs Clarke referring to Mr Clements having offered

money, to prove that it was Mrs Clarke (Leila) who told her that Mr Clements (Paul) had offered to pay Mr Clarke (Darren), reveals Mrs Devine to have been devious and manipulative in seeking to set up Mr and Mrs Clarke. Further, it is submitted on behalf of Mr Clements that nothing should be read into the fact that Mr and Mrs Clarke did not respond to the references in the texts to Mr Clements having offered money on the basis that the texts, properly considered in context, did not specifically assert that Mr Clements had offered to pay money, but rather set out Mrs Devine feelings in respect thereof, which did not warrant a response.

108. On the other hand, on behalf of Mr Frisby, it is asserted that the exchanges, and in particular those on 23 November 2022, are only explicable on the basis of representing genuine and honest dialogue between Mr Frisby and Mrs Devine, and that there is no reason why, in the context thereof, Mrs Devine should, in private dialogue with Mr Frisby, have referred to offers by Mr Clements to pay money if, in fact, that did not represent what she had actually been told by Mr and/or Mrs Clarke. Further, it is submitted that the failure of Mr and Mrs Clarke to respond to Mrs Devine's comments in her texts to them with regard to payment of money by Mr Clements supports Mr Frisby's case, which relies upon the evidence of Mrs Devine that offers to pay money were made on behalf of Mr Clements.

Mr Clements' case

109. Mr Clements' case necessarily depends upon his version of events being accepted, rather than the version of events put forward by Mr Frisby. It is first necessary to consider the legal basis of Mr Clements' claim in the event that his version of events is accepted, and to then consider why he says that his version of events should be accepted in preference to that of Mr Frisby.

Legal basis of claim

110. Mr Clements puts forward his claim on what are, essentially, two bases:
- i) Firstly, a claim in equity founded upon the imparting of confidential information in relation to the Alleged Business Plan to Mr Frisby in confidence, which Mr Frisby wrongfully has misused and applied for his own purposes in establishing and carrying on the business of In The Style through the Company; and
 - ii) Secondly, a claim based upon an agreement that Mr Clements alleges was concluded with Mr Frisby whereby he was employed or engaged for £200 per week to set up the In The Style business, and for the purposes of which confidential information in the form of the Alleged Business Plan was imparted to Mr Frisby, which such agreement is alleged to have given rise to fiduciary duties on the part of Mr Frisby, and a contractual obligation not to misuse the confidential information imparted to him, which such duties and obligation Mr Frisby has breached by exploiting the opportunity and confidential information provided to him for his own purposes.
111. The parties accept that if I should find for Mr Clements on liability, then I should not at this stage say anything further with regard to the appropriate relief or remedy pending further submissions thereon given that the appropriate form of relief would necessarily

be dependent upon the basis upon which I might find Mr Frisby to be liable to Mr Clements.

112. So far as the claim founded in equity in respect of the imparting of confidential information is concerned, the relevant principles were set out in the judgment of Lord Neuberger in *Vestergaard Frandsen A/S v Bestnet Europe* [2013] UKSC 31, [2013] 1 WLR 1556, at [22] – [24], as follows:

*“22....After all, an action in breach of confidence is based ultimately on conscience. As Megarry J said in *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41 , 46: “the equitable jurisdiction in cases of breach of confidence is ancient; confidence is the cousin of trust.”*

*23. The classic case of breach of confidence involves the claimant's confidential information, such as a trade secret, being used inconsistently with its confidential nature by a defendant, who received it in circumstances where she had agreed, or ought to have appreciated, that it was confidential: see eg per Lord Goff of Chieveley in *Attorney General v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109 , 281. Thus, in order for the conscience of the recipient to be affected, she must have agreed, or must know, that the information is confidential.*

*24. The decision in *Seager v Copydex Ltd* [1967] 1 WLR 923 , on which Arnold J relied, was an entirely orthodox application of this approach. The plaintiff passed on to the defendants a trade secret about his new design of carpet grip, and, although the defendants realised that the secret was imparted in confidence, they went on to use that information to design a new form of carpet grip, which they marketed. What rendered the case unusual was that the defendants (i) did not realise that they had used the information, as they had done so unconsciously, and (ii) believed that the law solely precluded them from infringing the plaintiff's patent. However, neither of those facts enabled them to avoid liability, as, once it was found that they had received the information in confidence, their state of mind when using the information was irrelevant to the question of whether they had abused the confidence.”*

113. *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41, referred to by Lord Neuberger in the above passage, is relied upon by Mr Clements as identifying the three elements necessary for a cause of action for breach of confidence, namely:

- i) The information was of a confidential nature;
- ii) It was communicated in circumstances importing an obligation of confidence; and
- iii) There was an unauthorised use of the information.

114. In the latter case, Megarry J, at pages 419-420, referred to the well-known judgment of Lord Greene MR in *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd* (1948) 65 RPC 203, saying that:

*“As Lord Greene said in the *Saltman* case at page 215 “something which is public property and public knowledge cannot per se provide any foundation for*

proceedings for breach of confidence. However confidential the circumstances of communication, there can be no breach of confidence in revealing to others something which is already common knowledge. But this must not be taken too far. Something which has been constructed solely from materials in the public domain may possess the necessary quality of confidentiality: for something new and confidential may have been brought into being by the application of the skill and ingenuity of the human brain. Novelty depends on the thing itself and not upon the quality of its constituent parts. Indeed, often the more striking the novelty, the more commonplace its components”

115. It is submitted on behalf of Mr Clements that, in the present case, the Alleged Business Plan provides a good example of what Lord Greene MR was referring to in *Saltman Engineering v Campbell* (supra) when he said that “*the more striking the novelty, the more commonplace its components*”, the key point being that the Alleged Business Plan, it is said, married the emerging powers of online retail with the emerging influence of reality TV celebrities/social media influencers on young women and their fashion tastes, and the availability of cheap clothing from, for example, China. It is said that just how novel it was is amply demonstrated by the success of the Company and the business of In The Style.
116. Particular reliance is placed upon what was said by Mr Frisby in the application for a loan to Fashion Angel dated 31 January 2014 referred to in paragraph 70 above, and the fact that Mr Frisby had identified therein a USP that was described as “*simple*”. It is said that the problem for Mr Frisby is that it was not his own brain that came up with this new USP. Reliance was placed by Mr Jory KC upon what Lord Greene MR said about the document the subject matter of the case before him in *Saltman Engineering v Campbell* (supra) at page 215:

“What makes it confidential, even where materials are available for the use of anybody, is the fact that the maker of the document has used his brain and thus produced a result that can only be produced by someone who goes through the same process.”

117. As to the three elements of the cause of action identified in *Coco v AN Clark* (supra), the essence of Mr Clements’ submissions are as follows:
- i) *The information was of a confidential nature* – It is submitted that the Alleged Business Plan was a complete fully formed business model ready for the market. All the essential features, even the name and identity of potential suppliers, were formulated by Mr Clements, and Mr Frisby added nothing new of significance, merely implementing the Alleged Business Plan with effectiveness and success. It is submitted on behalf of Mr Clements that there is no evidence of any pre-existing business with the features of the Alleged Business Plan. Mr Clements points to the fact that Mr Frisby has been reported as having boasted in an interview with the Press that “*he was the first*” to introduce such a business to the market and it is said that all his dealings with third party funders, including the flotation of the Company, trumpeted its’ novelty. It is further said that the best proof that the business was novel, and a trendsetter is the speed with which a relatively low level of investment developed into a multi-million pound venture.

- ii) *Communication in the circumstances importing an obligation of confidence* – On behalf of Mr Clements, it is submitted that the circumstances in which the information was imparted clearly attracted the duty of confidentiality. This was not, it is said, information “*blurted out in public*” (per Megarry J in *Coco v AN Clark* (supra) at page 420). The meetings were not a social dinner amongst friends (cf *De Maudsley v Palumbo* [1996] FSR 447, relied upon by Mr Frisby) and both parties clearly regarded their meetings (Mr Clements) or meeting (Mr Frisby) as being for business purposes. It is said that Mr Frisby makes it clear that it was not a social meeting with Mr Clements even on what is said to be his false version of his alleged interaction with Mr Clements, in that he says that he met with Mr Clements with the sole intention of seeking investment, i.e. for a commercial and business discussion. Further, it is said that the proposal that Mr Frisby work for remuneration in testing the viability of the Alleged Business Plan and setting up the website was plainly a commercial proposition by which Mr Frisby was entrusted with the Alleged Business Plan in its entirety as a necessary element in performing his function on Mr Clements’ behalf for which he agreed to accept £200 per week. It is said that it was obvious, including in particular, to Mr Frisby that he could not simply feel free to walk off with the Alleged Business Plan and exploit it himself to the exclusion and ignorance of Mr Clements.
 - iii) *Unauthorised use of the information* - This is said to be self-evident from Mr Clements’ exclusion from the business, and the exploitation of the Alleged Business Plan by Mr Frisby for his own ends in circumstances in which Mr Clements was misled by Mrs Devine into believing that she and Mr Frisby had lost interest in pursuing the Alleged Business Plan, and in circumstances in which Mr Clements lost an investment of approximately £10,000.
118. It is submitted on behalf of Mr Clements that the case is readily distinguishable from the case heavily relied upon by Mr Frisby, namely *De Maudsley v Palumbo* (supra), not only in respect of the circumstances in which the alleged confidential information was imparted, but also in relation to the confidential quality of the components making up the Alleged Business Plan taken as a whole.
119. The further or alternative way that Mr Clements puts his case is on the basis that Mr Clements contends that Mr Frisby was engaged for £200 a week, and that the tasks required of him in pursuing the Alleged Business Plan with the benefit of the confidential information in respect thereof provided to him by Mr Clements in confidence, gave rise to a relationship of trust and confidence under which Mr Frisby owed fiduciary duties to Mr Clements, namely:
- i) A duty of honesty, good faith and loyalty;
 - ii) A duty not to make profit from his position of trust;
 - iii) A duty not to put himself in the position where his own interests conflict with those of Mr Clements;
 - iv) A duty to put Mr Clements’ interests above his own; and
 - v) A duty of honest, fair and full disclosure.

120. Mr Clements submits that a helpful summary of the law in relation to the fact-dependant circumstances in which agents are also fiduciaries, where there is a relationship of trust and confidence, was provided by Marcus Smith J in *Business Mortgage Finance 4 plc v Pengelly* [2020] EWHC 2002 (Ch) at [28]-[32], where he referred to Asplin LJ in *Prince Arthur Ikpechukwu Eze v Conway* [2019] EWCA Civ 88 at [39]:

“39...It all depends on the nature of the individuals’ duties and which of those duties is engaged in the precise circumstances under consideration. Although the relationship of principal and agent is a fiduciary one, not every person described as an ‘agent’ is the subject of fiduciary duties and a person described as an agent may owe fiduciary duties in relation to some of his activities and not others.”

121. It is said that Mr Frisby was in charge of developing Mr Clements’ confidential Business Plan on his behalf, and that his duties were therefore similar to those of the Defendant in *Nottingham University v Fishel* [2000] EWHC 2221, where Elias J observed that:

“97...in determining whether a fiduciary relationship arises in the context of an employment relationship, it is necessary to identify with care the particular duties undertaken by the employee, and to ask whether in all the circumstances he has placed himself in a position where he must act solely in the interests of his employer. It is only once those duties have been identified that it is possible to determine whether any fiduciary duty has been breached ...”

122. Applying the relevant principles, and the further authorities referred to in Mr Clements’ Skeleton Argument, it was submitted that the engagement of Mr Frisby for £200 per week to develop the business anticipated by the Alleged Business Plan, and the imparting of confidential information to Mr Frisby for that purpose, gave rise to a relationship of trust and confidence, under which Mr Frisby owed the fiduciary duties that I have referred to. In short, it is alleged Mr Frisby acted in breach of those duties by disloyally making use of the opportunity provided to him for his own purposes, thereby furthering his own interests in preference to those of Mr Clements.

Mr Clements’ case on the facts

123. It is submitted on behalf of Mr Clements that I should accept his evidence and narrative, in particular as to the origins of the business of In The Style and the idea behind it, and reject the evidence of Mr Frisby and Mrs Devine as untruthful and dishonest evidence.
124. Mr Clements submits that his case has a sure foundation on the documents. Reliance is placed upon the withdrawal slips as showing that cash was withdrawn at the relevant time which would have been available to pay to Mrs Devine to be applied as seed capital for the setting up of the In The Style business, including paying Mr Frisby £200 per week. Although it has emerged, contrary to paragraph 29 of Mr Clements’ first witness statement where reference is made to the monies coming from his own bank account, that the relevant bank account was that of Elegant Homes, the point is made that the latter is Mr Clements’ own company, entirely under his control.
125. Particular reliance is then placed by Mr Clements on Mr Wright’s file note dated 28 January 2014. This is said to provide a contemporaneous record of an investment of circa £10,000 in “ITS”, which, it is said, can only be a reference to In The Style. As I

have said, at one stage in his submissions, Mr Jory KC described Mr Wright as the most important witness in the case given the evidence that he gave as to what his file note meant.

126. It is then said on behalf of Mr Clements that, in contrast to his own position, Mr Frisby cannot show where the money for the start-up of the business came from, if not from Mr Clements. Although Mr Frisby's bank statements were disclosed late in the day, it is submitted that they do not explain how the start-up of the business was funded. Further, the point is taken that no bank statements have been produced by Mrs Devine notwithstanding that it is Mr Frisby's case that the start-up costs were borne between them on an equal basis. It is pointed out that the relevant issue was identified in the Disclosure Review Document as one for disclosure, and that Mrs Devine was identified therein as a custodian for the purposes of disclosure. Appropriate inferences from the non-disclosure of Mrs Devine's bank statements should, it is submitted, be made.
127. Further, Mr Clements relies upon the fact that although Mr Frisby's case as pleaded, and as dealt with in his first witness statement, was that he and Mrs Devine each put £1,000 into the business, the monies in question introduced by Mr Frisby representing redundancy monies received by Mr Frisby, this was a case that could not be maintained once Mr Frisby's bank statements had been obtained and disclosed late in the day. Rather than receiving £1,000 in redundancy money and introducing this sum into the business, the bank statements show that Mr Frisby received redundancy monies of in excess of £10,000 in December 2012, and it is said that there is no evidence of these monies being applied for the purposes of funding the setting up of the business. Rather, the case as advanced at trial by Mr Frisby has been that he and Mrs Devine each provided what was in essence a facility of up to £1,000 to fund the start-up until such time as the business started to trade, and the joint account was opened in August 2013.
128. A further matter relied upon by Mr Clements so far as the funding of the business is concerned is that referred to in paragraph 39 above, namely Mr Frisby's evidence that in the summer of 2013, both Mr Todd and Mr Clements were identified as potential investors in the business. As I have already mentioned, Mr Clements takes the point that the fact that Mr Todd did not actually invest until February 2014, and does not appear to have been seriously approached with a view to investing until comparatively shortly prior thereto, supports his case that he did in fact provide the seed capital for the business that it is said that was being sought in the summer of 2013. Whilst it was Mr Frisby's case that Mr Todd was a friend, with whom he was in discussions over a period of time, the point is taken by Mr Clements that Mr Todd has not been called as a witness in order to confirm this.
129. Mr Clements also places reliance upon inconsistencies in the evidence as to when Mrs Devine might have informed Mr Frisby about Mr Clements' conviction. As I have already identified, in his witness statement Mr Frisby referred to finding out about the conviction after the commencement of the proceedings, but the fact of the conviction was referred to in the email said to have been sent by Mrs Devine to Mr Frisby on 23 January 2014 as a draft of a potential email to send to Companies House. Further, as touched on above, the point is made that if Mr Clements was to be approached as a potential investor in a business to be carried on by Mr Frisby and Mrs Devine, then one might have expected Mrs Devine, who was by then aware of the conviction as well as being a friend of Mr Frisby, to have informed Mr Frisby that Mr Clements had been convicted of money laundering. On Mr Clements case the imperative to inform Mr

Frisby about Mr Clements' conviction would be less obvious if the business had initially been conceived by Mr Clements, or as a joint business between Mr Clements and Mrs Devine, in which Mr Frisby was approached to participate.

130. A further factor relied upon by Mr Clements so far as the establishment of the business, and the genesis of the business idea, is concerned is his challenge to the evidence of Mr Frisby and Mrs Devine that they were inspired by the business being done by Ms Molyneux, and her business Want that Trend. As I have mentioned, although summonsed to give evidence by Mr Clements, Ms Molyneux did not give evidence, but she did write a letter dated 6 December 2022 to Mr Clements' Solicitors setting out her position. It is said by Mr Clements that what Ms Molyneux says in this letter is inconsistent with Mr Frisby's case in that it refers to the sourcing of clothing from China, rather than from Cheetham Hill in Manchester, and it says that although she was trading through Facebook from 2012, this was "*very small quantities to friends and family and eventually to people around Manchester who were following my page,*" suggesting that it was not until after the In The Style business was established that she traded in any significant way. Further, during the course of the trial, it emerged that the friend who was said to have mentioned the activities of Ms Molyneux to Mrs Devine was called Alicia, and the point was taken that this Alicia could have been called as a witness to confirm what she knew about Ms Molyneux, but had not been called by Mr Frisby.
131. As referred to in paragraph 37 above, it is Mr Frisby's case that at the time that the idea for the In That Style business was formulated with Mrs Devine, another clothing retailer targeting young women, Dress Me A-list, had collaborated with Ms Crosby of the reality show Geordie Shore with regard to celebrity endorsement. Mr Frisby refers to Ms Crosby having become a good friend, and the point is taken by Mr Clements that she might have been called as a witness to confirm Mr Frisby's evidence regarding Dress Me A-List, and that appropriate inferences should be drawn from the fact that she has not been called.
132. As I have already mentioned, it is Mr Clements' case, and it was put to Mr Frisby and Mrs Devine under cross-examination, that on Mrs Devine leaving the business in late 2013 they essentially hatched a plan that if Mr Clements should assert a claim, then they would stick to a script broadly in line with the case and narrative, said by Mr Clements to be knowingly false, advanced by Mr Frisby in defence to the present claim, it being suggested that the email dated 23 January 2014 was produced as part of this process.
133. Further, it is Mr Clements' case that in his initial WhatsApp exchanges with Mrs Devine following the receipt of the 2020 LBA, Mr Frisby tested the water with Mrs Devine in order to ensure that she was sticking to the script, and that subsequent WhatsApp exchanges are to be viewed as rehearsals of that script portraying a false narrative, and therefore that these exchanges should be regarded as being unreliable as a contemporaneous record of Mr Frisby's Devine's real recollections and beliefs.
134. In support of this line of argument, and more generally as an attack on Mr Frisby's credibility, reliance is placed by Mr Clements on the WhatsApp voice note dated 19 October 2022 where, in the context of asking for a copy of a draft witness statement from Mrs Devine, Mr Frisby requested that she did not tell his Solicitor, Julien, about the approach. It is said that this, and the provision of the witness statement or draft

witness statement, and the attempts made to ensure consistency between their respective accounts, demonstrates an unhealthy collaboration between Mr Frisby and Mrs Devine with regard to the presentation of evidence at trial. Reliance is placed upon the fact that Mr Frisby was, apparently, prepared to mislead not only his own Solicitor, but also, Mr Clements contends, the Court, on the basis that Mr Frisby knowingly intended that this would prevent there being a reference in his own witness statement to the fact that he had referred to Mrs Devine's witness statement or draft witness statement, as said to be required by the relevant practice direction relating to the preparation of witness statements (CPR PD57AC).

135. Further matters are relied upon by Mr Clements in support of his case that Mr Frisby was a witness who ought not to be believed, including the following:
- i) It was put to Mr Frisby in cross examination that in a number of emails, including in an email dated 10 September 2013 from Mr Frisby to Kerry Katona, that Mr Frisby had referred to being approached by several agents, when, at the time, it was him who was approaching agents in order to seek to establish collaboration agreements with reality TV stars. Mr Frisby accepted, under cross-examination, that this was misleading, but that he regarded it as little more than exaggeration in seeking to promote the business. However, Mr Clements submitted that this demonstrated that he was a person who was prepared to lie, and/or did not understand the truth. A similar point is made in relation other comments made to third parties in emails at the time that the In The Style business was being established, including an email dated 19 September 2013 which referred to the fact that most of its stock was purchased in bulk from a manufacturer, when this was not the case, and it is submitted that the remarks such as this were clearly made with a view to giving the (false) impression that the business was more established than it was.
 - ii) Reliance is placed by Mr Clements on various press features relating to the In The Style business which involved interviews with Mr Frisby in which he is reported to have said various things in relation to the In The Style business and the establishment thereof which, so it is submitted, can now be seen to be untrue. These include references to Mr Frisby putting approximately £1,000 into the business, and giving the impression that he had established the business alone, without any mention of Mrs Devine's role in respect thereof.
 - iii) Apart from the individuals that I have already referred to who it is said Mr Frisby might have been expected to call, and in respect of whom it is submitted that I should draw appropriate inferences from the fact that they have not been called, Mr Clements also relies upon the fact that Mr Frisby has not called his partner, Mr Corbett, who, so it is said, might be expected to confirm Mr Frisby's case given, not least his involvement in the business.
136. Concerning the allegations that Mr Clements, through Mr and/or Mrs Clarke, offered to pay money to Mrs Devine to give evidence on his behalf, and the allegations made more recently that he offered money to Mr Clarke to give evidence on his behalf, Mr Clements emphatically denies the same, and relies upon a number of matters in support of his contention that the evidence of Mrs Devine in respect thereof ought to be rejected. In particular, he raises the following points:

- i) He refers to the fact that in the WhatsApp messages, and WhatsApp voice notes between Mr Frisby and Mrs Devine, there is no mention of Mr Clements having offered to pay her money until the recent WhatsApp messages in November of last year. Thus, whilst in March 2021 there were WhatsApp exchanges in which Mrs Devine had mentioned that she had been approached by Mr Clarke with regard to assisting Mr Clements, no mention was made at that time in exchanges with Mr Frisby of offers of payment. Likewise, in other communications between Mr Frisby and Mrs Devine in which Mr Clarke's approaches were mentioned.
 - ii) Mr Clements relies upon the fact that the only mention, prior to November 2022, of Mr Clements offering money to Mrs Devine, is in the WhatsApp voice note dated 23 December 2021 referred to in paragraph 103 above, where it was Mr Frisby who had suggested that Mr Clements might offer to pay her money for her assistance. It is submitted on behalf of Mr Clements that this is where Mrs Devine must have got the idea from to give evidence that Mr Clements had attempted to bribe her through Mr and/or Mrs Clarke.
 - iii) Reliance is placed upon the fact that in Mrs Devine's draft witness statement prepared prior to her making her witness statement dated 14 March 2022, she had suggested that it was Mrs Clarke, rather than Mr Clarke, who had mentioned to her that Mr Clements was prepared to pay her money, only then to make her witness statement dated 14 March 2022 and her trial statement pointing the finger at Mr Clarke.
 - iv) As I have already mentioned, it is submitted by Mr Clements that Mrs Devine's WhatsApp message to Mr Frisby at 19:41:21 on 23 November 2022 shows that Mrs Devine was seeking to set up Mr and Mrs Clarke in her texts to them in which she had made mention of Mr Clements offering money.
 - v) Reliance is placed upon the fact that Mrs Devine first mentioned an offer to pay £100,000 in her trial witness statement, having made no mention thereof prior thereto.
 - vi) It is submitted that Mr Clarke had no obvious motive to come to Court to lie on Mr Clements' behalf, particularly bearing in mind that Mr and Mrs Clarke had been friends of Mrs Devine for some time, having been to each other's respective weddings etc..
137. It is Mr Clements' case that if Mrs Devine's evidence in respect of the alleged bribe made through Mr Clarke is not to be believed, as he submits that it ought not to be, then that taints and undermines the evidence as a whole upon which Mr Frisby relies to support his case and narrative.
138. In the above circumstances, it is submitted on behalf of Mr Clements that the Court ought to accept his evidence and narrative, and reject that of Mr Frisby.

Mr Frisby's case

139. It is Mr Frisby's case that Mr Clements is a dishonest witness whose evidence, in particular in relation who came up with the idea for the business of In The Style, the

basis on which he met with Mr Frisby and Mrs Devine in 2013, and with regard to putting money into the business, is untrue and ought be rejected. If it is, then it is submitted that this must be the end of Mr Clements' claim, which Mr Frisby maintains is a fraudulent, dishonest and contrived claim.

140. However, it is Mr Frisby's case that even if Mr Clements was involved in formulating the idea behind the business of In The Style, his claim must still fail, in short because:
- i) He is unable to show that the three key elements of a breach of confidence case identified in *Coco v AN Clark* (supra) are made out given not least, it is submitted, the lack of originality in the idea behind the In The Style business and that it involved what others were already doing, and so the information in question was not confidential or imparted on a confidential basis;
 - ii) Even if the facts were as contended for by Mr Clements, they do not evidence a relationship of trust and confidence between Mr Frisby and Mr Clements, and so, it is submitted, there can have been no question of fiduciary duties arising in Mr Clements' favour binding on Mr Frisby; and
 - iii) In any event, and consistent with the way matters were put on behalf of Mr Clements in the 2020 LBA, the Alleged Business Plan and the proposal to carry on the business of In The Style pursuant thereto was introduced to Mr Frisby as a joint idea and venture between Mr Clements and Mrs Devine, and there was nothing to prevent Mrs Devine from exploiting the same in the way that she did with Mr Frisby without Mr Frisby becoming liable to Mr Clements in any way following Mrs Devine having dropped out of the picture.
 - iv) Further, and in any event, Mr Clements' claims are statute barred, or barred by application of laches, given his delay in coming forward with them.
141. As to the lack of confidentiality in the information alleged to have been imparted to Mr Frisby, Mr Frisby relies, in particular, upon:
- i) *De Maudsley v Palumbo* (supra) at 445-446 and 458-459, a case that was concerned with the idea behind the "*Ministry of Sound*" nightclub and the imparting of information regarding the latter at a dinner party; and
 - ii) *Bailey v Graham* [2011] EWHC 3098 (Ch) at [104]–[108], a case that was concerned with the idea behind "*Chilli Reggae*" Sauce.
142. It is submitted on behalf of Mr Frisby that there is a clear analogy between the case sought to be advanced by Mr Clements and these cases, both of which identify that the test as to what constitutes confidential information essentially rests upon what would be regarded by the reasonable person as being confidential.
143. However, Mr Frisby's principal submission is that Mr Clements' claim is a false and fraudulent claim, and that I should reject his evidence, and the narrative upon which he relies. The key evidential points relied upon by Mr Frisby are the following.
144. Firstly, it is submitted on behalf of Mr Frisby that Mr Clements' claim essentially depends upon him being able to show that both Mr Frisby and Mrs Devine were

involved in a dishonest conspiracy dating back prior to Mr Frisby meeting Mr Clements at the Crown and Anchor public house, which such conspiracy included, it is said, the following:

- i) It being falsely represented to Mr Clements that Mr Frisby had lost his job with Burger King, and was looking for work, when, in fact, the documentary evidence proves that he had been made redundant the previous year, had a new job paying a regular salary, and was not looking for work. It is submitted that not only is it inherently unlikely in its own right that there was any such fraudulent misrepresentation, but it makes no objective sense as to why Mrs Devine and Mr Frisby would have wanted to mislead Mr Clements in this way, and why somebody made redundant by Burger King with no proven business acumen or experience of women's fashion would have been thought suitable for the purpose of giving effect to the Alleged Business Plan. In his witness statement, Mr Clements referred to Mr Frisby as being given responsibility for day-to-day matters given that, unlike Mr Frisby, he and Mrs Devine had jobs, but when these points were put to him in cross examination, he, unconvincingly it is said, sought to play down Mr Frisby's role by describing it as "*menial*".
- ii) Mr Frisby and Mrs Devine brazenly making the application to the IPO to register a Trade Mark describing themselves as owners of the mark, and opening a business bank account in their joint names in August 2013, even though, on Mr Clements' account, the business agreed to be set up was to be that of Mr Clements and Mrs Devine.
- iii) Mrs Devine falsely representing to Mr Clements that there was no future in the business and that Mr Clements had lost his money when, in fact, the business was about to take off.
- iv) On Mrs Devine leaving the In The Style business in late 2013, Mr Frisby and Mrs Devine conspiring to contrive a false narrative that would be presented in the event that, if not put off by Mrs Devine's false representations as to her own and Mr Frisby's lack of interest in continuing the business, Mr Clements should mount some claim in respect thereof. As I have already mentioned, it is Mr Clements' case that the email dated 23 January 2014 was a document prepared to assist in portraying this false narrative, and to be taken out of the drawer in the event that a claim should be asserted. It is submitted on behalf of Mr Frisby that these assertions are simply absurd.
- v) When Mr Clements first asserted his claim by the 2020 LBA, the allegation against Mr Frisby is that he immediately approached Mrs Devine to test the water as to whether she would stand by the false narrative, and that when it became apparent that she would, subsequent WhatsApp exchanges between them essentially involved them perpetuating the conspiracy by rehearsing the false narrative. It is submitted on behalf of Mr Frisby, that on a proper consideration of the WhatsApp exchanges, this is frankly absurd, and that the WhatsApp exchanges represent them honestly and fairly setting out their contemporaneous recollection of events, and beliefs as to what had occurred. It is submitted that all that was said in the numerous WhatsApp exchanges between them over a period of two years or so is entirely consistent with Mr

Frisby's evidence and narrative, supported by that of Mrs Devine, and simply could not have been contrived in the way suggested.

145. In short, it is submitted that Mr Clements' claim depends upon him making out this conspiracy, but that the existence of any such conspiracy is manifestly unsustainable on the evidence.
146. Secondly, Mr Frisby relies upon what is said to be the lack of documentary evidence to support Mr Clements' claim.
147. Whilst withdrawal slips have been produced, reliance is placed on the fact that Mr Clements has failed to produce any bank statements, or any other documentation apart from Mr Wright's file note which, it is submitted, is open to a number of interpretations. It is submitted that if Mr Clements had, in fact, formulated the Alleged Business Plan, then one might have been expected there to be some note or record of it, or some email or other correspondence relating to it, with individuals such as Mr Jones or Mr Ayanoglu. To the extent that Mr Clements might have extracted the relevant cash from Elegant Homes as drawings on account of dividends, then it is submitted that one might have expected some sort of record thereof, for example a director's loan account ledger showing the cash as having been withdrawn on this basis or evidencing the director's loan account.
148. Thirdly, it is submitted that there is no cogent explanation as to what, exactly, Mr Clements did in respect of the business having provided Mrs Devine with the cash that he says that he did, apart from receiving reports from her from time to time. In this context, it is submitted that there is the oddity of Mr Clements not even having Mr Frisby's telephone number despite the fact that it is Mr Clements' case that there existed a relationship of trust and confidence between Mr Frisby and himself. Further, it is submitted that there is no evidence of Mr Clements approaching suppliers in a way to actually assist the business once it came to starting to trade, and needing supplies with which to trade. It is said that the evidence from Mr Clements as to when he might have spoken to Mr Jones and Mr Ayanoglu, and what they actually spoke about, and even whether they did actually discuss clothing supplies, is extremely vague. In contrast, the evidence is clear and straightforward that Mr Frisby and Mrs Devine took steps, including those referred to in paragraph 52 above to get the business up and running.
149. Fourthly, Mr Frisby points to significant changes in Mr Clements' narrative as the case has progressed. In particular:
 - i) In the 2020 LBA, when Mr Clements might best have been expected to have recalled matters, and in his Particulars of Claim, Mr Clements refers to the incorporation of ITSL as being effected by Ms Lomas on his instructions in the context of the setting up of the business, and prior to him having any real concerns in relation thereto, and in particular as to what Mrs Devine and/or Mr Frisby might be up to. However, in his witness statement, as referred to in paragraph 45 above, he refers to a prior conversation in which Mrs Devine had suggested that it was not a good idea to continue with the business at that time, and to the incorporation of ITSL being something of a protective measure in the light of concerns as to what she had said, and to having, at the same time, enquired of Ms Lomas as to whether she could recommend a good company lawyer to offer legal assistance if needed.

- ii) Further, although the 2020 LBA and Mr Clements' Particulars of Claim spoke in terms of not taking matters further because he was persuaded by Mrs Devine that she and Mr Frisby had no continuing interest in pursuing the business, paragraph 39 of Mr Clements' witness statement gives a somewhat different impression, talking in terms of not having "*the mental capacity to fight with them*", and to Mr Wright persuading him that he should concentrate on other matters, and in particular the confiscation proceedings.
 - iii) In the 2020 LBA, Mr Clements spoke in terms of discussions with Mrs Devine with regard to possible businesses in "*early 2013*". However, it is submitted that he somewhat unpersuasively under cross examination sought to portray those discussions as having taken place later when confronted with the fact that he was in prison for some time in early 2013.
 - iv) In the 2020 LBA, Mr Clements spoke in terms of a proposed business venture under the In The Style name between himself and Mrs Devine, with Mrs Devine contributing ideas in respect thereof. However, in his witness statement, any joint involvement of Mrs Devine is very much played down.
150. Fifthly, a number of more general points are made with regard to Mr Clements' lack of credibility as a witness, including the following:
- i) In paragraph 11 of his first witness statement, Mr Clements said that he was currently working on a new concept with a number of influencers, including Ms Ferry. In response to this, Mr Frisby filed and served for purposes of trial a witness statement from Ms Ferry denying that Mr Clements was currently working with her. In cross examination, and confronted with this evidence, Mr Clements somewhat backtracked on the allegation as a result of which it was not necessary for Mr Frisby to call Ms Ferry or rely on her witness statement.
 - ii) In his Reply to a Request for Further Information dated 17 June 2022, Mr Clements stated that he did not engage with and was not and never has been a subscriber to or user of Facebook, going on to add that he "*did not interact with or have a personal Instagram account until 2018*". During the course of his cross examination, and in the context of questioning about there being an inconsistency between him coming up with the Alleged Business Plan but having limited interaction social media as demonstrated by what he had said in the above Reply to the Request for Further Information, he said that whilst he did not have an Instagram account until 2018, he did, in fact, interact with Instagram on a computer, an account not being required in order to access Instagram in this way. Reliance is placed by Mr Frisby on the inconsistency between this answer and what he had previously said about not interacting with Instagram until 2018.
 - iii) It is Mr Clements' case that Mrs Devine left the business out of concern as to what Mr Clements might do when he discovered what she and Mr Frisby had been up to. Mr Frisby submits that this is inconsistent with the contemporaneous reasoning as to Mrs Devine's departure provided by Mr Frisby in his email correspondence with Rachel Smith on 18 December 2013.

151. So far as Mr Clements' submission that Mr Frisby cannot show where the start-up funding came from, reliance is placed by Mr Frisby upon his bank statements as showing him introducing funds in order to meet various expenses prior to the opening of the joint account, and to the fact that his bank statements can be seen to show him contributing to expenses in such a way as to equalise expenditure as between himself and Mrs Devine, as in the case of the costs of the Trade Mark application. Both he and Mrs Devine were working at the time, and one can see funds going into his bank account in the form of salary in excess of £2,000 per month over the relevant period of time. Thus, it is submitted that Mr Frisby has amply demonstrated that he and Mrs Devine contributed up to £1,000 each up to the time of significant sales beginning to generate income as shown on the joint account statements.
152. So far as Mrs Devine is concerned, and the attacks made by Mr Clements on her credibility, it is accepted that Mrs Devine is a close friend, and accepted that they have had numerous discussions in which they have sought to recall the events of the past. However, it is submitted that this has not been done with a view to presenting a false narrative, but rather to best defend the proceedings, first intimated some 7 years after the key events in question, and now being tried some 10 years after the events in question.
153. It is submitted that Mrs Devine, whilst obviously very keen to support Mr Frisby as a friend, had no obvious motive or reason for coming to Court and perjure herself in respect of the events of the last 10 years or so. It has not been suggested that any incentive has been offered to Mrs Devine to give false evidence on Mr Frisby's behalf, and there is no suggestion of Mrs Devine harbouring any grievance against Mr Clements apart from the fact that she considers that he has brought a false and fraudulent claim.
154. It is submitted that it is in this context, that I should consider the allegations made concerning money being offered by Mr Clements to Mrs Devine, or to Mr Clarke, to give evidence on his behalf.
155. So far as these allegations are concerned, apart from what is said about Mrs Devine's general credibility as a witness in contrast to that of Mr Clements, and a lack of motive for lying, particular reliance is placed by Mr Frisby on the WhatsApp exchanges between himself and Mrs Devine from 23 November 2022 onwards, on the basis that Mrs Devine had no obvious reason to lie to Mr Frisby about matters such as Mrs Clarke having told her that Mr Clements had offered to pay Mr Clarke a few weeks ago, and it is submitted on behalf of Mr Frisby that it cannot seriously be suggested that these WhatsApp exchanges are a contrivance.
156. It is therefore submitted that, on this issue, I should prefer the evidence of Mrs Devine to that of Mr Clements and Mr Clarke, and so far as Mr Clarke is concerned, a significant factor is that when Mrs Devine had raised the question of Mr Clements offering to pay money to lie in the text exchanges earlier in the month, neither Mr Clarke nor Mrs Clarke had sought to deny that. Further, reliance is placed upon the fact that although a witness summary had been served by Mr Clements in respect of Mrs Clarke she was not called as a witness, although I understand there to have been some technical difficulty so far as the service of the witness summons is concerned.

157. In the circumstances, it is submitted on behalf of Mr Frisby that I should accept his version of events and dismiss Mr Clements' claim.

Correct approach to the evidence

158. It is common ground that the burden of proof is on Mr Clements to prove his case, and that his narrative of events is to be preferred, to the requisite standard, i.e. on the balance of probabilities, and that should he fail to do that, then I must find against him.
159. Mr Maynard-Connor KC, on behalf of Mr Frisby, accepted that so far as proving that Mr Clements offered money through Mr and/or Clarke to Mrs Devine to give evidence on his behalf is concerned, the burden is on him. However, given that proving this allegation is not an essential part of his case, this does not alter where the overall burden of proof rests – see Phipson on Evidence, 20th edition, at 6-06.
160. I bear in mind that where a serious allegation is made in a civil case, such as an allegation of conspiracy, or of bringing a knowingly false claim or offering money to a witness to give false evidence, where the burden lies remains the same, and the standard of proof remains the civil standard. However, if a serious allegation is made, then more cogent evidence may be required to overcome the unlikelihood of what is alleged, at least to the extent that it is incumbent on the party making the serious allegation to prove it. This is on the basis that the more serious the allegation the less likely it is that the event occurred and hence the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability – see Phipson (supra) at 6-57 and *H (Minors)* [1996] AC 563 at 586D-F, per Lord Nicholls.
161. In closing, Mr Jory KC referred to observations made by Arden LJ (as she then was) in *Re Mumtaz Properties Ltd* [2012] 2 BCLC 109 at [12] and [14]:

“12. There are many situations in which the court is asked to assess the credibility from their oral evidence, that is to say, to weigh up their evidence to see whether it is reliable. Witness choice is an essential part of the function of a trial judge and he or she has to decide whose evidence, and how much evidence, to accept. This task is not to be carried out merely by to the impression that a witness made giving evidence in the witness box. It is not solely a matter of body language or the tone of voice or other factors that might generally be called the ‘demeanour’ of a witness. The judge should consider what other independent evidence would be available to support the witness. Such evidence would generally be documentary but it could be other oral evidence, for example, if the issue was whether a defendant was an employee, the judge would naturally consider whether there were any PAYE records or evidence, such evidence in texts or e-mails, in which the defendant seeks or is given instruction as to how he should carry out the work....

14. In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation

may be conspicuous by its absence and the judge may be able to draw inferences from its absence.”

162. These observations highlight that it is necessary for a fact finding judge to act with caution before attaching undue weight to the impression that a witness might give in the witness box, or his or her “*demeanour*”, and that what is said in the witness box requires to be tested against other evidence, and in particular contemporaneous documentary evidence. However, this does not, in my view, mean that the *demeanour* of a witness is, at least in most cases, of no importance so long as properly tested against other evidence.
163. It is a feature of the present case that the Court is required to decide questions of fact relating to events that took place up to nearly 10 years ago, during the course of 2013. In these circumstances in particular, it is necessary to bear firmly in mind the much repeated observations made by Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse Limited* [2013] EWHC 3560 (Comm) at [15] – [22] with regard to the unreliability of memory, and his caution to place limited, if any, weight on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts.
164. The particular concern identified by Leggatt J was the ability of a witness, in seeking to recall events that took place some time ago, to falsely do so, but with genuine conviction and belief that their recollection is accurate. Thus, as Leggatt J cautioned in *Gestmin* at [22]: “... *it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.*” Allied to this is a concern that a witness seeking to recall events over a significant period of time is liable in reconstructing those events in his or her own mind, to do so in a way that inaccurately recalls those events in his or her favour, and to exaggerate perceived advantages to his or her own case, and do so without deliberately giving false evidence.
165. However, the present case is not, as I see it, a case where the differences in evidence between the parties can simply be put down to differences of recollection with the passage of time. The parties’ respective narratives are so fundamentally different that it is difficult to conclude otherwise that one of them is now lying and deliberately giving false evidence.
166. The Court of Appeal in *Kogan v Martin* [2019] EWCA Civ 1645 at [88] stressed the importance of making findings by reference to all the evidence, that is both documentary evidence and witness evidence, placing such weight as the circumstances require on each. In considering what weight ought to be attached to the witness evidence in the present case, I must take into account the considerations highlighted in *Re Mumtaz Properties Ltd* (supra) and *Gestmin* (supra).
167. In addition to documentary evidence, it is plainly appropriate to test the witness evidence against the inherent probabilities of the relevant situation, and considerations such as the consistency (or otherwise) of a particular witness’ evidence with other evidence, the internal consistency of that evidence, and the consistency of that evidence with what the witness might have said on other occasions – see *Kimathi v The FCO* [2018] EWHC 2066 (QB), at [98].

168. I consider that the above considerations lead to the conclusion that in most cases the party required to prove their case will need to do so by using reliable contemporaneous documentary evidence as a platform, to which are added known, established or agreed facts, and probable facts (both inherently probable and by inferences properly drawn from known, established or agreed facts), which the Court will then consider by reference to witness testimony which is consistent or compatible with that underlying body of reliable documentary evidence and is not tainted or flawed by other indicators of unreliability – see in *Re Parsonage (deceased)* [2019] EWHC 2362 (Ch), per HHJ Simon Barker QC at [32]-[37].
169. Both parties have sought to suggest that because witnesses who might have been expected to be called to support the case of the other party have not been called, it is appropriate for the Court to draw adverse inferences. The correct approach to drawing adverse inferences in such circumstances has recently been considered by the Supreme Court in *Efobi v Royal Mail Group Ltd* [2021] 1 WLR 3863. At [41], per Lord Leggatt expressed the position as follows:

“So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.”

170. Given the passage of time since the events in question I consider that I must take into account that witness and documentary evidence that might well have been available shortly after the events in question may not now be available as witnesses may no longer be contactable, recollections may have faded, and documents may have been lost, and that might have affected decision making in deciding whether or not to call a particular witness.

Is Mr Clements’ case established on the facts?

171. As to my impression of the witnesses, or their demeanour, and whilst recognising the limited value thereof for the purposes of determining where the truth lies having regard to the considerations identified in *Re Mumtaz Properties Ltd* (supra) at [12] and [14] per Arden LJ, I unhesitatingly say that as between Mr Clements and Mr Frisby, Mr Frisby came across to me as the more impressive witness.
172. So far as Mr Clements is concerned, he was at times argumentative, and when inconsistencies were put to him with regard to how his case had been advanced as between the 2020 LBA, his Particulars of Claim, and his witness statements, he had a tendency to deflect responsibilities for those inconsistencies on others notwithstanding

that he confirmed that he had approved the 2020 LBA, and the Particulars of Claim and his witness statements each contained his statement of truth.

173. On the other hand, I found Mr Frisby to be a most impressive witness who answered questions clearly and concisely, and who was, by and large, prepared to make concessions as appropriate. I accept that there are some potentially unsatisfactory aspects of his evidence in respect of the “*don’t say this to Julien*” WhatsApp audio voice dated 19 October 2022, and in respect of what was said in some of the email exchanges with agents and others when the business was being established, which I shall return to, and how he sought to explain these when giving evidence. However, as I shall explain, I do not consider that these are matters that ought to lead me to a conclusion other than that when giving evidence at trial, Mr Frisby was doing his best to assist the Court honestly and to the best of his recollection, subject to the consideration regarding recollection that I have referred to.
174. I also found Mrs Devine to be a good witness doing her best to assist the Court, notwithstanding some reservations that I had at one stage regarding the veracity of her evidence about being offered money by Mr and/or Mrs Clarke to assist Mr Clements, which again I will return to. It is not in dispute, but that Mrs Devine is a close friend of Mr Frisby, and, as evidenced by the WhatsApp exchanges, that she and Mr Frisby have extensively discussed their recollections, with the inherent danger that shared honest but false recollections may have become entrenched in consequence thereof. I bear this in mind in considering the weight that I should attach to her evidence. However, to the extent that Mrs Devine came across as eager to assist Mr Frisby and ensure that he wins the present case, I have concluded that this is down to the fact that she genuinely believes that Mr Clements’ claim is a false claim based upon a false narrative which does not accord with the truth as she genuinely recalls it.
175. I am not persuaded that Mr Clements’ case is, as he contends, founded on a convincing basis on the documents.
176. The bank withdrawal slips, taken on their own, do little more than show that £8,990 was drawn in cash out of the bank account of Elegant Homes at the relevant time. No bank statements have been produced in relation thereto, and to the extent Mr Clements’ maintains that the monies were withdrawn as against a director’s loan account, no evidence has been produced in the form of a loan account ledger to evidence this as being the basis upon which the cash was withdrawn to be applied by Mr Clements, or that there was a director’s loan account balance in his favour, and if there was, how a credit balance had arisen in his favour.
177. It is regrettable that Mrs Devine’s bank statements have not been produced, but we do have the benefit of Mr Frisby’s personal bank statements covering the whole of 2013 as well as the statements relating to the joint account that was opened in the names of Mr Frisby and Mrs Devine on 22 August 2013. The personal bank statements do show Mr Frisby meeting certain expenses on behalf of the business, and I consider it particularly significant that it can be shown by reference to, for example, the cost of the Trade Mark application, that monies were paid out of Mr Frisby’s bank account to Mrs Devine in order to equalise their respective contributions to items of expenditure connected with the business. This does not, as I see it, fit in with Mr Clements having provided the cash.

178. It is Mr Clements' case that there is no evidence as to how Mr Frisby and Mrs Devine funded the setting up of the business of In The Style if not with the cash that he says that he provided, particularly bearing in mind that Mr Todd did not invest until February 2014. However, I consider that I am entitled to take into account that Mr Frisby had received a substantial sum by way of redundancy pay in December 2012, which would have been available for that purpose, and that both he and Mrs Devine were in secure employment receiving not insignificant salaries, out of which they could fund the limited costs involved on an ongoing basis until trading was established.
179. Apart from the bank withdrawal slips, the other key documentary foundation of Mr Clements' case is said to be Mr Wright's file note of his meeting with Mr Clements on 28 January 2014. Mr Wright clearly gave honest evidence as to what, 9 years after the event, he understands the file note to reflect so far as the reference to "ITS" and "£10K" is concerned, but to my mind the file note, as well as the explanations provided by Mr Wright in his witness statement and under cross examination, gives rise to as many questions as it answers. In particular:
- i) The file note talks in terms of the fact that Elegant Homes "*may have co. asset in ITS*", language that hardly accords with the firm agreement that Mr Clements alleges was concluded with Mrs Devine and Mr Frisby in respect of a joint venture, initially involving him and Mrs Devine, to which he had contributed £10,000 odd.
 - ii) The context of the relevant meeting as between Mr Wright and Mr Clements on 28 January 2014 was, as Mr Wright explained under cross examination, to account for Mr Clements' assets in the context of the restraint order that had been made against him, and impending confiscation proceedings. Mr Clements was therefore looking to account for the withdrawals of cash that had been made, and to provide an explanation for them for the purposes of those proceedings. Whilst the file note does provide some evidence that Mr Clements had used cash provided by Elegant Homes to make a personal investment in the In The Style business of approximately £10,000, I do not find this to be particularly convincing, certainly when balanced against the other evidence in the case.
180. It has consistently been Mr Clements' case that it was Mrs Devine who identified Mr Frisby to him as somebody who might be able to assist in the establishment of the In The Style business, and that she did so on the basis that Mr Frisby had lost his job with Burger King, and was looking for work. The documentary evidence shows quite clearly that this was not the case, and that whilst Mr Frisby had been made redundant the previous year receiving a significant sum by way of redundancy pay, by April 2013 he was working for Work Solutions and he was receiving a significant salary (of £1,723.98 on 30 April 2013, rising to more than £2,000 per month in subsequent months).
181. When challenged about these contradictions, Mr Clements' explanation was that what he had alleged in relation to Mr Frisby losing his job and looking for work reflected what had been represented to him by Mrs Devine, who had therefore misrepresented the position to him. However, there is, as I see it, no cogent or obvious reason why Mrs Devine would have wanted to deliberately mislead Mr Clements in this way. On Mr Clements' case there were at least three meetings at which the basis upon which Mr Frisby was to be engaged were discussed, and so the deception would have had to have been perpetrated throughout these meetings in order to get to the point when, on Mr

Clements account, Mr Frisby was to be engaged to deal with matters on a day-to-day basis because Mr Clements and Mrs Devine were otherwise employed. This alleged deception, and the conspiracy that would have had to have been behind it, is, to my mind, far-fetched.

182. I do not consider that it assisted Mr Clements' case that, when challenged on the fact that the evidence showed that Mr Frisby had a good job at the relevant time, just like him and Mrs Devine, he, unconvincingly in my judgment, sought to play down Mr Frisby's role by saying that he was in fact engaged to perform "*menial*" tasks. I am left with the impression that Mr Clements has used somewhat hyperbolic press articles with regard to Mr Frisby's account of the establishment of the In The Style business to assist in creating his own false narrative. In the press articles in question, much is made of Mr Frisby having used redundancy monies to assist in the setting up of the business, and to having previously worked at Burger King, and I consider that Mr Clements has simply incorporated this into a false narrative.
183. It is, in my judgment, highly significant that the key steps taken to establish the business of In The Style were taken by Mr Frisby and Mrs Devine with no involvement on the part of Mr Clements. I note that under the arrangement as contended for by Mr Clements as referred to in paragraph 14 of the 2020 LBA, specific reference is made to Mr Frisby being responsible for managing the website, managing online orders, packing and posting to clients, and dealing with queries from customers. I appreciate that paragraph 14 refers to Mr Frisby's day-to-day responsibilities as including, and not being limited to these matters, but it is significant that Mr Frisby and Mrs Devine took all the steps that they did, including those referred to in paragraph 38 above, which, in turn, included contacting suppliers and arranging supplies, and taking the initiative in making contact with celebrities and their agents.
184. On Mr Clements' account (see paragraph 12(d) of the 2020 LBA), he had, or was to make arrangements with Mr Ayanoglu for the supply of stock until such time as arrangements could be made for supplies from China. However, there is no evidence that any such arrangements were made, or explanation provided as to why this aspect of the Alleged Business Plan was not given effect to. Ultimately, Mr Ayanoglu did not give evidence, and his statement is not relied upon, but it is in any event extremely vague as to whether Mr Clements, at any time, had discussions with him as to the supply of clothing stock. Had Mr Clements taken the steps apparently contemplated by his discussions and agreement with Mrs Devine and Mr Frisby, then one would expect email exchanges or other documentary evidence thereof.
185. A similar point can be made with regard to Mr Clements' alleged contact with Mr Bell, and his ability to approach celebrities by reason thereof. There is no evidence that he actually did so, and again, no explanation provided as to why that which was allegedly envisaged by the Business Plan was not in fact done. Rather, as mentioned, the initiative so far as seeking to establish collaboration agreements with celebrities can be seen to have been taken by Mr Frisby and Mrs Devine.
186. I consider it not to be without significance that Mr Clements accepted that he did not have Mr Frisby's mobile telephone number, which he sought to explain away on the basis that he did not need it as all contact was through Mrs Devine with whom he was in a relationship. However, if, as he alleges, he had appointed Mr Frisby to take responsibility for overseeing the day-to-day affairs of the new joint venture that he had

entered into with Mrs Devine, then it does, to my mind, stretch credulity that he would not have recorded, and made use of Mr Frisby's mobile telephone number.

187. The absence of any ongoing involvement on the part of Mr Clements in the new venture is, in my judgment, telling in itself. In reality, Mr Clements did nothing until he took steps, through Ms Lomas in November 2013, to have ITSL incorporated. However, this again, to my mind, raises as many questions as it answers. Firstly, there is the inconsistency identified above as to the circumstances in which ITSL came to be incorporated as between the 2020 LBA and the Particulars of Claim on the one hand, and Mr Clements' first witness statement on the other hand. As initially portrayed the incorporation of ITSL was a step taken in the ordinary course of events in the setting up of the business as a joint venture with Mrs Devine. However, in Mr Clements' first witness statement, a very different reason for incorporation is advanced, namely that Mr Clements had concerns in the light of Mrs Devine having raised the viability and future of the business as an issue with Mr Clements. The explanation now provided in his witness statement is that the incorporation of ITSL was something of a protective measure taken at the same time as asking Ms Lomas for advice in relation to a suitable lawyer to assist him in protecting his position.
188. There is then the conflict of evidence as to what happened following the incorporation of ITSL, with Mrs Devine saying that she tried to speak to Mr Clements in order to vent her fury as to what Mr Clements was up to, and that when she did ultimately make contact with him, he denied any involvement in the incorporation of ITSL. On the other hand, it is Mr Clements' evidence that he was informed by Ms Lomas that Mr Frisby and Mrs Devine had contacted her enquiring as to whether they could acquire that company.
189. I take into account that the relationship between Mr Clements and Mrs Devine was breaking down, or had broken down by this stage, but I prefer the gist of Mrs Devine's account albeit that her recollection of the detail of how she tried to get hold of Mr Clements may now be affected by the passage of time. Although I need to be careful about reading too much into, or drawing inferences into the fact that Mr Clements did not call Ms Lomas as a witness given the passage of time and the likely deterioration of recollection and possible loss of documentation, one might have expected that Ms Lomas would have been able to provide some explanation as to circumstances and reasoning behind the incorporation of ITSL, and as to whether she was subsequently contacted by Mr Frisby and/or Mrs Devine to purchase the business.
190. Mr Clements says that there were subsequent conversations with Mrs Devine in which he was further told that there was no future in the business, and that his investment had been lost, which he then relied upon. But this does not, to my mind, rest easily with his evidence that when Ms Lomas had first raised these issues, his reaction was to incorporate ITSL and consult a lawyer. Further, if these further discussions with Mrs Devine had put him off the scent, then it is not clear why he would, as he says that he did in paragraph 39 of his first witness statement, have raised the question of his money having been "*filtered away*" in discussion with Mr Wright on 28 January 2014. I note that this is neither referred to Mr Wright's note, or dealt with in his witness statement.
191. Although perhaps not particularly well versed in the use of social media, if Mr Clements is right that he had the concerns that he said he did in causing ITSL to be incorporated and seeking the name of a lawyer, then I find it difficult to believe that he would not

have looked at In The Style's website and seen that it was continuing to trade, despite what Mrs Devine might have told him.

192. In the light of the above matters, I am driven to conclude that the incorporation of ITSL on Mr Clements' instructions was nothing more than something of a try on in an attempt in some way to muscle in on the business that Mrs Devine and Mr Frisby had mentioned to him when meeting him earlier in the year at the Crown and Anchor, set against the background of the deteriorating relationship between Mr Clements and Mrs Devine.
193. Mr Clements contends that Mrs Devine left the business because she was concerned about Mr Clements bringing some sort of claim based upon being excluded from the business of In The Style notwithstanding the it was his idea behind it and that he had come up with the Alleged Business Plan. However, there is no evidence to support this, and I consider that Mr Frisby's email to Rachel Smith dated 18 December 2013 provides a contemporaneous explanation to the contrary, namely that she was not prepared to commit herself in the same way as Mr Frisby to the business with what was required to take it to the next level, and, for that reason, Mr Frisby and Mrs Devine amicably parted as business partners/shareholders in the Company albeit remaining good friends. I would observe that the willingness with which Mrs Devine has been prepared to assist Frisby in defending the present claim is inconsistent with not having the stomach for the fight that Mr Clements suggests that, in late 2013, she sought to avoid by leaving the business.
194. It is further Mr Clements' case that on Mrs Devine leaving the business, she and Mr Frisby hatched a plan to present a false narrative should Mr Clements ever seek to assert a claim based upon his Alleged Business Plan, that would rely upon a lack of documentary evidence in support of any such claim, and a belief that Mr Clements would be regarded as a person not to be trusted or believed in given his conviction for money-laundering. As to the plan said to have been so hatched, it is said that the draft email prepared by Mrs Devine with a view to being sent to Companies' House, and sent to Mr Frisby on 23 January 2014, formed part thereof, and is to be viewed as a contrived document that was intended to be "*kept in the drawer*" to be used as a contemporaneous document in the event of a claim. I regret that I find these assertions unconvincing and far-fetched.
195. As to the email dated 23 January 2014, this was clearly intended to be a first draft to be revised by Mr Frisby and sent to Companies House albeit seemingly never sent. However, I consider that it reflects genuine contemporaneous concerns on the part of Mrs Devine and Mr Frisby in the light of the incorporation of ITSL by Mr Clements. Further, I consider that the text referred to in this email is broadly consistent with Mrs Devine's evidence as to her approach to Mr Clements following the incorporation of ITSL, and that a text in the terms referred to was probably sent by Mr Clements, and that the terms of the text are consistent with the motivation behind the incorporation of ITSL by Mr Clements that I have identified above.
196. I consider that the delay by Mr Clements in asserting a claim for some seven years until December 2020 is telling, as is the fact that the claim was only asserted after the floatation of the Company had been ventilated in the press. Although Mr Clements denies that he was aware of the potential floatation at the time that the 2020 LBA was sent, and although the 2020 LBA makes no reference to the potential floatation, I consider it likely that that formed the motivation for asserting a claim at that time.

197. I take into account what I consider to be the somewhat unsatisfactory explanation provided by Mr Clements as to why he delayed between 2016 and 2020 in asserting a claim, if, in fact, he only found out that Mr Frisby had had success with In The Style in 2016.
198. It is Mr Clements' case that the WhatsApp exchanges between Mr Frisby and Mrs Devine following the receipt by Mr Frisby of the 2020 LBA demonstrate Mr Frisby testing the water so far as Mrs Devine's support was concerned, and to them then rehearsing the false narrative. I do not accept that the WhatsApp exchanges are to be so construed. One can understand why, with the claim being asserted some seven years after the event, Mr Frisby should have approached Mrs Devine in order to seek to make sense of the claim that was being asserted, but I do not read these approaches as a testing of the water of the kind alleged. As I see it, the exchanges represent Mr Frisby and Mrs Devine genuinely and honestly seeking to recall events as best they can many years after the event in circumstances where the difference in the narrative between the two parties is so different that the difference cannot be accounted for in terms of the difference in recollection, but must be down to one of the parties advancing a false narrative.
199. A particularly telling exchange is that referred to in paragraph 76 above beginning at 14:31:23 on 23 December 2020, and following on from an audio voice message at 14:31:05. Mrs Devine reminds Mr Frisby about meeting in a bar, but nothing coming of it because Mr Clements was not interested. This is entirely consistent with Mr Frisby's case. Having considered the WhatsApp exchanges with some care, I do not read them as being a rehearsal of some false narrative on behalf of Mr Frisby as suggested on behalf of Mr Clements.
200. There are then the further WhatsApp exchanges between Mr Frisby and Mrs Devine over the next two years or so, leading up to the trial. Again, it is suggested by Mr Clements that these represent a rehearsal of the false narrative. However, again, I find it impossible to read these exchanges in that way. Throughout these exchanges, and over an extended period of time, Mr Frisby and Mrs Devine discuss matters in terms entirely consistent with the case that Mr Frisby now advances, and do so, in my judgment, in a way that would be difficult if not impossible to contrive without a devious ingenuity that I would not ascribe to Mr Frisby or Mrs Devine.
201. The point is taken that the WhatsApp messages have been disclosed very late in the day. That is unfortunate. However, if they had been contrived in order to assist Mr Frisby's case, then one might have expected them to have been disclosed very much earlier than they in fact were.
202. I have been somewhat troubled by the allegation made by Mrs Devine that Mr Clements offered money through Mr and/or Clarke to Mrs Devine to assist him in his case against Mr Frisby, and then offered money to Mr Clarke to give evidence denying that be the case. These are serious allegations in respect of matters that are unlikely ordinarily to occur, and which if required to be proved would require stronger evidence to do so.
203. It is not essential to Mr Frisby's case that he should succeed on this issue, and it is, of course, an issue that does not depend or turn on his own evidence, but rather that of Mrs Devine, and what Mrs Devine has told him. Nevertheless, I am, on balance, persuaded that Mr Clements did offer money as alleged, and that the fact that he did so was

reported to Mrs Devine by Mr and Mrs Clarke. Should I be wrong as to this, then I consider that Mrs Devine's evidence on the point represents at worst a misguided attempt on the part of Mrs Devine to bolster Mr Frisby's case because she is so convinced, based on her own honest recollection and belief as to what occurred in 2013, that Mr Clements' case is a false claim based upon a false narrative and she wants to ensure that he does not win. However, if this is the case, I do not consider Mr Frisby was a party to any such scheming on her behalf and that he has relied on her evidence in the belief that it is true.

204. In reaching the conclusion that I have, I take into account the apparent inconsistencies between the draft statement prepared in March 2022, and Mrs Devine's statement dated 14 March 2022 and her trial statement as to whether it was Mrs Clarke or Mr Clarke who mentioned to her that Mr Clements was prepared to pay money to her. I also take into account the fact that there is no evidence in the WhatsApp exchanges of Mrs Devine having raised the issue with Mr Frisby in March or December 2021 when there were exchanges about Mr Clarke having been approached by Mr Clements, the fact that Mrs Devine only first mentioned the figure £100,000 having been referred to in her witness statement prepared for trial, and that Mr Clarke (apart from any offer of money from Mr Clements) has no apparent motive to come to Court to give false evidence contradicting that of a supposed friend.
205. However, as against these factors, apart from a friendship with Mr Frisby, Mrs Devine herself has no good reason to come to Court to lie on Mr Frisby's behalf. There is no suggestion that Mr Frisby is paying her to give false evidence, and the fact that he may have provided her with some dresses appears to me to be of little moment. Further, there is no suggestion of Mrs Devine having any continuing grievance as against Mr Clements.
206. Although potentially self-serving and said on behalf of Mr Clements to be contrived between Mr Frisby and Mrs Devine, I do consider that particular weight is to be attached to the WhatsApp exchanges between Mr Frisby and Mrs Devine on 23 and 24 November 2022. Having regard to the way in which the WhatsApp exchanges are structured, and to Mr Frisby's and Mrs Devine's responses to cross examination in respect of the WhatsApp exchanges, I again do not consider that these exchanges were contrived, but rather demonstrate Mr Frisby genuinely seeking to ascertain from Mrs Devine what had gone on so far as any conversations with Mr and/or Mrs Clarke with regard to the payment of money by Mr Clements were concerned.
207. Mrs Devine's message sent at 19:41:21 on 23 November 2022 does reveal a certain canniness on her part in sending text messages to Mr and Mrs Clarke to seek to draw them out on the question of whether money had been offered, but I do not consider that the contents of this message shows Mrs Devine as having sought to set Mr and Mrs Clarke up to saying or doing anything that did not reflect the truth.
208. Indeed, considering the relevant texts sent earlier in the month referred to above in which Mrs Devine had mentioned to each of Mr Clarke and Mrs Clarke the offers made by Mr Clements to pay money, it is, as I see it, somewhat surprising that, if there is no truth in relation thereto, neither of them responded to ask what on earth Mrs Devine was talking about. Mr Jory KC sought to make the point that the relevant texts from Mrs Devine spoke more in terms of Mrs Devine's feelings rather than expressing statements of fact. Nevertheless, I have considered the terms of the texts with some

care, and having regard thereto, and to Mr Clarke's evidence, which did not as I see it satisfactorily deal with the point, and have concluded that the silence on the part of Mr and Mrs Clarke on the point in their responses to Ms Devine's texts is telling, and supportive of Mrs Devine's evidence.

209. In short, therefore, so far as the allegation made by Mrs Devine's evidence that Mr Clements offered money through and to Mr and/or Mrs Clarke in an attempt to obtain evidence helpful to his case is concerned, I consider that it can only support Mr Frisby's case, and that it does not undermine it.
210. So far as the rival narratives are concerned, I consider that the following further matters support Mr Frisby's version of events, or undermine that of Mr Clements:
- i) I accept Mr Maynard-Connor KC's submission that Mr Clements's case essentially rests upon establishing a conspiracy between Mr Frisby and Mrs Devine dating back to before when Mrs Devine introduced Mr Frisby to Mr Clements, and beginning with a false representation as to Mr Frisby having been made redundant by Burger King and looking for work, and then involving taking steps behind Mr Clements' back in establishing the business involving matters such as the application to register a Trade Mark in which Mr Frisby and Mrs Devine represented that they were the owners of the alleged Trade Mark, and opening a PayPal account and the joint bank account in their names etc., and then, when Mrs Devine left the business, falsely representing a narrative that there was no future for the In The Style business and agreeing to present a false narrative if Mr Clements should present a claim. These are serious allegations involving matters that one would not expect to occur in the ordinary course of events, and I consider that I am therefore entitled to proceed on the basis that strong evidence is required to prove them, albeit to the civil standard. I do not consider that the evidence adduced is sufficiently strong to prove these allegations on the balance of probabilities, although I do not consider this to be a decisive point and that Mr Clements has not proved his case on the balance of probabilities irrespective of such a consideration.
 - ii) The fact that Mr Clements backtracked with regard to his evidence as to an ongoing involvement with Ms Ferry in the light of the contents of her witness statement.
 - iii) The fact that Mr Clements changed his case with regard to engaging with Instagram as set out in his Reply to a Request for Further Information dated 17 June 2022 where he had said that he did not interact with Instagram or have a personal Instagram account until 2018. When confronted in cross examination with his lack of engagement with social media, he then sought to suggest, unconvincingly in my judgment, that he did access Instagram on a computer through the Internet as early as 2013.
211. I do not consider that other points taken on behalf of Mr Clements in respect of the evidence materially assist him in seeking to prove that his narrative is to be preferred to that of Mr Frisby.
212. I have already dealt in paragraphs 177-178 above with the suggestion that there is no evidence as to how Mr Frisby and Mrs Devine funded the business pending the

introduction of capital by Mr Todd February 2014, apart cash that it is said that Mr Clements must have introduced. I am satisfied that Mr Frisby and Mrs Devine were able to fund the relatively modest costs involved pending the entry into the collaboration agreement with Ms Pope in March 2014 out of their own resources, bearing in mind that they were both in paid employment, and that Mr Frisby had received significant redundancy monies in December 2012.

213. So far as the inconsistency between Mr Frisby's pleaded case with regard to him and Mrs Devine each introducing £1,000 odd into the business, and the fact that Mr Frisby's bank account, and the joint business account, show no such monies as having been introduced, is concerned, this is not, as I see, down to Mr Frisby presenting a false narrative, but rather reflects Mr Frisby's honest recollection many years after the event. Having seen the bank statements, he now says that he and Mrs Devine agreed to and did provide what was, in effect, a facility of up to £1,000 to fund the business. I consider that this broadly supported by what is revealed by Mr Frisby's personal bank statements, and that an original recollection of having actually contributed £1,000 odd is not entirely inconsistent therewith and understandable in the circumstances.
214. There is the inconsistency between Mr Frisby saying in his witness statement that he only became aware of Mr Clements' conviction after the commencement of proceedings, whereas the email from Mrs Devine's dated 23 January 2014, which he says that he received, shows that he must have been aware of the conviction at that point, if not earlier. Further, there is the point that Mrs Devine might have been expected to have mentioned the conviction for money-laundering before introducing Mr Clements as a potential investor. However, I must take into account the fact that recollections as to details such as this are very likely to have faded over time, and therefore it is quite understandable if Mr Frisby has misremembered when he first became aware of Mr Clements' conviction. Further, although Mrs Devine may have been aware of the conviction at an early stage, it is not clear, particularly so long after the event, what, exactly, Mr Clements might have said to her about it, or the extent to which she appreciated the consequences of it. I therefore do not feel able to read too much into the fact that Mrs Devine may not have mentioned the conviction to Mr Frisby before introducing Mr Clements to her.
215. It is correct that it forms an important plank of Mr Frisby's case that the inspiration for the business originally came from Mrs Molyneux's *Want that Trend*, and what Mrs Devine had been told by her friend Alicia. I accept that there are potential inconsistencies in what Mrs Molyneux may have said in her letter dated 6 December 2022 and the account of Mr Frisby and Mrs Devine with regard to where Mrs Molyneux sourced stock from, and the extent of her business in 2013. However, Mrs Molyneux has not given evidence, despite Mr Clements having had the opportunity to call her to give evidence in response to her witness summons, and so she has not been cross examined on this letter upon which Mr Clements now seeks to place reliance. The letter does show that Mrs Molyneux was in business by May/June 2013, and that in itself is supportive of Mr Frisby's case. It is true that Alicia could potentially have given evidence supportive of Mr Frisby's case. However, I do have to bear in mind that this would have involved her being asked to recall events of almost 10 years ago in respect of a matter which is unlikely been at the forefront of her mind, about a business that was not her business. In these circumstances, I doubt that her evidence would have been

of any great value, and I do not draw any adverse inferences from the fact that she has not been called as a witness.

216. In short, therefore, I do not consider that Mr Frisby's case in respect of Want that Trend being part at least of the inspiration behind the In The Style business is materially undermined by the above matters.
217. There is the question of Mr Frisby, in September 2013, having exaggerated the success and development of the business by talking in terms of agents contacting it, rather than it seeking to engage with agents, and having overstated its sources of supply, and doing so in a misleading way. Further, it is the case that, under cross examination, Mr Frisby was reluctant to accept that this amounted to lying or not telling the truth. There are, clearly, unattractive features of this correspondence. However, I do have to bear in mind that these were the actions of an enthusiastic 27 year old seeking to promote a business that he was very passionate about. I am unable to read into this that Mr Frisby is a person whose word is not, more generally, to be believed, and in particular believed as a witness in Court. Mr Frisby might have been more open in accepting that the correspondence in question had not been entirely honest, but he did make concessions in relation to other matters, and his defensiveness is, I consider, understandable in the circumstances.
218. I consider that similar considerations apply in respect of comments that Mr Frisby may have made in the course of press interviews in highlighting the circumstances in which the business of In The Style had begun, e.g. making no mention of Mrs Devine's role, referring to having worked in Burger King, and referring to having set up In The Style with £1,000 of redundancy money. It is difficult to know how much of this was journalistic licence on the part of those writing the relevant articles, and how much of this is down to a spin put on matters by Mr Frisby himself. However, I am unable to conclude from these articles that anything said therein detracts from Mr Frisby's credibility as a witness for the purposes of the present case.
219. A further attack on Mr Frisby's honesty was made in relation to the "*do not say this to Julien*" WhatsApp audio voice note dated 19 October 2022, it being suggested that this represented an attempt not just to mislead Mr Frisby's own Solicitor, but also the Court. I do not accept that Mr Frisby asked Mrs Devine not to disclose to Mr Luke his request for a copy her draft witness statement in a deliberate attempt to avoid reference being made in his own statement to the fact that he had considered the relevant draft witness statement, or any earlier witness statement or draft witness statement of Mrs Devine, and, thereby avoiding his responsibilities under CPR PD 57AC. I accept his evidence that his primary concern was that knowledge of him making the request might cause Mr Luke to question the extent to which Mr Frisby was on top of the case, albeit that I am more doubtful that this was in the context of consideration of a possible strike out of summary judgment at that comparatively late stage of the proceedings. There may have been a degree of naïveté involved on Mr Frisby's part, but I do not consider that he was seeking to mislead Mr Luke in any inappropriate way, or to mislead the Court. Consequently, I am not persuaded that this has any material impact on the credibility of Mr Frisby as a witness.
220. It does, however, further show that Mr Frisby was, consistently with the WhatsApp messages, endeavouring to ensure that there were no inconsistencies between his own recollection and that of Mrs Devine. These influences on their evidence, and the fact

that such communications might have reinforced honest but false recollections, are matters that I have borne firmly in mind in considering and testing the reliability of their evidence. However, I am left with the impression that Mr Frisby and Mrs Devine were collaborating in this way in a genuine attempt to seek to ensure that they were accurately recalling events of many years ago in the light of what they both genuinely considered to be a false claim, rather than with a view to concocting false evidence.

221. I take into account that Mr Frisby could have, but did not call as witnesses Mr Todd, Ms Crosby and Mr Corbett. However, bearing in mind in particular that they would be being asked to recall events that took place nearly ten years ago, I feel unable to attach too much significance to this, and certainly I do not consider that these are considerations that ought to lead me to a different conclusion with regard to the evidence as a whole.

Overall conclusion

222. The point is taken on behalf of Mr Clements that Mr Frisby's own case is that Mr Clements has come to Court with a wholly false and contrived claim and it is submitted by Mr Clements that this is, itself, a serious allegation of conduct outside the norm that ought to require strong evidence to prove it.
223. However, I remind myself that, ultimately, the burden is on Mr Clements to prove his case, and having duly weighed the witness evidence, the documentary evidence, and the inferences that I consider it appropriate to draw from the evidence, I have come to the firm view that the narrative advanced by Mr Frisby is the true narrative, and that the narrative advanced by Mr Clements is a false one.
224. Consequently, I find that the idea behind In The Style and its' business concerning collaboration with celebrities involved in reality TV in the marketing, through a website and social media, of fast fashion to younger end women, was that of Mr Frisby and Mrs Devine, and that Mr Clements played no part therein. Further, I find that the only meeting between Mr Frisby and Mr Clements was the one meeting at the Crown and Anchor at which Mr Clements was sounded out as a potential investor, but which did not lead any further than that.
225. In the circumstances, I consider that the basis for Mr Clements' claim based upon the imparting of confidential information, and the engagement of Mr Frisby under a relationship giving rise to fiduciary duties as between Mr Frisby and Mr Clements must fail.
226. I have considered whether I ought to make any findings on the alternative basis that I am wrong in respect of my factual findings, and that the Alleged Business Plan was formulated by Mr Clements and imparted to Mr Frisby in the circumstances alleged, in circumstances in which it was agreed that Mr Frisby would take day-to-day responsibility for implementing the Business Plan in the way that Mr Clements alleges.
227. I have reservations as to whether Mr Clements could have made out his case in these circumstances, not least given the case as initially advanced by Mr Clements in the 2020 LBA as to Mrs Devine's role in the Alleged Business Plan, and the case advanced in the 2020 LBA that Mr Frisby had been approached on the basis that the business was to be a joint venture as between himself and Mrs Devine, in which Mr Frisby might

subsequently acquire an interest. Further, I consider there to be real issues with regard to the evidence as to the originality and the confidential nature of the Alleged Business Plan, particularly bearing in mind the evidence in relation to Ms Crosby, and her collaboration with *'Dress the A-List'* at the relevant time, which does seem to be supported by the contemporaneous press articles that Mr Maynard-Connor KC took me to in the course of closing submissions.

228. However, I do not consider that it would be appropriate for me to make any findings on an alternative basis, and that it would be artificial for me to do so given that the application of the relevant legal principles would require a fact sensitive application of the facts as found.
229. On this basis, I conclude by finding that the claim as advanced by Mr Clements should be dismissed.