Claim No: F10CL371

**IN THE COUNTY COURT AT CENTRAL LONDON**

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 23 November 2020

**Before** :

**HIS HONOUR JUDGE MONTY QC**

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**Between :**

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| **MRS LINDA JOAN MATTAR** | **Claimant** |
| **- and -** | |
| **(1) MR KODZO MASSENYA (aka MR MICHAEL MASSENYA and MR KODZO MICHAEL MASSENYA)** | |
| **(2) MR RAGEN RAMANBHAI AMIN** | |
| **(3) MV COMMODITIES LTD (in liquidation)** | **Defendants** |

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**Mr Timothy Sherwin** (instructed by **Suttons Solicitors**) for the **Claimant**
**Mr Robert Jones** (instructed by **Ashtons Solicitors**) for the **Second Defendant**

Hearing dates: 3-7 August 2020

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# Approved Judgment

**HHJ Monty QC:**

## Introduction

1. An investment in MV Commodities Ltd ("MVC"), to be used in a coltan mine project in Sierra Leone, was promoted to Mrs Mattar by Mr Massenya, the director of MVC, and by Mrs Mattar's son Bilal, an MVC employee. In August 2013, Mrs Mattar paid £200,000 to MVC, money which she says represented her life savings, and which Mr Massenya said was to be used to purchase equipment to enable coltan mining to commence the following month. Mrs Mattar was told that MVC had a licence to mine coltan in the Bombali region of Sierra Leone, and that a substantial sum had already been raised. Mrs Mattar says the intention was that in return for her investment Mrs Mattar would receive shares in MVC, which would provide her with a generous income by way of dividend payments; she was told that the mining project would produce millions of dollars for MVC.

2. Sad to say, within a couple of days of Mrs Mattar's payment to MVC, Mr Massenya had procured the payment out of almost all of Mrs Mattar's money, some to an associated company and some to him personally. It has never been repaid. Mrs Mattar never received any shares in MVC and they would in any event have been worthless; the coltan mine either never existed or if it did, MVC had no rights or licences to mine coltan in Sierra Leone (or anywhere else) and MVC, supposedly a commodities trading company, never seems to have done any business of any value at any time. Mrs Mattar was the victim of a fraud.

3. Mrs Mattar has brought this claim to recover her money.

4. In this judgment, I have not referred to every single point raised in the detailed skeleton arguments of Mr Sherwin for Mrs Mattar and Mr Jones for Mr Amin (Mr Jones also helpfully produced a written closing note) and in their oral closing submissions, but I have taken all of their submissions into account; I am very grateful to them both.

## The parties

5. The first and third defendants to the claim are Mr Massenya and MVC. Judgment has been entered against Mr Massenya. Mr Massenya has played no part in these proceedings for some time and did not attend the trial nor was he represented. The simple issue at trial as against Mr Massenya was the nature and extent of his liability to Mrs Mattar.

6. MVC is in liquidation, and proceedings against it have been stayed.

7. The second defendant is Mr Amin, who was – in addition to being MVC's accountant – at one point a director and shareholder of MVC. Mrs Mattar alleges that Mr Amin was involved in the fraud. The central question at the trial was whether Mrs Mattar was able to establish, as against Mr Amin, liability to repay the money by reason of (a) dishonest assistance in the breaches of trust by MVC and Mr Massenya, and or alternatively (b) an unlawful means conspiracy.

8. Mrs Mattar was represented by Mr Sherwin of counsel, and Mr Amin by Mr Jones of counsel. Both presented their respective cases with clarity, economy and precision.

9. The trial took place face-to-face in court, with the participants observing appropriate social distancing requirements.

## Mr Amin's application for relief from sanctions

10. At the start of the trial, I gave permission to Mr Amin to adduce and rely upon his witness statement dated 27 July 2020 (although he had made other witness statements in these proceedings for the various interlocutory hearings, it was not until the production of this latest statement that he set out his factual evidence for the trial). I said that when I delivered my substantive judgment, I would set out the reasons for granting permission, and this I now do.

11. On 28 November 2019, I had ordered that the parties serve their factual witness evidence by 16 March 2020, and that oral evidence would not be permitted at trial from a witness whose statement was served late without permission of the court. On 30 July 2020, one working day before the first day of trial, Mr Amin issued an application seeking relief from the sanctions imposed by my order (and see also CPR 32.10). Mr Amin said that between 13 and 19 March 2020 he was advised not to leave his house because he had a heavy cold; after 19 March, he was due to meet his solicitor but both his solicitor Mr Patel and his assistant Mr Senior were forced to self-isolate in the light of the COVID-19 restrictions because they were vulnerable persons; indeed, Mr Amin had to isolate between 21 April and 5 May because his daughter was diagnosed with COVID-19; preparation of his witness statement was therefore interrupted by all of this, and because he had to deal with the various applications which had been made regarding disclosure as well as complying with an unless order, and then he had to deal with what proved to be an unsuccessful strike-out application by Mrs Mattar; he says he was then working on his statement and looking at various documents and the pleadings, and all of this took time.

12. It was common ground that in deciding whether or not to grant the application, I had to consider the three-stage test in *Denton v White* [2014] EWCA Civ 906, namely whether (i) the breach was serious or significant, (ii) what was the reason for the breach, and (iii) all the circumstances of the case, so as to enable the court to deal justly with the application (including the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders).

13. Mr Jones accepted that the breach was both serious and significant, and he was right to have done so.

14. It was contended that there was a good reason for the breach. I have briefly set out the reasons put forward by Mr Amin, and Mr Jones submitted that "the essence … is that the preparation of the main witness statement was disrupted by the unprecedented public health crisis." That appears to be partially correct, but there was no reason given as to why the preparation of the statement was not started well before the 16 March deadline and why work on that – in the light of the sanction which would apply if not served by then – was not prioritised. No medical evidence was provided to support the reasons put forward (although Mr Amin did exhibit copies of the texts received by Mr Patel and Mr Senior advising them to isolate). Further, no explanation was given as to why an application was not made prior to 16 March for an extension of time. In my view, there was no good reason for the breach.

15. At the third stage, I took into account the fact that this was not the first time that Mr Amin had been in breach of court orders; he is, as I have said on a previous occasion, a serial offender; and also the fact that this application was made very late in the day. Mr Sherwin sought to persuade me that there was a real risk of prejudice to Mrs Mattar, because there were some matters in the statement which were new and which she had not had any opportunity to consider. However, what in the end persuaded me to allow the statement in was really two-fold. First, Mr Sherwin very candidly accepted that he was not going to apply to adjourn the trial, that he was fully prepared to cross-examine Mr Amin and if Mr Amin did not give evidence, he would have to take me through all of the documents in any event, so there would be no real saving of time and the 5 days allowed for the trial would be ample time for Mr Amin to give his evidence. Secondly, and I think more importantly where such serious allegations are made against a defendant, particularly a professional, who is willing to give evidence and be cross-examined, it would be far better to make findings of fact following cross-examination, and base my decision on those findings, than purely by inference from the documents.

16. Had it not been for those two factors, I would have refused the application. I would emphasise that my decision was based purely on the particular circumstances of this case, and should not be accorded any wider significance.

**The witness evidence**

17. I heard evidence from three witnesses.

18. First, Mrs Mattar. She was understandably emotional, having lost £200,000 in a fraud, and puzzlingly combative on occasion, refusing to answer some fairly innocuous questions (saying this is personal and she would not answer) and unjustifiably accusing Mr Jones (who was courteous and open at all times) of being sarcastic and trying to tie her in knots. However, her evidence was consistent with the contemporaneous documents and in essence I accept it.

19. Secondly, I heard from her son, Bilal Mattar. I found him something of a puzzle. He was employed by MVC as a business development manager between May 2013 and July 2014, and he is now an estate agent. Although he worked for MVC for over a year, nothing he ever worked on resulted in any business for MVC, and indeed he saw no evidence that MVC ever did anything which produced income-generating work. He seems to have been totally taken in by Mr Massenya (he agreed with Mr Jones that Mr Massenya "talked a good game"). He enthusiastically and in my view somewhat misguidedly touted the investment in the coltan mine to his mother, writing up page after page of promotional material without any real knowledge of his own (mostly it was sourced from what Mr Massenya had told him and from "internet research"). When he discovered what Mr Massenya had done with the money, he made peripatetic and what I would describe as fairly gentle efforts spanning many months to get it repaid, but when MVC dispensed with his services, he says it was because he was asking too many questions. He wrote an internet blog piece which accused Mr Massenya in no uncertain terms of fraud and Mr Amin of being complicit to some degree, but then retracted it (he says in the hope that doing so would assist in the recovery of his mother's money). He appears to feel no responsibility or embarrassment for his part in promoting the investment to his mother (who was apparently the only potential investor who was approached). Having said that, in my

view Bilal's evidence also accorded with the contemporaneous documents, and I accept his evidence.

20. Thirdly, Mr Amin gave evidence. I regret to say that I found his evidence, when tested against the documents, to be unreliable. Some examples are these. First, he accepts that he was introduced by Mr Massenya to Bilal as the CFO (chief financial officer) of MVC; he says that he was not the CFO, but he did not correct that alleged mistake. Secondly, he was not truthful about the production of his witness statement (who was involved in its drafting), and he sought to blame junior members of his firm, whereas in fact in my view it was his responsibility. Thirdly, it is clear that he knew about the alleged coltan mine by September 2013 at the latest, but he took no steps to account for it in MVC's accounts; instead, Mrs Mattar's money went into the accounts as a loan, when on any footing – and as Mr Amin in my view knew – it was not a loan. Fourthly, he permitted the transfer of shares from Mr Massenya to himself in circumstances which Mr Sherwin described as shocking, and I agree; Mr Amin says that he sought confirmation from the Official Receiver, but he produced no supporting documentation and did not mention this in his statement; he said that the Official Receiver accepted that the shares had no value, but Mr Amin clearly knew at least by then that Mrs Mattar had paid £200,000 for 5% of the shares. Mr Amin blamed this on an oversight by others. Fifthly, after he knew of the allegations of fraud, he remained involved with Mr Massenya, acting as his nominee/trustee of the shares even though Mr Massenya was bankrupt, and as his "front man" between 2015-2017 in a number of proposed transactions, as well as allowing his account to be used as Mr Massenya's account, and he procured a loan for Mr Massenya for a car using his client account. It is clear that he had a much deeper involvement with Mr Massenya than he was prepared to accept. I find it impossible to rely on his evidence at all.

21. In addition to those three witnesses, I read two statements submitted by Mrs Mattar which were unchallenged. The first was from Dr De Freitas, and the second was from Mr Jamil. I will refer to their evidence when dealing with the facts.

## The facts

22. In this section of my judgment, I set out my findings of fact based on the evidence I have heard and read, and the documents in the trial bundle.

23. MVC operated a commodities trading business. From 2011, Mr Massenya was the sole shareholder (he owned all 100 of the issued shares in MVC) and he was its director. Bilal Mattar started working for MVC in May 2013 as a business development manager, having been introduced to MVC and Mr Massenya by Mr Jamil, who was a commodities trader at MVC. Bilal had no previous experience in commodities trading, having worked in the property industry (he is now employed as an estate agent). His job at MVC involved sourcing suppliers and buyers of commercial fishing equipment, oil spill response equipment, mineral ores and agricultural products, as well as carrying out "due diligence" exercises in respect of suppliers. He also researched new and potential clients and carried out research on potential projects in the areas I have mentioned, as well as for wood pellet factories, coffee cocoa and rice trading, and gold and diamond mining in Sierra Leone. He said that these were just "a few areas of research" which he carried out. He told me that during the period he worked at MVC, he was unaware of any project on which he worked coming to fruition or producing any income for the company.

24. In June 2013, Mr Massenya told Bilal and Mr Jamil that MVC had secured a 10-year lease and government permit in relation to land in the Bombali district of Sierra Leone with the potential for the development of a coltan mine, with the view to extending the lease and permit for a further 10 years. Mr Massenya showed them various documents including geological reports and drill testing results, and said that the mine could produce around 20 metric tons of coltan per week. He said that he had $1m to invest and needed to raise a further £200,000 to purchase further mining equipment. He asked Bilal to carry out some research and produce sales projections to form part of a business plan for the mine, based on production of 20 metric tons per week. Mr Massenya had prepared a draft of the business plan which he provided to Bilal, who drafted 5 paragraphs of narrative and produced some sales projections. Bilal told me and I accept that he produced the narrative from some internet research. Mr Massenya approved the projections, and asked Bilal to source some potential private investors.

25. Before I set out more of the factual narrative, I need to make one thing absolutely clear. Mr Massenya is a fraudster. There was, on the evidence I have seen and heard, no lease or permit in the name of MVC, and probably no coltan mine at all. He told Bilal that the documents were in his office in Sierra Leone. That was a lie. Mr Massenya did not have money to invest, let alone $1m. This and everything else done and said by Mr Massenya in relation to the supposed coltan mine project was part of his attempt, which proved successful, to extract money from an "investor" as part of a fraud.

26. Mrs Mattar, Bilal's mother, had been widowed in 2002, since when she had lived in a house in London. In 2009 she was diagnosed with leukaemia and underwent a course of treatment, following which she sold the house, downsizing to realise some capital which she intended to invest to generate an income.

27. Bilal discussed the coltan mine project with Mrs Mattar. He took the view that it would be a good option for an investment by Mrs Mattar and that it would be a good income generator, and he told her that it was an exciting and potentially lucrative project.

28. Mrs Mattar was shown the documentation which Bilal had worked on, and Bilal told her everything that Mr Massenya had said about the project.

29. Bilal was also shown by Mr Massenya a coltan sample which Mr Massenya told him he had obtained from the mine site on a trip to Sierra Leone. Bilal arranged for the sample to be tested by Dr De Freitas, a geologist at Imperial College London, and there were a number of meetings between Dr De Freitas and Mr Massenya at which Bilal was only briefly present. Dr De Freitas says that Mr Massenya told him that the coltan sample came from the potential mining area but refused to say where the mine was other than that it was in the Bombali district of Sierra Leone. Clearly there was a coltan sample provided by Mr Massenya, but I have little doubt that it was produced as part of the fraud.

30. Dr De Freitas arranged to have the sample analysed by a company in Australia. Bilal says he was told by Mr Massenya that Dr De Freitas had said that the test results showed the sample to be one of the best quality coltan samples he had ever seen (Dr De Freitas's witness statement says nothing about that, and for what it is worth I do not believe that, if indeed he said anything at all, Dr De Freitas told Mr Massenya more than that the sample had tested positive for coltan). Dr De Freitas recommended a mining engineering company based in Cardiff called SRK, and Bilal sent SRK a

confidentiality agreement, but this came to nothing because Mr Massenya refused to give details of the mine's location or other basic information about the mine (which were all requirements of SRK). Mr Massenya told Bilal that he had found another company, but never disclosed any details to Bilal. I have no doubt that Mr Massenya was not telling the truth about that.

31. Dr De Freitas formed the view that Mr Massenya had no experience or knowledge of mining and was puzzled by his refusal to give out basic information, but it did not occur to him at the time that the mine did not exist; he said in his statement that "on reflection such a possibility would certainly explain Mr Massenya's odd and secretive behaviour."

32. Bilal told his mother what Mr Massenya had said about the sample being one of the best that Dr De Freitas had ever seen, and Mrs Mattar decided – on the basis of the documents shown to her by Bilal and what she heard about what Mr Massenya had said about the project – that she was interested in investing her money in the project.

33. Because Mrs Mattar was still recovering from treatment, she asked Bilal to represent her in all dealings with Mr Massenya, and Bilal relayed this to Mr Massenya, who suggested that Mrs Mattar should invest her money with MVC to be part of the company on a long term basis, and that she would benefit from all of MVC's projects and would get annual dividends from MVC. Bilal informed his mother of this proposal, and they both thought it a good idea.

34. Despite appointing Bilal as her agent, Mrs Mattar wanted to meet Mr Massenya, and the three of them met at the Chelsea Harbour Hotel in early August 2013. I accept that before the meeting, Bilal had told Mr Massenya that his mother might be interested in investing £200,000 into the mining project (this must be right, otherwise why would the meeting have taken place).

35. The meeting lasted an hour and a half or two hours. Mr Massenya talked about the coltan mine, MVC's 10-year lease and the option to renew for a further 10 years, and the likely production levels of 20 metric tons per week. Bilal says (and I accept) that Mr Massenya said that Mrs Mattar's investment should be made as soon as possible as he wanted to start production the following month and needed the money for equipment which had to be purchased and shipped to Africa.

36. Mrs Mattar's version of events at that meeting largely mirrors that given by Bilal. She says Mr Massenya said that MVC owned a mine in Sierra Leone and had a licence to operate it; if Mrs Mattar invested her money it would be used to purchase mining equipment, which would enable mining to start in September 2013. Mrs Mattar asked Mr Massenya whether he had ever had any dealings in Nigeria, where she used to live, and he said he had not; she also asked him, she says and I accept in a jocular manner, whether he was a "419 fraudster" (this being a reference to the well-known advance fee "confidence" frauds which are prosecuted in Nigeria under section 419 of the Nigerian Criminal Code, hence the name), and responding in a similarly jocular vein, he said that he was not. That appears to be the extent of any enquiries made by Mrs Mattar.

37. In the Particulars of Claim, it is pleaded that a number of representations (referred to in the pleading as "the Initial Representations") were made at this meeting. I accept the evidence of both Mrs Mattar and Bilal about what Mr Massenya said at the meeting,

and hence I find as a fact that representations were made by Mr Massenya, at that meeting, (a) that MVC had a 10-year lease of a mine in the Bombali district of Sierra Leone, (b) that the land contained coltan, (c) that MVC had a permit to develop a coltan mine there, (d) that there was an option to extend the lease and the permit for a further 10 years, (e) that the mine could produce 20 metric tons per week, and (f) that MVC needed £200,000 to purchase mining equipment. Neither Mrs Mattar nor Bilal say that Mr Massenya said anything about MVC (or him personally) having $1m to invest to develop the land, but I do not think that matters, because (as I have already set out above) Mr Massenya had already told Bilal that, and Bilal had relayed that to his mother, prior to the meeting.

38. The Particulars of Claim go on to assert that the sales projections and summaries were drafted by Bilal after the meeting, but that is not correct and is contrary to the evidence given by Bilal. Nothing turns on this.

39. The Particulars of Claim then plead that further representations (referred to as "the Investment Opportunity Representations") were made by Mr Massenya at the meeting. For the same reasons as before, I accept that representations were made (a) that if Mrs Mattar invested her £200,000 it would be used to purchase mining equipment, (b) that mining could then start the following month, and (c) that MVC had a lease of the land and the relevant permits (this is the same as representations which formed part of the Initial Representations).

40. Neither Bilal nor Mrs Mattar gave evidence in their statements or orally that representations were made at the meeting (i) that Mr Massenya had an office in Sierra Leone where the documentation was stored, (ii) that MVC was engaged in other lucrative projects including car parking and commodities trading, or (iii) that the £200,000 could be invested in the mining project by subscribing for shares in MVC which would enable Mrs Mattar to get annual dividends from all of MVC's business. These three points are said to have been representations made at the meeting as part of the Investment Opportunity Representations. I find as a fact that they were not made at the meeting, as there is no evidence before me that they were. However, (i) was something said to Bilal by Mr Massenya on an earlier occasion, and (iii) was something which Bilal and Mrs Mattar had discussed as a result of Mr Massenya having suggested prior to the meeting that Mrs Mattar could subscribe for shares in MVC thus benefiting from MVC's other projects. As to (ii), Bilal should have been aware that MVC was not involved in running car parks (that was a business carried out by another company, MVC Car Parks Ltd, which I will refer to as "CPL"), but I accept that Bilal and Mrs Mattar hoped – as a result of buying shares in MVC – that she would get annual dividends, because Mr Massenya had made that suggestion to Bilal prior to the meeting.

41. Therefore, whilst I do not accept that all of the pleaded Investment Opportunity Representations were made at the meeting, I have no doubt that (save for MVC running a car park business) they were all made by Mr Massenya prior to the investment, with a view to inducing Mrs Mattar to make her investment.

42. As a result of all of this, after the meeting Mrs Mattar decided that she would invest in MVC.

43. Mr Massenya produced a document on MVC headed paper, entitled "Appointment investor and acceptance agreement." I shall refer to it as the MVC draft. It is not clear who prepared the MVC draft, and I find myself unable to make any finding as to who did, although I rather suspect it was Mr Massenya. It is a badly drafted agreement, but the essential terms were these: (a) Mrs Mattar agreed to purchase 5% of MVC's shares for an investment of £200,000; (b) Mrs Mattar would be entitled to receive dividends from time to time; (c) MVC had the right to repurchase the shares at any time at the original purchase price less any dividends received; and (d) MVC could use the investment for any purpose, although it was the parties' expectation and intention that it would be used for income generating projects only. It will be noted that the MVC draft makes no reference to the coltan mine project.

44. The meeting at the Chelsea Harbour Hotel took place in early August 2013. By 16 August 2013, Bilal (on Mrs Mattar's behalf) had instructed solicitors to advise her on the MVC draft. This is clear because on 16 August 2013, Mrs Price of Fladgate LLP sent a lengthy email to Bilal and Mrs Mattar, referring to a telephone call with Bilal that morning and setting out "questions that you may want to raise with Mr Massenya, some areas which require further discussion; and my comments on the proposed agreement." Mrs Price described the agreement – which must have been the MVC draft – as confusing and unclear, and I think she was right about that. She set out detailed comments and suggested what information would be required from MVC, as well as the standard terms she would expect to see in such an agreement. It is clear that Mrs Price quite rightly regarded the MVC draft as inadequate, and she concluded the email by saying that once Mr Massenya and Mrs Mattar had decided how they wanted to proceed, she would be more than happy to draft an agreement to reflect this.

45. At some point between 16 and 19 August 2013, Bilal forwarded Mrs Price's email to Mr Massenya; on 19 August 2013, Mr Massenya sent a copy of it back to Bilal with his comments in bold. The covering email to Bilal said, "kindly note my business with MV commodities has been done outside UK jurisdiction, this does not reflect the true value in terms of accounts for 2012. As my employee you should know the future value of the company." Mrs Price had seen MVC's annual return and abbreviated accounts for 2012 and one of the pieces of further information she suggested was the full 2012 accounts and management accounts to date. I cannot think that Mrs Price was ever told by Bilal what Mr Massenya had said about MVC doing work outside the jurisdiction which was not reflected in the accounts, or she would I am sure have been horrified that the filed accounts were said not to be a true account of MVC's financial position and would have said so. As to Bilal knowing about "the future value of the company", by this stage Bilal had been working for MVC for some 3 months, and although he had apparently been involved in researching lots of projects in disparate areas of work, none had resulted in any work for MVC. It is surprising that Bilal had the view – which I accept he genuinely had – that MVC would be a good investment for his mother. I agree with Mr Sherwin's description of Bilal as being naïve.

46. The replies given by Mr Massenya included the following. First, he was asked what the current valuation of the company was, bearing in mind that £200,000 was being paid for 5% of the shares. His response was, "This is confidential information, the company handles trading outside UK jurisdiction." Secondly, he was asked to provide full accounts and management accounts, and again he said that this was confidential information. Thirdly, having been asked about Mrs Mattar's right to approve and/or be

consulted about dividends, he replied that Mrs Mattar "will have the rights for payments of dividends." Fourthly, Mr Massenya said, "MV commodities has its own car park, oil contracts valued in the region of hundreds of millions with total employees of 12 full time staff." Fifthly, Mr Massenya said that there was no business plan. Sixthly, he said that he was happy for Mrs Price to draft an agreement.

47. Again, these are extraordinary answers to have given. I ask rhetorically, how can company accounts be "confidential" and not made available to a potential share purchaser, particularly when there is an assertion that even if they were produced they would not reflect the true position because the company did offshore work which was not shown in the accounts? Also, what Mr Massenya said about the car park (presumably a reference to the business run by CPL) was untrue as it was not MVC's business, and certainly there is no evidence that MVC had valuable oil contracts. MVC did not have 12 staff (unless one counts CPL's staff).

48. Mr Massenya seems to have forwarded the email with his replies to "globalcb3" and there was an email back (the sender and the contents of which are blank) but there is no evidence which enables me to make any findings in relation to those matters.

49. It is pleaded in the Particulars of Claim that the replies were representations made to Mrs Mattar and Bilal (which I accept) but also to Fladgate. I feel confident in concluding that Mrs Price was not shown this email with Mr Massenya's replies. Whilst Mrs Price was not called as a witness, I find it hard to accept that had she seen the replies, she would have carried on acting for Mrs Mattar at least not without expressing the clearest warnings that things might not be all they seemed. I therefore find that the email was not forwarded to Mrs Price. However, nothing seems to me to turn on that.

50. The next event was that Mrs Mattar made a payment of £200,000 to MVC on Friday 23 August 2013. The following Monday was a Bank Holiday. On Tuesday 27 August 2013, unknown at the time to Mrs Mattar and Bilal, a transfer of £100,021 was made from MVC to Mr Massenya's personal bank account, a transfer of £65,021 was made from MVC to CPL, and two transfers amounting to £29,757.39 were made to a car dealership. The balance in MVC's account prior to Mrs Mattar's payment was £81.15.

51. The only explanation from Mrs Mattar and Bilal as to why the money was paid to MVC before any agreement had been finalised was that Mr Massenya had put pressure on Mrs Mattar to make the payment to ensure that the equipment could be purchased and mining could start as soon as possible. With hindsight, this was a plain fraud by Mr Massenya, and it might be said that all the warning signs were there, if only Bilal and Mrs Mattar had known where to look (and that had Mrs Price been told about the payment – there was no evidence that she was, and in my view Mrs Price must have believed that payment would not be made until the agreement which she drafted, and to which I will turn in a moment, was signed – she would have done everything she could to stop it).

52. The pleaded case is that the payment was made "pursuant to an oral agreement between the Claimant, MVC and Mr Massenya by which she would subscribe for 6 shares in MVC in exchange for £200,000" and this is defined in the Particulars of Claim as "the Agreement": see paragraph 26 of the Particulars of Claim.

53. No particulars are given of the Agreement as defined.

54. The reference to 6 shares in MVC cannot in my view fit correctly with there having been an oral agreement with that as a term prior to the payment. The position as at the date of payment, which was before Mrs Price produced her draft agreement, was that Mrs Mattar would pay £200,000 for 5% of MVC's shares. As I shall go on to set out, this ended up being 6 shares (since Mr Massenya was not selling any of his 100 shares, the company would have to issue new shares, and as a mathematical exercise 5% would have to be rounded up to 6 shares) but this was not agreed until much later.

55. However, it seems to me clear and I so find as a fact that there was a common understanding and intention between Mrs Mattar and Mr Massenya on behalf of himself and MVC about the payment of £200,000 in exchange for 5% of MVC's shares; it is easily spelled out from the findings of fact I have made about the representations which were made and the provision of the MVC draft, and I have no doubt that Mrs Mattar was right when she said in evidence that she would not have handed over the money as an investment in a company without getting shares in that company.

56. I therefore reject Mr Jones's submission that Mrs Mattar has failed to prove the precise oral agreement on which she relies.

57. On 12 September 2013, Mrs Price sent Bilal by email a first draft of a subscription and shareholders' agreement. That email, and the draft Deed attached to it, has not been disclosed, but it is clear from Mrs Price's email of 26 September that this is what happened.

58. On 26 September 2013, Bilal emailed Mrs Price saying, "I would like to introduce you to Ragen, he is our CFO. Can you please discuss with each other how to move forward with the share agreement. We would like to invest into the company, and apparently it isn't as simple as buying 5 of the 100 shares, so I would appreciate if you could figure out between the 2 of you, how to best do this."

59. First, this email reinforces my conclusions (a) that there was an agreement about buying 5% of the shares, and (b) that Mrs Price was not aware that the money had been paid.

60. Secondly, the reference to Ragen is to Mr Amin, and I now need to say more about his involvement.

61. Mr Amin is an accountant with his own firm, JVR, which had acted as accountants for MVC for some years. On 16 April 2012, JVR invoiced MVC for work done including registering MVC for VAT, "Attending meetings at our offices in respect of the Company's trading and meeting with the Directors on a number of occasions", "Dealing with the bank and applying for a Letter of Credit online", "Perusing the Company's contracts and advising on them in terms of non-legal aspects of the Contract", "Drawing up a draft shareholders agreement", and "General advise [*sic*] throughout the period to date". A further invoice of 6 November 2012 shows that JVR acted on the formation of CPL (although it billed MVC for the work), and "Attending to various Company matters including assistance with staff recruitment, company insurance, credit card facilities, purchase of kiosk [that must have related to CPL as

well]. Attending meetings and phone calls and emails." JVR continued to act for MVC over the years, as I shall set out below.

62. When Bilal joined MVC, Mr Massenya introduced Mr Amin to him as the company's CFO (chief financial officer). Mr Amin says that he was not at any stage the CFO, and that whilst he did not correct Mr Massenya there and then, he later said to Bilal (and to Mr Jamil) that he was not in fact the CFO. I do not believe him. It is clear that Bilal continued to believe that Mr Amin was the company's CFO, because he described him as such in his email to Mrs Price, and I do not believe he would have done so had Mr Amin in fact "corrected" what Mr Massenya had said (and in the emails which Mr Amin subsequently sent to Mrs Price, to which I will refer below, he did not say that he was not the CFO either). It is clear from the evidence – and I will deal with this later in this judgment – that Mr Amin was far more closely involved, with Mr Massenya, in the financial planning of MVC than he was prepared to admit. Mr Amin had and utilised an MVC email address in his own name. In my view, and I so find, Mr Amin was indeed MVC's CFO.

63. In reply to Bilal's email, to which Mr Amin was copied in, on 26 September 2013 Mrs Price emailed Bilal, Mr Amin and Mrs Mattar with a further copy of the draft (whilst Mrs Price's email has been disclosed the draft Deed again was not). Mrs Price explains why Mrs Mattar, as a matter of mathematical calculation, would be getting either 5 or 6 shares, and she noted, "The agreement also provides for a dividend procedure which I understand is still to be finalised." Mrs Price continued, "To complete the [share] allotment process, board minutes of the Company to allot the shares and a new share certificate for Linda [Mrs Mattar] will need to be prepared and signed and a Form SH01 will need to be drafted and filed at Companies House and we can prepare these documents for you." Finally, Mrs Price commented that "the agreement is nearly there now, save for the points I raised in my email dated 12 September." Since no copy of that email has been disclosed, what those points were is unknown.

64. Mr Amin emailed Mrs Price on 10 October 2013 with a number of points which he said followed on from discussions he had had with Mr Massenya. The number of shares would be 6; the investor (Mrs Mattar) would not have the right to appoint a director; dividends would not be paid until annual net profits exceeded £50,000; no business plan would be provided; management accounts would be provided as and when they are prepared. To some extent it can be seen that this reflected the points made by Mr Massenya in his comments in bold in relation to Mrs Price's initial questions. Bilal said that he was not concerned by these points (and in particular, he thought that MVC would be making millions of dollars from the mining project within months, and that the dividends would be paid). There was no evidence about whether he discussed them with Mrs Price.

65. The following day, Mrs Price sent Bilal and Mrs Mattar (copying in Mr Amin) the final version of the agreement, with instructions as to how it should be executed and witnessed. The final paragraph of Mrs Price's email reads, "In addition, please note that the investment is not completed until a board meeting has been held resolving to allot the shares to Linda, her name is entered into the register of members and she is issued with a share certificate. Form SH01 must also be completed and filed at Companies House. Please let me know if you would like me to draft the board minutes and complete Form SH01 ready to be signed by the director of the Company. We can

also update the Company books (if they are delivered to us) and prepare a share certificate. I will wait for your instructions in this regard."

66. At some point – the agreement as signed is undated (of which more below) – the agreement was signed by Mr Massenya in his personal capacity and as director for MVC (his signatures were witnessed by Mr Amin) and by Mrs Mattar.

67. Mr Jones took the point that the agreement was ineffective as a deed, for the following reasons.

    (1) The document is expressed to be executed as a deed but is not to be delivered until it has been dated: clause 22.

    (2) A deed (as opposed to a simple written contract) must be "delivered", as delivery fixes the date from which the parties are bound and a deed is not binding and effective until delivery.

    (3) Here, the agreement is expressed to be a deed, it contains clear wording that it will be delivered only once it has been dated, and it was not dated. Therefore, it has not been delivered and by s1(3)(b) Law of Property (Miscellaneous Provisions) Act 1989 ("the 1989 Act") it is not validly executed as a deed and therefore by s1(2)(b) of the 1989 Act it is not a deed.

    (4) The document cannot take effect as a simple contract, because that would defeat the intention of this arrangement. The purpose of clause 22 is to create certainty as to whether or not the document has taken effect. Clause 3.2 provides for various things to happen "on the date of this agreement", including the allotment of the shares. The intention must be that all these things should take place more or less simultaneously, i.e. the deed is dated, the investor makes the payment, the board meeting takes place and the shares are issued and allotted. Clause 3.2 does not even make sense in the absence of a date.

    (5) Furthermore, the parties must have understood in signing the document that they were signing a deed and not a simple contract, and there was no intention to create legal relations other than by deed, so the document must take effect as a deed or not at all. Therefore, there is no written agreement.

68. Mr Sherwin submits in response that there is no doubt the document has been executed in the sense that it has been signed and witnessed. The only question is whether there has been delivery. On the frontispiece of the deed, the document is dated "2013" and he says there is no requirement for greater specificity than that, and so the deed is appropriately dated to be delivered in 2013 and has thus been delivered. I do not agree with that submission. Whilst it is possible for the word "date" to mean just the year (for example, "I own an 1840 Penny Black postage stamp"), I have no doubt that for a date to be validly set out in a deed, it must give a day, a month and a year.

69. Mr Sherwin accepts that if the deed is not dated – and in my judgment, it was not – then it has not been delivered and it fails to meet the requirement of s. 1(3)(b) of the 1989 Act and is not "validly executed as a deed".

70. Mr Sherwin goes on to submit that the document nonetheless is effective as a contract, for the following reasons:

(1) A failure to meet the statutory requirement means the document takes effect as a simple contract. In *Darjan Estates Co plc v Hurley* [2012] 1 WLR 1782, the court dealt with the requirement that the signature be witnessed pursuant to s. 1(3)(a)(i) of the 1989 Act, and held that on the facts of that case there had been no witness. That was not fatal however to the binding nature of the document created, as the court continued at [12]:

"[t]hus the deficiency in the execution of the lease as a deed is manifest, and it does not comply with the requisite statutory requirements. It therefore takes effect only as an agreement…".

(2) In any event, the document is only seeking to put into formal effect the pre-existing agreement that (a) on the payment by Mrs Mattar of £200,000, (b) she would subscribe for shares in MVC. That is again enough for the document to be enforceable as a simple contract: see *Mishcon de Reya LLP v RJI (Middle East) Limited* [2020] EWHC 1670 (QB), a case about the enforceability of a guarantee where there was no evidence of mutual execution and delivery, where it was held at [67]:

"The guarantee makes business and commercial sense without interpreting clauses 8.7 and 8.8 as imposing a condition of execution. At the time it was executed by the Respondent it had already agreed to underwrite the fees charged by the Appellant. The guarantee (without any obligation of execution by the Appellant) simply puts that agreement into effect. Although, in form, the guarantee amounts to a mutual agreement, with covenants on the part of the Appellant as well as the Respondent, in substance it was, for all practical purposes, a unilateral guarantee on the part of the Respondent: the principal obligation on the part of the Appellant was simply the provision of invoices to the Respondent and the application of receipts against the balance of outstanding invoices. Moreover, as soon as the Appellant sought to rely on, and secure the benefit of, the guarantee it was bound in equity to comply with the obligations that were imposed on it under the guarantee – see *Lady Nass and another v Westminster Bank Limited* [1940] AC 366 per Lord Russell of Killowen at 391 ("by his action he is affirming and adopting the deed and every provision of it, and is bound by it as effectively as if he had executed it"), and see *Webb v Spicer* 13 QB 886 per Lord Denman CJ at 1505 ("a man may be bound by the covenants of a deed in which he is described as a party, though he does not execute it, if he assent to it, and take a benefit under it")."

(3) The document contains all the necessary mutual covenants required to make a valid agreement, with consideration (i.e., the £200,000 for the share subscription), and an intention to create legal relations manifest from the document itself.

(4) The Defendant's submission that taking effect as a simple contract would "*defeat the intention of the arrangement*" is simply wrong. There is no intention by any party to enter an agreement by deed. That is shown by the fact that in the email attaching the final draft Mrs Price refers to the document as "*the agreement*"

three times, and never as "*the deed*". The parties plainly intended to reach a binding agreement, and the form of that agreement was immaterial.

(5) The fact that clause 3.2 states that various events will take place "*[o]n the date of this agreement*" strengthens rather than weakens that conclusion. There is no part of that clause which requires the agreement to be in the form of a deed (it does not say "*on the date of this deed*").

(6) The point that Mrs Mattar paid early, and that MVC and Mr Massenya did not comply at all, is likewise no bar to there being an agreement. Early discharge of an obligation cannot sensibly be said to mean that there is no legally binding obligation; just as failure to discharge an obligation on time cannot be said to mean that there is no obligation. In the former case the obligation (the payment of the £200,000) has been met early; and in the latter (the allotment and issuing of the shares), there is simply a breach of the agreement.

(7) That is supported by the fact that there is no formality requirement for this transaction. There was no need that the agreement between Mrs Mattar, Mr Massenya, and MVC be made by deed. Accordingly, the failure of the document to be a deed does not in any way affect the validity of the underlying transaction.

(8) Thus, even if not a deed, the document is a simple, written contract in the terms set out in the same document.

71. I have no doubt that Mr Jones is right that the agreement is ineffective as a deed, but that Mr Sherwin is right that it takes effect as a contract, for the reasons he has given and which I have set out above. I conclude that the ineffectiveness of the document as a deed makes no difference to my overall conclusions on liability, as I shall go on to explain.

72. Bilal says, and I accept, that in around November 2013 he asked Mr Massenya why no work had begun on the coltan mine and was told that work would begin in January 2014, but it did not, and that Mr Massenya became angry when Bilal asked more questions.

73. At no stage was Mrs Mattar allotted shares in MVC.

74. On 7 January 2014, Mr Massenya was adjudged bankrupt. On 1 March 2014, Mr Amin became a director of MVC and Mr Massenya resigned. At the same time, Mr Massenya transferred his shares in MVC to Mr Amin, who thereby became the sole shareholder of MVC.

75. On 3 March 2014, Bilal met Mr Massenya and asked for the return of his mother's money. Mr Massenya agreed to repay it by the end of the month, but he did not. Bilal sent an email to Mr Massenya on 1 May 2014, in which he said: "A month later [the beginning of April] you then told me to write to Ragen [Mr Amin] formally requesting the return of the funds, to which his reply was. 'I have no idea what you are talking about, you need to talk to Mr Massenya about this.'" In cross-examination, it was put to Bilal that Mr Amin was being truthful about this, and that Mr Massenya was being dishonest; Bilal's answer was that he wasn't sure who to believe at the time.

76. Bilal was then informed by the secretary at MVC that Mr Massenya had said he should not come back to work for MVC, and his employment was terminated.

77. Bilal tried to contact both Mr Massenya and Mr Amin without any response, save for one email from Mr Amin on 1 December 2014, in which Mr Amin said, "Michael [Mr Massenya] is at present in Ghana trying to finalise a business deal. Michael has asked me to re-iterate, on his behalf, that the £200,000 that you had invested in the Company will be repaid back to you. He is just trying to finalise this deal which should allow the Company to deal with your situation." Mr Amin said that all he was doing here was conveying to Bilal and Mrs Mattar what Mr Massenya had said and that he was not undertaking to repay the monies himself (I think he meant, on behalf of MVC). Mr Amin also says that he spoke to Bilal on a number of occasions (and I accept that he may well have done), and on each occasion told him that the money would be repaid when Mr Massenya was in funds.

78. There was next a meeting in early 2015 when Bilal and Mrs Mattar turned up unannounced at Mr Amin's office. I accept Bilal and Mrs Mattar's evidence that the meeting lasted an hour or so, and that Mr Amin told them that Mr Massenya was selling the mining equipment which he had purchased for the coltan mine project in order to raise funds to repay Mrs Mattar.

79. Mr Amin was, as I have said, a director of and sole shareholder in MVC from March 2014 and that remained the position until Mr Massenya came out his bankruptcy a year later. He said that he and Mr Massenya discussed this with the Official Receiver and since the company had no income the Official Receiver was content for the shares to be transferred. I do not accept that evidence. First, no documents in relation to the dealings with the Official Receiver have been disclosed. Secondly, the November Agreement effectively valued the shares at £33,000 per share because of Mrs Mattar's investment, and yet by the time of the bankruptcy almost £200,000 had been paid out. Thirdly, despite this, Mr Amin accepted that he did not tell the Official Receiver that he was Mr Massenya's nominee. It was put to Mr Amin that no honest accountant would have accepted a transfer from a bankrupt of valuable shares, and whilst Mr Amin said that with hindsight it was a stupid thing to have done, I agree with the premise of that question.

80. The MVC accounts for the year ending September 2013 were prepared by Mr Amin's firm. Mr Amin said that Mrs Mattar's money was shown under "Other creditors", which was clearly wrong, as she was purchasing shares, not making a loan. Asked whether that was ever corrected, Mr Amin said that it was not, and that the shares were offered to Mrs Mattar before the 2014 accounts were finalised, but that offer was rejected. Mr Amin knew that the money was not a loan. He then became a director of the company, and his firm continued to act for the company, and yet Mrs Mattar was never included as a shareholder. Mr Amin said that he missed that. Indeed, he then tried to distance himself from MVC during 2014-15 when he was director and shareholder, saying that he allowed the secretary to keep the office going and make payments, and he never checked any decisions she made, although he knew the general financial position of the company. Importantly, in my view, Mr Amin knew that Mr Massenya had paid out Mr Mattar's money, but he never sought to pursue Mr Massenya for that money. He also knew that there was nothing in the company accounts which hinted at the existence of a mining project. He did nothing to ask the associated company to repay the money.

81. In my view, Mr Amin knew that this was a fraud and he assumed a significant role in trying to put Bilal off the scent. First, he arranged for Bilal to be fired because he was asking too many questions. I do not accept that this was someone else's decision. Secondly, he knew that the company was not trading and had no money, and yet was happy to pass on promises from Mr Massenya about repayment which he knew could not possibly be met. Thirdly, he did not tell Bilal that he was a director and shareholder. Fourthly, I did not believe Mr Amin's evidence that he was aware of MVC having completed a project (he referred to a road construction deal worth $30-40,000) and in my view he knew that the company had never had any contracts and never carried out any income-producing work. Fifthly, despite all of this, Mr Amin re-appointed Mr Massenya as director after his bankruptcy. Sixthly, Mr Amin knew that it was MVC which owed the money to Mrs Mattar, not Mr Massenya personally, yet inexplicably he regarded it as a debt from Mr Massenya, for the purchase of the shares, for which Mr Massenya would have to repay Mrs Mattar to buy them back (and all this despite, as Mr Amin well knew, no shares had ever been allotted). Seventhly, when Bilal emailed Mr Amin on 21 January 2015 with a link to a webpage which appeared to indicate that MVC never had any mining permit, instead of being horrified, he says that it was "worrying" and that his reaction was to call Mr Massenya, who said he would pay the money back. Eighthly, after all of this, Mr Amin carried on in business with Mr Massenya. Mr Amin said that he felt obliged to carry on working with him to see if he could bring in some money to repay Mrs Mattar. I regard that as a disingenuous answer. If one looks at the email sent from Mr Massenya to Westcom group on 10 May 2016, of which Mr Amin was aware (a request for a $5m guarantee to demonstrate an ability to be awarded a telecoms licence in Sierra Leone), it is no more than an attempt at a simple advance fee fraud. Mr Amin says that he and Mr Massenya travelled extensively to Africa, although he was "just the accountant", which I simply cannot accept, any more than I can his evidence that this was all an attempt to get money to repay Mrs Mattar. At various times, his firm held money (which he described as Mr Massenya's personal money) which was to be used in connection with any contracts which MVC secured, and I do not think an honest accountant would have allowed his firm's account to be used as a bank for a client in this way. Further, the Westcom website shows Mr Amin as one of the directors, and I do not accept Mr Amin's evidence that he knew nothing about this; and Mr Amin was also a business partner of Mr Massenya's in another business (Fitzjames) and a shareholder in another two businesses which appear to be owned by Fitzjames (VGS Limited and MVPA Limited) as well as being connected with another company of Mr Massenya (C4G). In his firm's bank accounts, moneys were paid in and out again on behalf of Mr Massenya, and Mr Amin accepted that he was allowing his firm's client account to be used as Mr Massenya's personal account. In relation to that Mr Amin explained that Mr Massenya could not get finance so he arranged finance in his own name so that Mr Massenya could acquire a BMW motor car. Mr Amin was unable to give any coherent or rational explanation for large sums of money going in and out of his client account with reference to Mr Massenya. Ninthly, Mr Massenya has (very recently) been disqualified as a director for 4 years because of wrongful VAT returns, and Mr Amin's firm was responsible for those returns. I find it impossible to accept that Mr Amin was simply trying to get Mrs Mattar's money back.

82. Against that factual background, I now turn to the two bases upon which the claim against Mr Amin is advanced.

## Dishonest assistance

83. Mr Sherwin advanced the following propositions (which I have largely taken from his skeleton argument, amplified by his closing submissions):

    (1) Mr Amin dishonestly assisted in Mr Massenya's and MVC's breaches of trust in their failure to account for the payment or its traceable proceeds.

    (2) Clearly any agreement pursuant to which the payment was made by Mrs Mattar was rescindable because of the fraudulent misrepresentations.

    (3) Once the agreement was rescinded, which happened when Mrs Mattar demanded the return of the money, the money was held for her on trust. This is what is referred to in the authorities as a "rescission trust": see *National Crime Agency v Robb* [2014] EWHC 4384 (Ch) at [40, 41, 44, 45]. This shows that the right to rescind is a proprietary right which, once rescission takes place, revests in the defrauded party the proprietary right to the money which is thereafter held on trust by the fraudster.

    (4) Thus Mrs Mattar has a proprietary remedy (tracing the assets) as well as a personal remedy against MVC and Mr Massenya (who, as trustees, are liable to account for the money). The latter liability is ongoing.

    (5) There were 3 possible breaches. First, the payment out of the money. Secondly, the ongoing cover-up (the failure to provide information to Mrs Mattar as beneficiary). Thirdly, the ongoing failure to account.

    (6) Mr Amin gave dishonest assistance in relation to the breaches of trust.

        (a) It is enough that Mr Amin disguised or misdirected Mrs Mattar from knowing that the breach had occurred or that funds had been paid away in breach of trust: *Latchworth v Dryer* [2016] EWHC 3424 (Ch) at [167-177].

        (b) The question of whether Mr Amin was honest or dishonest is objective, his honesty or otherwise being judged according to the standards of ordinary decent people: *Group Seven Ltd v Nasir* [2020] Ch 129 at [58]. In cases of dishonest assistance, blind-eye knowledge (the existence of a suspicion that certain facts may exist, and the conscious decision to refrain from taking any steps to confirm their existence) is to be equated with actual knowledge: *Group Seven Ltd* at [59].

84. Mr Jones submitted that the Claimant's case on misrepresentation was confused, but as I have found (see paragraph 41 above) representations were made, and (see paragraph 25 above) that the basis for these representations was false. In my judgment, they were misrepresentations.

85. Mr Jones also submitted that there was no agreement which could be rescinded, but I have rejected that submission (see paragraph 55 above).

86. I agree with Mr Sherwin's submission that the agreement was rescinded for misrepresentation.

87. I also agree with Mr Sherwin that there was a breach of trust by MVC and Mr Massenya, for the reasons I have summarised above. That breach was an ongoing failure to account for the money. There was some discussion in closing submissions about whether the claimant was confusing the duty to account (in other words to give an explanation about what had happened) with the accounting remedy (in other words to make a payment). In my view this is a totally artificial distinction in the present case. It is clear that the claimant uses the word "account" to mean the liability to reconstitute the trust fund from the date of the breach. That is an ongoing duty, which demands an ongoing remedy.

88. Mr Jones says that the breaches which caused the loss occurred in August 2013, but in my judgment he is wrong about that. It ignores the fact that there is a continuing failure to account and to repay, as I have just set out. I therefore reject Mr Jones's submission that at any stage the breach was "fully committed" and that Mr Amin cannot therefore be said to have dishonestly assisted in the breach.

89. I have no hesitation in finding that Mr Amin dishonestly assisted in the breach of trust. In my judgment, the analysis put forward by Mr Sherwin is correct. On the facts as I have found them, once there was rescission in March/April 2014, Mr Massenya and MVC held the money or its traceable proceeds for Mrs Mattar. In March 2014, Mr Amin became the sole director and shareholder of MVC with access to all its books and records. Mr Amin knew of the payment out of the money in August, because he was plainly involved in MVC from January 2012 onwards, giving general advice (as his firm's fee notes show) and acting as CFO and as company secretary. Mr Amin also had a very close relationship with Mr Massenya, lending him money in January 2013 which does not seem to have been repaid, and acting as his nominee, doing as he was told, after Mr Massenya's bankruptcy. In my view it is perfectly proper and right to infer from Mr Amin's involvement in negotiating the 2013 deed that he knew the payment had come in and gone, and that his failure to transfer the shares when he was instructed to do so was because he knew that the money had been paid out, so there was no point in doing it. Mr Amin really had no answer to the question why he failed to tell Mrs Mattar about the payments having been made out of the MVC account, and the clear inference is that he knew they had been made and was covering up the position. Mr Amin also failed properly to deal with Mrs Mattar's money in the accounts, noting it as a loan where plainly it was not and saying nothing about the coltan mine; the irresistible inference in my judgment is that Mr Amin knew this was all a fraud. He continued working for Mr Massenya after November 2013, and in circumstances where in my view no honest person would have done nothing, he asks no questions and fails to account for the money, forwarding on without questioning Mr Massenya's empty promises of repayment. This in my judgment plainly amounted to assistance being given to the failure to account. Mr Amin was a director of the company, he knew that the money had been paid away, he did not cause MVC to account for it, he did not take any steps to chase Mr Massenya for the money, and was clearly putting Mr Massenya's interests above those of Mrs Mattar. Standing back, and reviewing the position as a whole, I conclude that Mr Amin was acting dishonestly, applying the test I have set out above.

90. I reject, on the evidence I have heard, the submission by Mr Jones that it is inherently more likely that Mr Amin was simply a dupe of Mr Massenya.

91. It must follow as a result of these findings that Mr Amin is liable to Mrs Mattar to account in equity as though he were a trustee: See Lewin, paragraph 43-015.

92. The appropriate rate of interest in my judgment is base rate + 1% as there is no evidence that Mrs Mattar could have bettered that rate, and interest should be compounded annually because this is a case of dishonest assistance in a breach of trust.

**Unlawful means conspiracy**

93. Mrs Mattar further claims that Mr Amin is liable to her because of an unlawful means conspiracy, namely the misrepresentations, the breaches of trust, and the dishonest assistance by Mr Amin in those breaches.

94. There was no dispute as to the law on unlawful means conspiracy.

> "A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him by unlawful means, whether or not it is the predominant purpose of the defendant to do so."
>
> *Kuwait Oil Tanker v Al Bader* [2000] 2 All ER (Comm) 2, Nourse LJ at [108].

95. Mr Sherwin says that the conspiracy can be inferred from the close business and personal relationship between Mr Massenya and Mr Amin; the involvement of Mr Amin in the business management of MVC; Mr Amin's involvement with other companies and businesses owned and controlled by Mr Massenya; the events following Mr Massenya's bankruptcy; the failure by Mr Amin to investigate Mr Massenya's conduct as director; and the dishonest assistance in the breaches of trust.

96. Mr Jones, echoing the submissions he made in connection with the dishonest assistance claim submitted that Mr Amin had no involvement in procuring the payment, and the breach of any agreement was not causative of loss.

97. In my judgment, Mr Sherwin is right, for the reasons I have summarised, and it is clear that Mr Amin facilitated and assisted, dishonestly, in Mr Massenya's and MVC's wrongdoing. The intention was plainly to defraud Mrs Mattar - in other words, to steal her money.

98. Mrs Mattar's remedy under this head is the same: repayment with interest on the same basis as before.

99. For the reasons I have set out above, the claim succeeds against both Mr Massenya and Mr Amin.

*(End of judgment)*