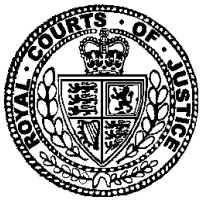

Neutral Citation Number: [2023] EWHC 1180 (Comm)

Case No: CL-2021-000469

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 May 2023

Before :

THE HON MR JUSTICE BUTCHER

- -

Between :

(1) MANISH GOYAL
(2) JYOTI GOYAL **Claimants**

- and –

(1) BGF INVESTMENT MANAGEMENT LIMITED
(2) BGF INVESTMENTS LP
(3) BGF GROUP PLC
(4) ALEXANDER NEVILLE SNODGRASS
(5) ARUN BALASUBRAMANIAM **Defendants**

- -
- -

Harish Salve KC, Peter Head and Chintan Chandrachud (instructed by **Gresham Legal**) for the **Claimants**
David Mumford KC and Ryan James Turner (instructed by **Macfarlanes LLP**) for the **First to Fourth Defendants**
Lesley Anderson KC and Paul Strelitz (instructed by **CMS Cameron Mckenna Nabarro Olswang LLP**) for the **Fifth Defendant**

Hearing dates: 15-17, 20-23, 27-31 March, 3-5 April 2023
Further Submissions: 11, 12 April 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 26 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

(see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

.....

MR JUSTICE BUTCHER

The Hon Mr Justice Butcher :

1. In this action, the Claimants, Manish Goyal (to whom I will refer as 'Mr Goyal'), and his wife Jyoti Goyal (to whom I will refer as 'Mrs Goyal') (together 'the Claimants' or 'the Goyals') claim against the Defendants damages in deceit, damages pursuant to s. 2(1) Misrepresentation Act 1967 and damages for unlawful means conspiracy.

2. Mr Goyal was one of the co-founders, in 2006, of a company called Invenio Business Solutions Limited ('IBSL'), an IT consultancy business specialising in the use of enterprise resource planning software developed by SAP AG.

3. The First Defendant ('BGFIML') and the Third Defendant ('BGFPLC') are companies incorporated in England and Wales. BGFPLC is a holding company for a group of companies trading under the 'Business Growth Fund' name, including BGFIML. I will refer to this group, when it is unnecessary to distinguish between different corporate entities within it, as 'BGF'. BGF was founded by Barclays, HSBC, Lloyds, Standard Chartered and NatWest in order to provide equity funding for small and medium-sized enterprises.

4. The Second Defendant ('BGFILP') is a limited partnership, of which the Fourth Defendant ('Mr Snodgrass') is a limited partner. Mr Snodgrass is employed by a service company, BGF Services Ltd, as an 'Investor' on the terms of a contract of employment dated 25 November 2015. He provides services to BGFIML. He was responsible, on behalf of BGFIML, for identifying the investment opportunity relating to IBSL, and managing the process of the divestment transaction with which this case is concerned, and which I will describe below, from origination to completion.

5. While claims against BGFILP and BGFPLC were pleaded by the Claimants, by the end of the trial the Claimants had indicated that, given that BGFIML would be vicariously liable for any relevant wrongs of Mr Snodgrass, no claim was pressed against BGFILP or BGFPLC. On that basis, very little more needs to be said about those two companies.

6. The Fifth Defendant ('Mr Balasubramaniam') was a shareholder and director of IBSL from April 2017 and acted as its Managing Director from about 1 January 2018, and then as its CEO, which was the role he had at the time of the completion of the divestment transaction with which the case is concerned.

Background

7. To understand the nature of the case, and of the transaction at its heart, it is necessary to say something more about IBSL, the principal persons involved, and the genesis of the involvement of BGF. What follows was largely uncontroversial, but it should be recorded that, insofar as it relates to matters relating to the internal affairs of IBSL, not all was apparent to those outside the senior management of the company at the time of the conclusion of the divestment transaction involving BGF.

8. Mr Goyal had founded IBSL, with his business partner, Sunil Kulkarni, in July 2006. The two were its original shareholders. Each of their wives, ie Mrs Goyal and Vaishali Kulkarni, was employed by IBSL in 2006, and shares in the company had been issued to them in May 2007.

9. By 2009, Sanjay Hiranandani ('Sanjay') and Naveen Agarwal ('Naveen') had joined the business, taking on roles with IBSL's Indian subsidiary. Sunil and Vaishali Kulkarni had exited the business, with their shares being bought out by the Goyals. Furthermore, Partha Bhattacharya (to whom I will refer, as he was generally referred to at the trial, as 'Partho') had joined IBSL as its Managing Director. Shares in IBSL had been issued to Naveen, Partho and Sanjay.

10. By the end of 2011, Sanjay left the business and his shares were cancelled. Mr Balasubramaniam joined the business, as COO, in March 2013. He was initially located in India. In March 2015, he was issued 2% of the shares in IBSL.

11. During the second half of 2016, relationships between senior management in IBSL became strained. This was in part as a result of the failure of IBSL to win a contract for the provision of services relating to the tax system in Dubai. Mr Goyal apparently blamed Naveen for the failure, and was upset with Partho for not taking Naveen sufficiently to task about it. There was a meeting in the Hilltop Hotel, Mumbai. At that meeting, according to the evidence of Partho and Mr Balasubramaniam, which I accept, Mr Goyal told Partho in angry terms that he, Mr Goyal, wanted Partho to leave the business. When Partho said that he would leave, Mr Balasubramaniam and Naveen said that they would leave too. This led to a decision, including on the part of Mr Goyal, that the business had to be sold. It was decided that Mr Balasubramaniam should step up to the role of Managing Director; and that there should be an approximately 18-month period in which Partho should hand over to Mr Balasubramaniam, the business should be run more aggressively to maximise its sale value, and that there should then be a sale.

12. As a result, Mr Balasubramaniam relocated to the UK, and started the transition from Partho to himself of the role of Managing Director. He was appointed as a director in April 2017. 2017 proved to be a successful year, financially, for the company. At the end of the year, at Christmas time, there was a Board meeting. At this meeting, Mr Goyal indicated that he now did not wish to sell his shares in the company. Partho continued to wish to exit. Mr Balasubramaniam and Naveen agreed that they would continue to work for the company, but Naveen wished to sell half his shares. The upshot was that it was agreed that Partho would cease to be Managing Director, and Mr Balasubramaniam would take over, which he did in January 2018. Partho moved to the position of Non-Executive Chairman. It was further agreed that, instead of a sale of all the shares in the company, there should be a divestment only of Partho's shares and of half of Naveen's.

The Divestment Transaction

13. IBSL instructed PwC to market a minority investment opportunity in March 2018. The process of finding an investor was given the name 'Project Ipala'. Vendor due diligence had to be carried out. For this to be performed, the company's financial data needed to be put into a form which would permit the appointed accountants, RSM, to produce a due diligence report. A consultant, Peter Lukac, was engaged to perform a detailed analysis of the historical monthly management accounts, and while this was done the Project Ipala process was paused.

14. Marketing of IBSL by PwC commenced properly on 4 September 2018, on which date the Information Memorandum was finalised and shared with interested parties. 14

potential investors were invited into the process, including BGF. In September and the first half of October 2018 there was a process of Bidder Questions and Answers and of management meetings. The round 1 bid deadline, as extended, was 18 October 2018. By that date, non-binding indicative offers had been received from five bidders: Three Hills Capital Partners ('THCP'), MML Capital Partners, BGFIML, Sovereign Capital Partners and Growth Capital Partners LLP.

15. RSM's Vendor Due Diligence Report (or 'VDDR') was finalised on 29 October 2018. On 31 October 2018 it was received by BGF, and shared by it with HSBC, a potential funder. On 7 November 2018 a second management presentation by IBSL to BGF occurred.

16. BGF's Deal Memo, a document for internal consumption summarising the potential transaction, was finalised on 9 November 2018. That Deal Memo contained a 'big picture' description of the potential deal, including the following:

'Invenio [ie IBSL] is a fast-growing provider of complex technology solutions with an impressive client base and a pipeline of new business that is currently running ahead of the company's ability to service. The management team is mature and well-rounded with a strong track record. …

- Invenio is a technology solution provider with deep domain knowledge within three very clearly defined verticals: Tax and Revenue Management ("TRM"), Media, and Manufacturing & Logistics. The company is strategically aligned with SAP, the leading software ecosystem in these verticals, but has also developed substantial, bespoke capabilities in-house and also incorporates best-of-breed software from other vendors to meet client requirements.

…

- Founded in 2006 by Manish Goyal (CFO), the business has grown organically (41% CAGR over last 2 years) with operations in 6 countries, employing 600+ FTEs, including a back-office operation in India. New business momentum is very strong – recent wins and advanced pipeline largely underpin forecasts. Scaling to meet demand is the challenge.

…

- The deal has been catalysed by the need to replace retiring NXC [ie Partho] and provide 50% cash out to the CTO [ie Naveen] (to support his brother's family, who have recently been involved in a car accident with life changing injuries that require round the clock care). Critically, the MD [ie Mr Balasubramaniam] and CFO [ie Mr Goyal] are driving the outcome and do not want cash out at this stage, their priority is to find the right partner to help get them to the next horizon (secondary or trade at £150m+ EV).

- *Why participate in the process?* i) there is a balance between the wants/needs of management and exiting NXC – this means that price maximisation is not the primary objective; ii) management (except CTO) are not getting any cash out of the deal, their priority is to find the right partner; iii) there is a compelling future growth cap angle in the form of acquisition (likely to be in the US); and iv) the

investment acts as a catalyst for succession planning and incentivisation of the management team (especially MD and COO [ie Mr Chris Leggett]).

Current Ownership & Proposed Transaction

Name	Role	Cash Out	Shareholding	
			Pre-deal	Post-deal
Partho Bhattacharya	NXC	17,070	26.3%	-
Arun Bala	MD	-	3.0%	3.0%
Chris Leggett	COO	-	-	-
Manish Goyal	CFO	-	41.5%	41.5%
Naveen Agarwal	CTO	5,080	15.6%	7.8%
Other		-	13.7%	13.7%
New shares/options			-	14.6%
BGF			-	19.5%
TOTAL		22,150	100.0%	100.0%

- We are proposing a £10.75m investment, structured as 'A' Ordinary Shares for 19.5% equity. The investment will be structured with a minimum return of 1.5x. HSBC will provide £12.4m (c. 1.5x LTM EBITDA)…'

17. On 12 November 2018 the VDDR presentation to BGF took place; and on the following day the first BGF Investment Committee meeting in relation to IBSL occurred. Thereafter BGF made revised offers to invest in IBSL. THCP was another potential

investor in the running at this stage. On 23 November 2018, Mr Balasubramaniam and Mr Goyal selected BGF as the preferred bidder; and this decision was communicated to BGF and to THCP. On 27 November 2018 a first draft Heads of Terms were provided to PwC. Heads of Terms were signed on behalf of BGF and by Mr Bhattacharya on behalf of IBSL by 5 December 2018. Under them, BGF was granted exclusivity until 18 January 2019.

18. On 20 December 2018 the Deal Team within BGF produced an Investment Paper. This noted that, at that point, the details of the proposed deal had changed somewhat from those which had been set out in the Deal Memo. It was now proposed that BGF's investment should be £10.25m for 17.1% of the equity; and that debt should be increased to £13.9m. On the same date, a second BGF Investment Committee meeting in relation to IBSL was held, and the Investment Committee approved the deal.

19. On 15 January 2019 the solicitors acting for BGF, Field Seymour Parkes, circulated the first draft of three of the key transaction documents. On 17 and 18 January 2019 the Heads of Terms were varied. What was now proposed was that BGF should invest £11.585m by way of equity, for 19.4% of the company's fully diluted equity on completion. On 5 February 2019 BGF's Investment Committee approved the increase in the investment from £10.25m to £11.6m. On 12 February 2019 the exclusivity period was extended. A Top-Up Due Diligence Report by Wilson Partners was finalised on 28 February. The transaction completed on 5 March 2019.

20. This transaction (to which I will refer as 'the transaction' or 'the divestment') was implemented by five main transaction documents which are material to the present dispute. They were as follows:

(1) The primary Sale and Purchase Agreement ('the SPA'). This provided for Partho, Naveen, Mr and Mrs Goyal and Mr Balasubramaniam to sell their shares to a company called Invenio Business Solutions Holdings Limited ('IBSHL') for a purchase price of £58,718,839, apportioned between the shareholders in accordance with Schedule 1 to the SPA. Partho was to receive his consideration in cash; Naveen received a mixture of cash and Ordinary Shares in IBSHL. The others, including Mr Goyal, 'rolled' their shareholdings into IBSHL: by which is meant that they received a near equivalent number of shares in it. (Each of the small minority shareholders entered into a separate 'minority Sale and Purchase Agreement' under which they sold their shares in the same way, taking the total purchase price to £63,872,000).

(2) An Investment Agreement, which was a separate contract between BGFIML, IBSHL and each 'Manager', entered into immediately after the SPA, under which BGFIML subscribed for 134,985 A Ordinary Shares in IBSHL, to be held by it or its nominee, for £11.6 million, and BGFIML was granted certain preferential rights.

(3) IBSHL's Articles of Association. These provided for four classes of shares with different rights, namely

(i) The 'A Ordinary Shares', which were to be issued to BGFILP or its nominee. These carried preferential rights as to (i) income: namely an entitlement to receive in priority to the Ordinary shareholders a preferred dividend of 6% of the BGF investment for 4 years and 10% thereafter; (ii) capital: a guaranteed minimum 1.65x return on the BGF investment; and (iii) an enhanced voting event: namely

that in certain circumstances BGF had the power to increase its voting rights to 51% and to appoint and/or remove IBSHL directors.

(ii) The 'Ordinary Shares', which would be issued to the pre-transaction shareholders in IBSL who were 'rolling over'.

(iii) Non-voting 'F' or 'Freezer' Shares, the value of which was 'frozen' as at the transaction date, because the shares only carried an entitlement to participate in a surplus of 'Exit Proceeds' after payment of the 'A Ordinary Minimum Return' up to the 'Equity Hurdle'.

(iv) The 'G' or 'Growth' shares, which only benefited from 'Growth' because they only carried an entitlement to participate in 'Exit Proceeds' which exceeded the 'Equity Hurdle'.

Partho and Naveen received certain F and G shares which were subject of options in favour of Mrs Goyal.

(4) Executive Director Service Agreements for each of Mr Goyal, Mr Balasubramaniam, Mr Leggett and Naveen. These provided for the appointee to hold a particular role or to act 'in such other position or capacity with such job title as the Company may from time to time reasonably decide…'

(5) Mr and Mrs Goyal entered into Deeds of Settlement and Release with Partho and with Naveen in connection with the dispute between the Goyals and Partho, which I will describe in more detail below.

Outline of Events after the Completion of the Divestment

21. After Completion, on 16 March 2019, Mr Leggett resigned as COO of IBSHL. On 27 March 2019, Mr Geoffrey Neville ('Mr Neville') was appointed as Non-Executive Chairman of IBSHL, to fill the role that Partho had previously performed at IBSL.

22. Before that date, namely on 23 March 2019, Mr Balasubramaniam had sent an email to Mr Snodgrass and Partho, which said, in part:

'I am very uncomfortable driving the business forward in my role as the CEO with the current set up in the company where Manish is supposed to report into me in his role as the CFO.

The reasons are the following:

1.He is a majority shareholder in the company and does not effectively report into me although on paper he does. I cannot think of any other set up where the founder / majority investor reports into a CEO who has just 3% of the shares. I am sure you can appreciate how it makes me ineffective in managing him.

2.I do not agree with the way the Finance function is managed and controlled by the Goyal family and his extended family which includes Kedia in India. We are a

professional set up and not a family owned business. Manish approves Jyoti's and Vandana's expenses.

3.I have no visibility to the Finance function, I have no control over it and things are run on an adhoc basis.

4.In terms of his background and experience, he has been an SAP Finance Consultant and the last four or five years is when he has been running the Finance function for Invenio. There is a clear lack of industry experience running a Finance function and this reflects in a lack of controls, processes, budgeting, etc.

5. Also he runs a parallel command structure providing advise (sic) and recommendations to other leaders especially in the operations area and effectively tries to run the business as a co-CEO.

I do not think it is sustainable and clearly impacts my ability to drive the business forward.

I recommend that we would need Manish to move out of any Exec position in Invenio and certainly from his CFO role.

I request for a board meeting to pass this as this is a board level appointment.

We have our Employee event coming on 5th April in Delhi and ideally we should do it before that event. If we are not able to sit together as a Board before that, we could have him influencing the event like he influenced the Mumbai Employee event…'

23. The poor working relations between Mr Balasubramaniam and Mr Goyal demonstrated by this email continued to deteriorate. As a result, on 1 May 2019, there was a meeting between Mr Neville and Mr Goyal, at which there was a discussion about Mr Goyal's relinquishing the role of CFO. Further discussions followed. Mr Neville's uncontradicted evidence was that, during these discussions, Mr Goyal proposed that if he were to cease to be CFO, he should become Chief Investment Officer, or CIO. That was what happened, Mr Goyal ceasing to be CFO, and being appointed as CIO of IBSHL on 21 June 2019. Mr Stephen Coxhead, who had been engaged as a consultant in March 2019, was appointed interim CFO.

24. On 4 October 2019, Mr Balasubramaniam had a meeting with Mr Snodgrass at which he said that his remuneration was inadequate, and that he did not consider that he could fulfil the role of CEO any-more. Later that day, by email to Mr Snodgrass, Partho and Mr Neville he tendered his resignation. The recipients of the email decided to accept that resignation, but not immediately to tell Mr Goyal. On 7 October 2019, Mr Balasubramaniam sent an email to Mr Snodgrass, Mr Neville and Partho which reiterated some of the complaints which Mr Balasubramaniam had previously made about Mr Goyal, and made some further criticisms. Thus, in part, it was said that:

'**Parallel management by Manish continues**: I was very clear from the start about the parallel management from Manish. Of course, he has no involvement with Customers but with employees, he continues to advise, guide and decide. Despite your best negotiated position with Manish we have been unable to do anything about it. …'

25. This was followed by a trip to India by Mr Neville and Mr Balasubramaniam, at which the latter's resignation was announced, and a number of senior managers asked him to stay on. Furthermore, Mr Goyal and Mr Balasubramaniam apparently patched up their differences, and sought to assure each other that they could work together if Mr Balasubramaniam stayed on. On 25 October 2019, Mr Balasubramaniam sent an email to the members of the Board, which withdrew his resignation, and stated, in part:

'… I have had personal differences with Manish over the last few months and recognise the need to resolve them and put them behind us. I have had discussions with Manish and we have agreed to set aside any differences we may have had in the past and Manish as a key Board member and Founder of the company will be offering me the much-needed support. I recognise the strong Emotional Capital that Manish has put into the Company over a long period of time since inception and the strong role he has played in the architecting and building of the Company together with Partho and Naveen and a number of other employees, many of who (sic) are Shareholders. It is important for me to recognise this Emotional Capital. …

Considering all the above and especially the strong Support assured by one of the two key Investors – i.e., Manish, I have decided to withdraw my resignation….'

26. On 29 October 2019 there was an IBSHL Board Meeting. According to the evidence of Mr Neville, to which there was no challenge:

'… we had a disruptive and aggressive board meeting. Driven by Manish, there was little interest in the standard Agenda, but a great desire to have a discussion re removing me as Chairman, to be followed ideally by BGF. There was unsavoury language and even talk about infidels and invaders. I ended the Board meeting. BGF and I decided to let things cool down. Arun was embarrassed by it I believe.'

27. After that meeting, Mr Balasubramaniam, Partho, Mr Snodgrass and Mr Neville discussed the situation, and decided that Mr Goyal should be dismissed from his employment by IBSHL. The company's letter, signed by Mr Neville, confirming this dismissal, was dated 18 November 2019. It stated in part:

'I am writing to confirm that it has been decided by the Board of [IBSHL] that your employment with the Company should be terminated on performance and misconduct grounds.

Your past and continuing behaviour has been disruptive and damaging to the Company and you have failed to act in the Company's best interests. This includes breaches of governance and consistently disrupting board and other meetings. …

Please provide your resignations from your statutory directorships by return in accordance with clause 12.3 of your service agreement…'

28. Mr Goyal resigned as a director of IBSL and of IBSHL on 26 November 2019, and ceased to be CIO of IBSHL on 3 December 2019.

29. Mr Goyal subsequently, in April 2020, brought proceedings against IBSHL, Mr Balasubramaniam and Mr Neville in an Employment Tribunal, contending that he had been unfairly dismissed because he had made protected disclosures between about

August and October 2019. No details were provided to the court as to the outcome of those proceedings, but it was in evidence that DSARs were made during those proceedings, and that Mr Goyal considered that the documentation which he had seen in connexion with those proceedings had been of significance in revealing the basis for the present claims.

The Nature and Development of the Goyals' case

30. In broad outline, the Goyals' case is that a number of misrepresentations were made to Mr Goyal (and indirectly to Mrs Goyal) during the course of the negotiations for the divestment, which induced the Goyals to enter into that transaction. Those alleged representations related, in a way I will describe, to Mr Goyal's role as CFO, to his suitability for it, and to whether the representors intended that he should continue in it after the completion of the divestment. Mr Goyal contends that his understanding, based on those misrepresentations, was that there was no intention on the part of the Defendants that he should cease to be CFO. The Goyals contend that in fact it was the intention of Mr Snodgrass, and of Mr Balasubramaniam, that Mr Goyal should be removed as CFO, and from any executive position in IBSHL after the completion of the divestment. They contend, further, that Mr Balasubramaniam and Mr Snodgrass conspired to make misrepresentations to Mr Goyal in order to induce the Goyals to enter into the divestment, as part of a common plan to remove Mr Goyal as CFO, and from any executive position, once the divestment had completed.

31. A case focused on alleged misrepresentations and conspiracy in relation to Mr Goyal's role in the business after completion of the Divestment was first put forward in a Letter Before Action ('LBA') dated 16 April 2021. It was said that both Mr Balasubramaniam and Mr Snodgrass (and through him BGF) had '… made representations that it was their intention and expectation that Mr Goyal would continue in the executive management of IBSHL after the date of the SPA, in materially the same role as he had at IBSL.' In Particulars of Claim served some four months later, it was pleaded that it was represented by Mr Balasubramaniam and Mr Snodgrass that 'it was the intention of [Mr Balasubramaniam, Mr Snodgrass and BGF] that [Mr Goyal] would continue in the senior management of the business and as CFO, once the ownership of IBSL was transferred to [IBSHL]…'

32. At a CMC held on 4 February 2022, Cockerill J made certain criticisms of the way in which the Claimants' case had been pleaded, and in particular of the insufficient clarity as to what exactly had been represented. The case was repleaded by Amended Particulars of Claim ('APOC') filed on 22 July 2022, and by Re-Amended Particulars of Claim ('RAPOC') filed on 9 August 2022.

33. The structure of this pleading is as follows:

(1) In paragraph 42 it is alleged that there were a series of representations made by Mr Balasubramaniam and by Mr Snodgrass, as set out in paragraphs 45 to 52, 'that were intended to lead [the Goyals] to believe that:

a. upon the investment [Mr Goyal] would remain in the role of CFO;

b. upon the investment [Mr Goyal] would maintain the similar role of senior executive management within [IBSHL] as he had in IBSL;

c. there was no intention on the part of [Mr Snodgrass, Mr Balasubramaniam] or BGF to remove [Mr Goyal] from his role as CFO;

d. there was no intention on the part of [Mr Snodgrass, Mr Balasubramaniam] or BGF [to] remove [Mr Goyal]'s role as a key person in the executive management team;

e. there was no intention on the part of [Mr Snodgrass, Mr Balasubramaniam] or BGF to reduce [Mr Goyal]'s role in [IBSHL] from that which he had in IBSL;

f. the Defendants considered that [Mr Goyal] was suitable and capable of performing the role of CFO of [IBSHL] and of maintaining the similar role of senior executive management within [IBSHL] as he had performed in IBSL; and

g. [Mr Goyal] and [Mr Balasubramaniam] would work collaboratively as a team going forward into the next stage of the business's life-cycle which was expected to last for 3 to 5 years.'

(2) In paragraph 43 it is alleged that those representations were false; in paragraph 44 that the Defendants knew that the representations or the substance of them would be relayed by Mr Goyal to Mrs Goyal with the intention of inducing her to enter into the SPA, and did induce her to do so; and in paragraphs 44A and B, certain pleas as to how the representations were relayed to Mrs Goyal by Mr Goyal.

(3) At paragraphs 45 to 52A nine occasions (embracing both emails and meetings) were pleaded in which it was alleged that representations had been made. I will return to these in more detail below, but they were, in summary:

(i) A meeting between IBSL, PwC, and BGF at the Sofitel Hotel, Heathrow on 7 November 2018, at which it is alleged that Mr Snodgrass made certain statements (para. 45);

(ii) A phone call between Mr Snodgrass and Mr Goyal on 3 or 4 December 2018, while Mr Goyal was in Bahrain (para. 47);

(iii) A meeting, pleaded as having occurred in 'early December 2018' but which was subsequently identified as having occurred on 19 December 2018, between Mr Goyal and Mr Snodgrass at the Holiday Inn, Winnersh Triangle, at which it is alleged Mr Snodgrass made certain statements (para. 46);

(iv) An email from Mr Balasubramaniam to Mr Goyal dated 20 December 2018 (para. 48);

(v) A meeting between Mr Balasubramaniam, Mr Goyal and Partho at the Holiday Inn, Winnersh Triangle, on 2 January 2019, at which Mr Balasubramaniam is alleged to have made certain statements (paras 24 and 49);

(vi) An email sent by Mr Goyal to shareholders on 15 January 2019 (paras. 49A and B);

(vii) A phone call between Mr Snodgrass and Mr Goyal on 18 January 2019 during which Mr Goyal made certain statements which Mr Snodgrass acknowledged and did not correct (para. 50);

(viii) An email sent by Mr Balasubramaniam to Mr Goyal on 18 February 2019 concerning shareholder voting restrictions (para. 50B); and

(ix) a meeting on 25 or 26 February 2019 between Mr Goyal and Mr Balasubramaniam at IBSL's offices in which it is alleged that Mr Balasubramaniam made certain statements (para. 52).

(4) At paragraph 54B it is alleged that the Defendants knew that the representations pleaded were false.

(5) Principally at paragraphs 40B and C and 56, that there was a common plan and intention on the part of the Defendants to remove Mr Goyal as CFO. At paragraph 57, that on a date believed to be before the meetings on 15 and 23 November, and most probably at the time of the meetings on 7 and 14 November 2018, 'the Defendants wrongfully and with intent to injure [Mr Goyal and Mrs Goyal] by unlawful means conspired and combined together to conceal their intention to remove [Mr Goyal] from the senior executive management of [IBSHL] and as CFO of [IBSHL] and to falsely represent to [Mr Goyal] that he would continue in his current role so as to induce [Mr Goyal and Mrs Goyal] to agree to the BGF Investment.'

(6) Had it not been for the representations and the conspiracy, the Goyals would not have entered into the transaction documents and BGF's investment would not have proceeded. This caused the Goyals loss.

34. In the Re-Amended Defence of the First to Fourth Defendants, at paras. 3 and 4, it was pleaded that it was understood that the Claimants were relying on three implied representations, as well as on express representations contained in the 'statements' pleaded in paragraphs 45 to 52 of the RAPOC. The First to Fourth Defendants pleaded that the Claimants' case was of three groups of implied representations, namely:

(1) 'Absence of Intention Representations', pleaded in paragraphs 42(c) to (e) of RAPOC, namely that it was not the intention of Mr Snodgrass, Mr Balasubramaniam or the BGF entities at the time the representation was made that, following completion, Mr Goyal would be removed as CFO or as a 'key person' in the executive management or have his 'management role' reduced in IBSHL.

(2) 'Post-Completion Representations', pleaded in paragraphs 42(a), (b) and (g) of RAPOC, namely that upon completion a particular state of affairs would occur.

(3) A 'Suitability Representation', pleaded in paragraph 42(f) of RAPOC, namely a representation that the Defendants considered that Mr Goyal was suitable and capable of performing the role of CFO of IBSHL and of maintaining a similar role of senior executive management within IBSHL as he had performed in IBSL.

35. This plea on behalf of the First to Fourth Defendants is of particular significance because, in their Opening Skeleton Argument for the trial, the Goyals adopted that classification of the implied representations for which they were contending; and further made it clear that they were relying only on implied representations. They further stated that the matters pleaded in paragraphs 45-52 of the RAPOC were not relied on as express representations in themselves but 'as particulars of certain of the

primary facts from which the seven Representations identified [in paragraph 42 of RAPOC] are to be implied.'

36. The Claimants' case was further clarified and modified by Mr Salve KC in his oral opening submissions. He made it clear that the Claimants were not relying on the Post-Completion Representations in paragraphs 42(a), (b) or (g) of RAPOC as actionable misrepresentations. Furthermore, he told the Court that the Claimants were not relying on the email sent by Mr Snodgrass to Mr Goyal on 18 February 2019, pleaded in paragraph 50B of RAPOC, as a factual matter from which the representations for which the Claimants were contending could be implied. A Schedule was then provided which identified which of the factual matters pleaded in paragraphs 45 to 52 of RAPOC were said to give rise to the implication of (a) the Absence of Intention and (b) the Suitability Representations for which the Claimants still contended. In summary, only the phone call of 18 January 2019 was said to have given rise to the alleged Suitability Representation. The other matters (as well as the call of 18 January 2019) were said to give rise to one or more of the Absence of Intention Representations.

37. The First to Fourth Defendants on the one hand and the Fifth Defendant on the other were separately represented. As is apparent from the above, different matters were relied upon, as against them, as giving rise to the implied representations contended for. But both denied there had been actionable misrepresentations; denied that there had been fraud; denied that had been reliance on any misrepresentations; and denied that the Claimants had suffered loss and damage. They both denied that there had been any conspiracy. I will return in more detail to the defences raised, in due course.

The legal principles

38. With very limited exceptions, considered below, there was no dispute as to the relevant legal principles. They may be summarised as follows.

The tort of deceit

Elements of the tort

39. The elements that must be established in a claim in deceit are as follows:

(1) A representation.

(2) Made to the representee.

(3) Which is false.

(4) Which the representor knows is false, or has no belief in its truth, or is reckless as to its truth or falsity (although no issue of recklessness arises in these proceedings).

(5) On which the representor intends the representee to rely in the sense in which it is false.

(6) On which the representee in fact relies.

(7) Causing the representee loss.

(These elements are set out in *Vald Nielsen Holding A/S v Baldorino* [2019] EWHC 1926 (Comm) at [131] (Jacobs J)).

Statements of opinion and as to the future

40. A statement of opinion is not actionable save insofar as it incorporates or implies a representation of present fact (for example that the representor does hold the indicated opinion, or in some cases that he has reasonable grounds for holding that opinion): *Pisante and others v Logothetis and others* [2022] EWHC 161 (Comm) ("*Pisante*"), at [6(2)].

41. A statement as to the future is not actionable save insofar as it incorporates or implies a representation as to present intention or presently-held belief: *Pisante*, at [6(3)].

Not all statements of fact are actionable representations

42. The core question is whether the representee was entitled to take the statement seriously so as to rely on it in deciding whether to enter into the contract; some statements may be more in the nature of "sales talk". Whether a party is entitled to rely on a statement as entailing a representation is to be judged objectively according to the impact that the statement may be expected to have on a reasonable representee in the position and with the known characteristics of the actual representee: *MCI Worldcom International Inc v Primus Telecommunications Inc* [2004] 2 All ER (Comm) 833 at [30].

Implied representations

43. The general tests for the implication of a representation were summarised in *Marme Inversiones 2007 SL v NatWest Markets plc* [2019] EWHC 366 (Comm) at [115]-[116], [123] and [157] per Picken J, as follows:

> "[115] There was no dispute as to the legal principles applicable to the implication of representations. They were summarised by Toulson J (as he then was) in *IFE Fund SA v Goldman Sachs International* [2006] 2 CLC 1043 at [50]:
>
> > 'In determining whether there has been an express representation, and to what effect, the court has to consider what a reasonable person would have understood from the words used in the context in which they were used. In determining what, if any, implied representation has been made, the court has to perform a similar task, except that it has to consider what a reasonable person would have inferred was being implicitly represented by the representor's words and conduct in their context.'
>
> This passage has been applied variously by Christopher Clarke J (as he then was) in *Raiffeisen Zentralbank Osterreich AG v RBS* [2010] EWHC 1392 (Comm) at [82]; Popplewell J in *Moto Mabanga v Ophir Energy PLC and anor* [2012] EWHC 1589 (QB) at [26]; and in *PAG* by Asplin J (as she then was) at first instance, at [377] and by the Court of Appeal at [129].

> [116] Whether any, and if so what, representations were made must be 'judged objectively according to the impact that whatever is said may be expected to have on a reasonable representee in the position and with the known characteristics of the actual representee': *MCI WorldCom International Inc v Primus Telecommunications plc* [2004] EWCA Civ 957, per Mance LJ (as he then was), [30] (applied by Christopher Clarke J in *Raiffeisen* at [81] and by Popplewell J in *Moto Mabanga* at [25]).
>
> …
>
> [123] Although each of these authorities is necessarily fact-specific, drawing the threads together, a number of principles can be distilled from these authorities:
>
> (1) First, it is possible for a representation to be made expressly or impliedly through words or conduct. For a representation to be implied, silence or mere assumption is not usually enough as there is no general duty of disclosure. It is necessary to view the words or conduct objectively to determine whether an implied representation has been made, although the natural assumptions of the reasonable representee will be helpful in assessing whether an implied representation has been made through the conduct of the representor.
>
> (2) Secondly, whether or not a representation is implied is ultimately a question of fact to be determined in the circumstances of the particular case: see also *Deutsche Bank AG v Unitech Global Ltd* [2013] EWCA Civ 1372 per Longmore LJ at [25].
>
> (3) Thirdly, more may be required, in terms of words or conduct, for a representation which is wide in meaning or complex to be implied.
>
> (4) Fourthly, it is less likely that a representation that is vague, uncertain or ambiguous would be objectively understood to have been made from words or conduct.
>
> …
>
> [157] Although…passive conduct may sometimes be sufficient for the implication of a representation… the broader and more complex the alleged representations, the more active and specific the conduct must be to give rise to the implication. Put differently, whilst it may be that some representations are legitimately to be implied, it is less obvious that intricate and broad representations … should be implied from passive (and necessarily somewhat limited) conduct. …"

44. A representation cannot be inferred from mere silence: *Pisante* at [6(5)].

45. The parties were agreed that an express or implied representation of present intention is capable of 'continuing', such that it may be relied upon by the representee when entering into a contract at a later time. There was however an issue about the effect of such a representation continuing, which I address below.

Knowledge of the representation

46. What (if any) representation has been made is to be ascertained objectively, but: (a) for a claimant to establish reliance, they will have to show that they understood the representation in the sense alleged (see, e.g., *Marme Inversiones 2007 SL v NatWest Markets plc* [2019] EWHC 366 (Comm) at [281]-[286] per Picken J), and (b) in order to establish deceit, the claimant must show that the defendant understood he was making the alleged representation, i.e. that he was conveying to the claimant that same representation (see, e.g, *Cassa di Risparmio della Repubblica di San Marino SpA v Barclays Bank Ltd* [2011] 1 C.L.C. 701 at [221] per Hamblen J).

Falsity

47. A representation may be true without being entirely correct, provided it is substantially correct and the difference between what is represented and what is actually correct would not have been likely to induce a reasonable person in the position of the claimant to enter into the contract. Moreover, the mere fact that events do not subsequently unfold in line with the representation does not falsify it: *Avon Insurance v Swire Fraser* [2000] 1 All E.R. (Comm) 573 at [17].

Knowledge of falsity

48. For a representor to be liable for deceit, the representor must know of the falsity of the representation or be "*reckless*" as to the truth or falsity of the representation: see the classic formulation in *Derry v Peek* (1889) 14 App. Cas. 337 at 374 per Lord Herschell.

Intention

49. The representor must intend the representee to rely on the representation in the sense in which it was false: *Akerhielm v de Mare* [1959] A.C. 789 at 805.

Reliance

50. To establish reliance, the representation need not be the only (or the decisive) cause of the induced act alleged. It makes no difference that the reliance alleged was also induced by other factors, so long as the representee is "*materially influenced*" by the representation, i.e. it was "*actively present to his mind*": *BV Nederlandse Industrie van Eiprodukten v Rembrandt Enterprises Inc* [2019] 3 WLR 1113.

51. There is a rebuttable presumption of fact that a representee relied upon a representation if they were aware of the representation and it is "*of such a nature that it would be likely to play a part in the decision of a reasonable person to enter into a transaction*": *Dadourian Group International Inc v Simms* [2009] 1 Lloyd's Rep 601 at [99]. In those circumstances, reliance by the representee on the representation may be presumed. Where the misrepresentation was made fraudulently, the presumption is "*particularly strong*". The inference can be rebutted, but that is "*very difficult*": per Lord Clarke in *Zurich Insurance Co v Hayward* [2016] 3 WLR 637 at [34]-[37].

52. There was a limited dispute between the parties about the circumstances in which a third party to whom a representation has been relayed is entitled to rely on and subsequently sue on that representation despite it not having been directly made to

them. The issue is whether the representor must intend the third party to rely on the representation or whether an "*expectation*" that they will rely on the representation is sufficient. That issue is potentially relevant to Mrs Goyal's claim. I deal with it below.

53. Subject to that dispute, there was agreement that where the representation has been passed on to the third party, the third party's ability to sue on it depends on their being within the second or third categories identified in *Chitty on Contracts,* 34th ed. at [9-037]:

> "In order to be entitled to relief in respect of misrepresentation, the person seeking relief must be able to demonstrate that he is a representee; for, subject to the transmission by operation of law of claims on death, bankruptcy and assignment, the person or persons who in law come within the category of representees are alone entitled to a remedy. To put the matter another way, the claimant must show that it was intended that he should act on the representation, rather than it being aimed solely at someone else. There may be said to be three types of representees: first, persons to whom the representation is directly made and their principals; secondly, persons to whom the representor intended or expected the representation to be passed on; and thirdly, members of a class at which the representation was directed."

Causation

54. For there to have been an actionable deceit, the claiming party must establish that the misrepresentation caused them loss by satisfying a "*but for*" test of causation. As Lord Sumption put it in *Versllot Dredging B.V. v HDI Gerling Industrie Versicherung A.G.* [2016] 3 W.L.R. 543 at 559 [29], "*If [the claiming party] would have done the same thing even in the absence of the misrepresentation, a claim based on it will fail*".

Continuing representations

55. A representation may "*continue*" after it is made and so be able to be relied upon. A party who has made a continuing representation may have a duty to correct the representation in the event that they discover that, although they considered it to be true when it was made, it was in fact false or where the representation, although actually true when made, subsequently becomes false as a result of a supervening event: *With v O'Flanagan* [1936] Ch 575. However, a representation does not last forever and may be "*spent*"; that is, it may be unable to be relied upon by a representee even if it was, in fact, relied upon by them: *Limit No 2. Ltd v Axa Versicherung AG* [2008] 2 CLC 673 at [26].

56. Where the Court is concerned with a "*continuing*" representation that the representor has a duty to "*correct*" in the event that they discover the representation was false when made or that it has become false as a result of a supervening event, the representor must appreciate the significance of the change (i.e. that it falsifies a representation made by them and that they have a duty to correct it) in order for them to be dishonest: at *FoodCo UK LLP v Henry Boot Development Ltd* [2010] EWHC 358 (Ch) at [213]-[214] per Lewison J.

Standard of proof

57. While the standard of proof remains the balance of probabilities, the starting point is that more convincing (or 'cogent') evidence is required to establish fraud or dishonesty than is true of other types of allegations. This is often justified on the basis that such matters are considered improbable: *Bank St Petersburg PJSC v Arkhangelsky* [2020] 4 W.L.R. 55 at [117].

58. A misrepresentation should not be too easily found: *SK Shipping Europe Limited v Capital VLCC 3 Corp* [2022] EWCA Civ 231 at [38] (and the authorities cited there).

Common design

59. Where a person has not made a fraudulent misrepresentation directly or through an agent he can, nevertheless, be liable as a joint tortfeasor with a person who has committed deceit if he assisted the principal tortfeasor or if he procured or induced the commission of the deceit: see Cartwright, *Misrepresentation, Mistake and Non-Disclosure* (5th ed.) at 5-22.

60. D will be jointly liable with P if they combined to do or secure the doing of acts which constituted a tort. This requires proof of two elements:

i) D must have acted in a way which furthered the commission of the tort by P; and

ii) D must have done so in pursuance of a common design to do or secure the doing of the acts which constituted the tort.

Fish & Fish Ltd v Sea Shepherd UK [2015] AC 1229, per Lord Toulson at [21].

61. For there to be joint liability, the common design must extend to all elements of the deceit: *European Real Estate Debt Fund (Cayman) Ltd (in liquidation) v Treon* [2021] EWHC 2866 (Ch) at [376] to [378].

Damages in deceit

62. The normal measure of damages for deceit is the value of the benefits given up less the value of the benefits received on the date of acquisition. However, that rule "*is not to be inflexibly applied where to do so would prevent* [the claimant] *obtaining full compensation for the wrong suffered*" in the ways described in *Smith New Court Securities v Citibank N.A,* [1997] A.C. 254 at 267 per Lord Browne-Wilkinson.

63. In appropriate cases, the claimant may be awarded damages for the loss of profits on an alternative transaction, or alternative investment opportunity, which the claimant would have pursued but for entering into the contract that was concluded as a result of the deceit: *East v Maurer* [1991] 1 WLR 461 [269]. In such scenario:

i) The determination of what the claimant would have done but for the deceit is to be determined on the balance of probabilities.

ii) The determination of any matter that depends upon the acts of third parties is to be determined on the 'loss of a chance basis'. That requires the court: (a) to be satisfied that there was a "*real and substantial*" chance that the third party/ies would have acted in the manner alleged; and (b) to assess the chance in percentage terms.

Unlawful means conspiracy

64. The elements of the tort of unlawful means conspiracy were summarized in para [94] of the judgment of Cockerill J in *FM Capital Partners Ltd v Marino* [2018] EWHC 1768 (Comm):

"The elements of the cause of action are as follows

i) A combination, arrangement or understanding between two or more people. It is not necessary for the conspirators all to join the conspiracy at the same time, but the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of: *Kuwait Oil Tanker* at [111].

ii) An intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention: *Kuwait Oil Tanker* at [108]. Moreover

a) The necessary intent can be inferred, and often will need to be inferred, from the primary facts – see *Kuwait Oil Tanker* at [120-121], citing *Bourgoin SA v Minister of Agriculture* [1986] 1 QB": "*[i]f an act is done deliberately and with knowledge of the consequences, I do not think that the actor can say that he did not 'intend' the consequences or that the act was not 'aimed' at the person who, it is known, will suffer them*".

b) Where conspirators intentionally injure the claimant and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests: *Lonrho Plc v Fayed* [1992] 1 AC 448 , 465-466; see also *OBG v Allan* [2008] 1 AC 1 at [164-165].

c) Foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention: *OBG* at [166].

iii) In some cases, there may be no specific intent but intention to injure results from the inevitability of loss: see Lord Nicholls at [167] in OBG v Allan , referring to cases where

> "The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort."

iv) Concerted action (in the sense of active participation) consequent upon the combination or understanding: *McGrath* at [7.57].

v) Use of unlawful means as part of the concerted action. There is no requirement that the unlawful means themselves are independently actionable: *Revenue and Customs Commissioners v Total Network* [2008] 1 AC 1174 at [104].

vi) Loss being caused to the target of the conspiracy.

The legal points at issue

65. There were two limited areas of dispute between the parties as to the legal principles to be applied, on which it is convenient that I should express my conclusions at this stage.

66. The first was as to whether a representation of intention is only capable of constituting a representation of the representor's intention as of the original date on which the representation was made. The Defendants contended that this was the case, and was so even though the representation could be regarded as a continuing representation (in the sense that it was one which could continue to be relied upon). This meant that a change of intention after the representation was initially made but before the contract is concluded would not falsify the representation. In support of their case the Defendants relied upon *Tudor Grange Holdings v Citibank* [1992] Ch 53, at 67, and upon what was said in *Limit No. 2 Ltd v Axa Versicherung AG* [2008] 2 CLC 673 at [26]-[28]. The Claimants denied that was the case, and contended that a representation might be a continuing representation of the representor's current intention, and that the corollary was that if the representor's intention changed, then he should correct it for there not to be a misrepresentation.

67. In my judgment, the Defendants' case goes too far. I accept that a representation as to intention is as to the intention of the representor at the time the representation is made. But, as with other representations of present fact, a representation of intention may be one which will reasonably be understood to continue: that is, will be understood to continue to represent the current position. In the event of a continuing representation of intention, the representor would be regarded, in effect, as continuing to make a representation as to his current intention. I cannot see why such a case cannot engage the principle enunciated by Lord Wright MR in *With v O'Flanagan* at 583, by reference to what Turner LJ had said in the earlier case of *Traill v Baring* 4 De G. J. & S. 318, 329:

> 'This is what Turner LJ says: "I take it to be quite clear, that if a person makes a representation by which he induces another to take a particular course, and the circumstances are afterwards altered to the knowledge of the party making the representation, but not to the knowledge of the party to whom the representation is made, and are so altered that the alteration in circumstances may affect the course of conduct which may be pursued by the party to whom the representation is made, it is the imperative duty of the party who has made the representation to communicate to the party to whom the representation has been made the alteration of those circumstances; and that this Court will not hold the party to whom the representation has been made bound unless such communication has been made". In these cases … the position is based upon the duty to communicate the change in circumstances.'

68. With that said, however, I would accept that, in relation to many representations of intention, it may well be that they should not be regarded as having any continuing effect. With many such representations, it may be clear from their nature and the surrounding circumstances, that they are ephemeral, and could not be regarded as continuing to appertain without confirmation from the representor that this is the case. This would appear to me to be a matter which would depend on the precise nature of the alleged representation and the circumstances in which it was made.

69. The second area of dispute, which is potentially relevant to Mrs Goyal's claim, is whether a person to whom the representor *expected* a representation to be passed on can be regarded as a representee such that he or she is entitled to bring a claim in deceit, or whether it is necessary for the representor to have *intended* the representation to have been passed on to the representee. The Claimants contended for the former, relying in particular on the way in which the second category is formulated in *Chitty* paragraph 9-037, quoted above; and the approval of that formulation in *Taylor v Van Dutch Marine Holding Ltd* [2019] EWHC 1951 (Ch) at [281], and in *OMV Petrom SA v Glencore International AG* [2017] 3 All ER 157 at [13]-14]. The Defendants contended for the latter.

70. In my judgment, in the context of a claim for deceit, the test must be whether the representor *intended* the third party, or someone in his or her position, or a class to which he or she belonged, to be induced by the representation; and thus, in a case in which the third party could only be induced by it if it is passed on, the representor must have *intended* that it be passed on. It is a general requirement of the tort of deceit that the statement complained of must have been made with intent to deceive the claimant. The position can be no different in the case of what may be termed an 'indirect representee' from a 'direct representee'. The law is in my judgment accurately summarised in *Clerk & Lindsell on Torts* (23rd ed), 17-31 – 17-33, as follows:

> '17-31. In order to give a cause of action in deceit, not only must the statement complained of be untrue to the defendant's knowledge, but it must in addition be made with intent to deceive the claimant; with intent, that is to say, that it shall be acted upon by him. …
>
> 17-32. A representation made to the claimant directly causes no problems; so too with a statement made to someone known to be acting as agent for the claimant. But a representation made to a third party with intent that it be passed on to the claimant to be acted on by him will equally suffice. … All that is required for these

> purposes is that the representation be intended, one way or another, to reach the claimant in order to induce him to act on it. Nor is it even necessary that the defendant know precisely who the statement is intended for, provided he intends it to be relied on by someone in the claimant's position; thus in another banker's reference case a bank was held liable when it sent a fraudulent reference to another bank for the benefit of a customer of whose identity it was entirely unaware. …
>
> 17.33. Nevertheless, it must be shown that there was an actual intention to deceive the claimant in question, whether individually or by reference to a class to which he belongs; it will not be enough merely to show that the misstatement is reasonably calculated to deceive him…'

71. The cases to which the Claimants referred in this context are not to contrary effect. What was said by Christopher Clarke LJ in *OMV Petrom SA v Glencore International AG* at [13]-[14] was merely that the claimant's predecessor in title had fallen within all three of the categories referred to in what is now *Chitty* paragraph 9-037. He did not need to address the question of whether 'expectation' of the passing on of the representation was sufficient. Equally, in *Taylor v Van Dutch Marine Holding Ltd*, what the judge (Ms Dias QC, as she then was) said at [281] was not addressing the issue of whether it was necessary for there to be an intention to induce the representee, or whether it would be sufficient for there to be a mere expectation of the representation being passed on. She was rather addressing (obiter) the point that someone might be a representee if their advisors relied on the representation, even though it was not passed on to the principal. She recognised that this might be the case if the representor had 'expected' that the representation would be passed on: but this does not indicate that there need not have been an intention on the part of the representor that the principal should be induced. That there is an expectation of a result is often good evidence that the result was intended.

The Evidence

72. As in almost all commercial cases, the documentary evidence is the primary and most reliable evidence as to what occurred in this case.

73. In the present case, however, the evidence of the factual witnesses is of more significance than in many commercial cases. Partly because of the somewhat informal way in which some of the business of IBSL and of its directors was conducted, and partly because of the domestic nature of some of the matters involved, there is little documentation covering some important events. Mr Goyal was apparently known for not producing or keeping many documentary records. Partho said of him ironically: 'Manish has one great quality about him, he documented nothing.'

74. The witnesses called on behalf of the Claimants were Mr Goyal and Mrs Goyal themselves, Mr Leggett, Mr Peter Bosley-Sharpe and Mr Rajinder Singh Banga ('Mr Banga').

75. Mr Goyal's evidence disclosed him to be a man of considerable intelligence, shrewdness and determination. His evidence revealed that he regards with bitterness the fact that he no longer has a role in the management of the company which he founded and which he considers he contributed much toward.

76. His evidence was in a number of important respects unsatisfactory. He was not infrequently argumentative, evasive or guarded in his answers to questions. He gave what appeared manifestly incorrect evidence on a number of points, including whether he was aware of the recommendation by RSM in the draft VDDR to bring in a replacement CFO; and his denial that he was responsible for Mrs Goyal's decision to instruct the firm of solicitors, Temple Bright, to assert a claim on her behalf.

77. It is not an uncommon feature of litigation that witnesses who have a considerable amount to gain if their recollection of events is accepted by the court are biased in their recollections towards the outcome they seek; and that the witness may unconsciously reconstruct those events (as recognised, for example, in *Bannister v Freemans* [2020] EWHC 1256 (QB) and in *Jackman v Harold Firth & Son Ltd* [2021] EWHC 1461 (QB)). It appeared to me that these were features of Mr Goyal's evidence. I concluded that his apparent recollection of matters which assisted his case was not as clear, in various instances, as he suggested. An example is his account of his call with Mr Snodgrass from Bahrain on 4 December 2018. While his evidence was that he remembered clearly what had been said, the clarity of his recollection is dubious given that it has become apparent that there had already been a discussion between him and Mr Snodgrass of the issue of the allocation of sweet equity on a call which occurred on 30 November 2018, of which Mr Goyal had no recollection.

78. I concluded that it was in general unsafe to rely on Mr Goyal's evidence where this was not supported by documentary evidence or satisfactory corroborative evidence of other witnesses.

79. In the case of Mrs Goyal's evidence, this was not central. It was in some respects internally inconsistent. It appeared, moreover, to bear the hallmarks of rehearsal. She repeated on four occasions, in nearly identical terms, that representations had been made to Mr Goyal, that he 'relayed' them to her, and that she 'relied' on them, which was language mirroring the pleadings. Equally, she repeated, in nearly identical terms, phrases to describe a conversation between her, Mr Goyal and Mr Banga in late December 2018, and as to a discussion which she said she had had with Mr Goyal in February 2019. Again, I considered that it was likely that her evidence had in some respects been the subject of unconscious reconstruction, influenced by the strength of Mr Goyal's views as to what happened to him, and by the process of preparing for and giving evidence.

80. Mr Leggett's evidence was profoundly unsatisfactory, and in parts dishonest. I found it very troubling that Mr Leggett in his witness statement, although seeking to give the impression that, in late 2018, Mr Balasubramaniam was complaining about Mr Goyal and that Mr Leggett had been 'shocked' by this, gave no indication at all that he himself, in that period, and specifically in emails of 21 November 2018, had been criticising Mr Goyal, had described him as having 'maverick moments', and had said that there was 'a case for Manish to no longer hold an operational role.'

81. His evidence was also clearly not the product of any good recollection of the events he described. Just before he testified, it was intimated that the first meeting of which he gave evidence took place, not in January 2019, but in November 2018. Yet this account was impossible to reconcile with the contemporary documents, including a message sent by Mr Balasubramaniam to Mr Leggett on 5 December 2018. His evidence changed in other respects as well.

82. Most striking was his evidence in relation to an email which he had sent to Mr Snodgrass on 27 March 2020. That email had contained a clear threat or warning that a new venture of his would seek to poach staff from IBSHL. Mr Leggett sought to explain it by the – to my mind clearly dishonest – evidence that his new business would be seeking to help staff transition back to IBSHL to rescue the business.

83. It is not clear to me why Mr Leggett gave the evidence which he did. It may well be, as submitted by the Defendants, that he was motivated by a grudge against Mr Balasubramaniam, who had come to regard him as not performing properly in his role as COO, and had been on the point of dismissing him in March 2019 when Mr Leggett resigned instead. Be that as it may, I concluded that I could place no reliance on Mr Leggett's evidence.

84. The evidence of Mr Bosley-Sharpe was of limited significance. Mr Bosley-Sharpe had, it appeared, a close working relationship with Mr Leggett, and I considered that some of Mr Bosley-Sharpe's evidence was shaped by Mr Leggett's stance and attitude to the individuals involved in the proceedings. It was also in part evidently not based on a very good recollection of what had occurred. This was shown in the case of his evidence as to whether Mr Leggett had told him that Mr Balasubramaniam had said or implied he could 'manage' BGF so as to bring about Mr Goyal's removal. At one point he suggested that that had been said; immediately after he said it had probably not.

85. Mr Banga was the Goyals' personal accountant. There was no reason to doubt Mr Banga's honesty, but his evidence was of limited importance in relation to the issues which I have to decide.

86. The First to Fourth Defendants called Mr Snodgrass and Mr Swarbrick.

87. Mr Snodgrass's evidence was given carefully and, I considered, honestly. His evidence was on occasion guarded, but he sought to answer the questions put to him; and I concluded that his account was in most respects accurate and consistent with the contemporary documents viewed as a whole and in context.

88. Mr Swarbrick is Head of Portfolio at BGFIML. His evidence, which addressed the investment process in some detail, and set out his recollection of the investment committee meetings at which the investment in IBSL was considered, was not challenged.

89. Mr Balasubramaniam gave evidence himself, and also called Partho and Mr Neville.

90. Mr Balasubramaniam's evidence was, I considered, that of a truthful witness. He was prepared to make concessions where appropriate, and largely gave succinct answers to the questions put to him.

91. Partho's evidence was, in my judgment, compelling. He is clearly an independent-minded man, who had no interest in the outcome of the case, and whose conduct was not impugned. He admitted to having a grudge against Mr Goyal, because of what he saw as Mr Goyal's 'daylight robbery' in relation to the settlement of their dispute (to which I will return), but this frank answer seemed to me to increase rather than reduce the reliability of his evidence.

92. Mr Neville's evidence was not challenged in any way by the Claimants, and I accept it.

Analysis

Preliminary Matters

93. The most important issues on liability in the present case are as to whether actionable misrepresentations were made and if so whether they were made dishonestly, and as to the existence or otherwise of a conspiracy between the Defendants. I will come in due course to make factual findings in relation to those points. Before I turn to the most centrally relevant factual issues, there are certain other aspects of the facts, some of which were the subject of dispute, which it is helpful to identify first. They provide a context which helps in an assessment of the competing cases as to what was actually said, the context of what was said, and in relation to whether other ingredients of the torts alleged (eg reliance) are made out. I will consider four such aspects.

The Dispute between Partho and Mr Goyal and its resolution

94. When Partho had initially, in 2008, joined IBSL, it had been agreed that a significant number of shares would be transferred to him, and they were in fact transferred. Partho's evidence was that he had at the outset discussed paying for those shares, and there had been mention of a sum of some £40-£50,000. Mr Goyal, according to Partho's evidence, had postponed a decision on the issue of the price, even though Partho had asked him about it a number of times. After it had been decided that Partho would exit, however, Mr Goyal, according to Partho, demanded 20% of the value which might be realised for Partho's shares, 'as consideration for when you acquired the shares'. Partho disputed his entitlement to such an amount.

95. As part of this dispute and, as I find, instigated by Mr Goyal, a claim was made by Mrs Goyal that she 'beneficially owned' 62,400 A Ordinary Shares, which were registered in the names of Partho and Naveen.

96. Mr Goyal's case was that this dispute was settled on 25 October 2018 after a mediation facilitated by PwC; but the terms of the settlement were only finally executed as part of the deal documents in March 2019, because the company had been taking advice on the tax consequences and structuring of the settlement. Partho's evidence was that, on 25 October 2018, he had agreed with Mr Goyal (and Mrs Goyal) that he would pay 16% of the value of his shares, as well as past dividends attributable to that 16%, but had said 'Manish, this is contingent on the exit happening [ie that Partho could divest himself of his shares]. You only get that if the exit happens. If it doesn't happen, nothing is agreed. We'll go through the court.' He said that that was indeed what happened, in that he paid £3.2 million as part of the divestment arrangements.

97. I accept the thrust of Partho's evidence on this point: namely that a binding settlement of the share dispute was contingent on the divestment going through. This is consistent with the fact that a draft settlement agreement to embody the compromise which was prepared shortly after 25 October 2018 had to be abandoned because there were unresolved tax implications, and with PwC's understanding in December 2018 that there was an 'on-going dispute', as recorded in Ian Fraser's email of 18 December 2018. It is borne out by Partho's description of what had been agreed which is contained in an email of 24 January 2019 (copied to Mr Goyal among others), and which said that

the parties had reached a compromise for the transfer of 16% of equity value from Partho to Mr Goyal 'immediately after this divestment transaction and contingent on this divestment transaction.' Importantly it is also consistent with the way in which the settlement was ultimately documented, namely in Deeds of Settlement and Release dated 5 March 2019, which stipulated that the Deeds were to be effective 'Subject to completion of the Transaction…', which was defined to mean the purchase of IBSL's shares by IBSHL.

98. It is convenient to mention here that one feature of the settlement of the dispute, embodied in Deeds of Settlement and Release, was that each of Naveen and Partho granted Mrs Goyal options to buy certain F and G Shares in IBSHL. The strike price of the option granted was very low (1p per hundred Option shares), and Mrs Goyal was entitled to exercise these options at any time between 5 March 2019 and 4 March 2029.

IBSL's Finance Function and Mr Goyal's role before Divestment

99. The second group of points is the nature of IBSL's finance function before the divestment, the role performed by Mr Goyal, his suitability for that role and what was known about this and by whom.

100. It is evident that prior to the Divestment, IBSL's finance function needed upgrading, and that this was widely acknowledged within IBSL's management. It was partly a matter of personnel. In the VDDR, the Finance Team organogram showed Mr Goyal as the CFO, with Mrs Goyal as one of three reporting to him. Another was Vijesh Kedia, who had, according to Mr Balasubramaniam's evidence, been brought into the company by Mr Goyal, and was understood to be a distant relative of his. In the next layer down, another member of the Finance Team was Vandana Goyal, Mr Goyal's sister-in-law. Of itself, this composition of the Finance Team suggested a function more suited to a family-run business than a rapidly growing international concern.

101. It was, however, not only an issue of the identity of the personnel. The finance function was not performing adequately in a way consonant with the size and ambitions of the business. There were no 'hard close' or equivalent month end processes, and monthly management accounts were inadequate. The cash basis of accounting employed by IBSL was unsatisfactory. It appears that not all the subsidiaries were using the same accounting software. There was rudimentary financial reporting and budgeting. There was no formal FX hedging strategy.

102. These limitations in the performance of the finance function are reflected in the VDDR, which, in its final form, referred to the fact that 'the Company does not produce conventional monthly management accounts and month-end processes do not represent a "hard-close" i.e. no monthly accruals and prepayments are posted.' It also stated 'Additional resources for finance team: The current CFO fulfils other responsibilities and we believe based on the size of the business in FY18 the finance team may require further investment. The adjustment [to reported EBITDA] of £170k represents salaries of £150k plus employer's NIC at a rate of 13%.'

103. There were concerns on the part of the management of IBSL, including Mr Balasubramaniam, that because of the range of roles which Mr Goyal played, and because his strongest skills were not in the area of what might be described as the technical financial aspects of a CFO's role, it would be necessary after or in conjunction

with the divestment to make a relatively senior hire to provide IBSL with the necessary financial expertise. I am in no doubt that Mr Goyal was aware that this was a view held by other managers within IBSL. As I have already said, I find that Mr Goyal did see a draft of the VDDR, which was sent to him and others by PwC on 14 September 2018 with a request for comments. That draft had included a paragraph which said: 'Replacement CFO: the current CFO currently fulfils other responsibilities and we believe based on the size of the business in FY18 the current finance team requires investment, potentially via the recruitment of a new CFO.' Similarly, in a draft of the Investment Memorandum prepared by PwC and circulated, amongst others, to Mr Goyal at the end of August 2018, there was a provision for a sum for 'Replacement CFO'. I consider that it is likely that Mr Goyal objected to this phraseology in both documents. Be that as it may, however, I regard it as clear that he will have known that both other managers and IBSL's advisors considered that there would need to be a strengthening of the finance function by a senior hire.

104. I also consider it clear that, during the period leading up to the divestment, Mr Goyal was aware that BGF, and in particular Mr Snodgrass, would assist in the recruitment of a senior finance resource. Mr Snodgrass's evidence was that on the visit which they paid, together, to Delhi on 28-30 January 2019, he had discussed recruitment for the finance team and said that BGF could help through its 'Talent Network'; and that the person to be recruited needed to be able to do the core technical aspects of the role from the start, but might provide succession for Mr Goyal over time. Mr Snodgrass was not challenged on that account, and it appeared to me credible.

Anticipation of Changes in management of business post-Divestment

105. The third group of points is that it was anticipated, including by Mr Goyal, that there would be some changes and improvements in the way in which the business was managed as a result of the divestment. Some of those changes were reflected in the 100 Day Plan, prepared by Mr Snodgrass and colleagues at BGF as a plan for the period after the investment had been completed, which was incorporated into the transaction as an annexure to the Investment Agreement. Mr Goyal had seen the 100 Day Plan prior to completion. It included the following:

'Financial and trading

…

2 Maintain a financial forecasting model, and implement rolling forecasts

3 Implementation of full accruals accounting policy, and consistent financial reporting framework/processes

4 Implementation of formal hedging policy

5 Action financial reporting and process recommendations arising from FDD:

-Review and formalise month-end reporting process (and document)

-Review ERP system

-Review purchasing processes (automate where possible)

-Review working capital management and credit control processes

…

Recruitment

13 Finalise recruitment of Finance resource

…

Management / Board

15 Agree a schedule of monthly board meetings

16 Implementing minuting of Board meetings

17 Establish a remuneration committee

18 Exit planning and strategy meeting to be undertaken by Board

…'

106. These proposed changes were part of what was envisaged by all concerned as a 'professionalisation' of the business, which was one of the purposes of the transaction. Mr Goyal, in an email to shareholders dated 15 January 2019, had himself stated that: 'The key objectives of the exercise was (sic) to secure a reputable partner as shareholder to further professionalise, institutionalise best-practices in business processes and compliance which will help us prepare for an even bigger next step, most likely a stock exchange listing.'

107. Given these matters, I regard it as clear that Mr Goyal must have understood, and did understand, that the divestment transaction would lead, not only to changes in the finance team, but also to some changes in his relationship with other members of the management team, and that that the process of decision-making would become more structured and formal.

BGF and IBSL

108. The fourth group of points concerns the nature of the relationship between BGF and IBSL, before PwC began the process of seeking investors to make the divestment process possible. What appears to me of some significance is that there was, effectively, no such relationship.

109. Mr Snodgrass's evidence on this, which I accept, was that, while IBSL may have appeared on BGF's internal market lists beforehand, the first time that he recalls being told about IBSL was on a call from a partner at PwC called Dan Bessant, in early 2018. Thereafter, Mr Snodgrass met Partho in March 2018; then Mr Bessant told Mr Snodgrass that any potential deal would be put on hold because there were difficulties in the finance team at IBSL producing the necessary figures and reports; and then in about September 2018 Mr Bessant told Mr Snodgrass that the investment process was now commencing properly. IBSL held a first management presentation for BGF on 12

October 2018. Mr Goyal, Mr Balasubramaniam and Mr Leggett were in attendance for IBSL; Mr Snodgrass, Mr Teasdale and Mr Rea for BGF. That was the first time that Mr Snodgrass had met or spoken to Mr Goyal or Mr Balasubramaniam.

The Claim in Deceit

110. I will consider the issues of whether actionable misrepresentations were made, whether there was dishonesty, and whether there was reliance in turn. While they are dealt with in sequence for the purposes of exposition, I have considered the evidence as a whole, and that primarily relevant to one issue for the purposes of the others.

Were Misrepresentations Made?

111. I have already identified that there are eight occasions which the Claimants rely upon when, as they say, things were said or otherwise communicated, which give rise to the implied misrepresentations on which they rely. Four of those occasions involve Mr Snodgrass allegedly saying or doing something which founds the implied representations contended for (and are thus of direct relevance to the claim against the First to Fourth Defendants). Four of them involve Mr Balasubramaniam saying or doing something (and are thus of direct relevance to the claim against him). I will consider first the four involving Mr Snodgrass, and then the four involving Mr Balasubramaniam.

The occasions involving Mr Snodgrass

Meeting on 7 November 2018

112. The Claimants' case in relation to this occasion was as follows. There was a meeting between IBSL, PwC and BGF at the Sofitel Hotel, Heathrow. At that meeting, Mr Snodgrass asked for details of the composition of the finance team after the investment; Mr Goyal then said that the plan was to have two finance controllers under him, one of whom was in situ, and that there was a provision of £100,000 for the new position. Mr Snodgrass then said: 'That sounds good', or 'it sounds good'. That is said to give rise to the 'Absence of Intention' implied representations.

113. BGF's case is that the meeting lasted a few hours, but the exchange on which the Claimants seek to rely was of some 2-3 sentences spoken by Mr Goyal and 2-3 words spoken by Mr Snodgrass towards the end of the presentation. Mr Snodgrass's evidence was that, at the end of the meeting, he had asked as to the state of the current finance team at IBSL, to get a better understanding of how it operated; Mr Goyal had discussed the then current situation, and had acknowledged that someone with specific financial skillsets needed to be brought in to bolster the team, but had not mentioned any figure. He thought that he might, in response, have said something along the lines of 'sounds good'.

114. Insofar as they differ, I prefer Mr Snodgrass's account of what was said. I found his evidence, in general, more careful and reliable than Mr Goyal's. Whichever account is right, however, I am of the clear view that Mr Snodgrass's saying 'it sounds good' or something like it, was not intended by him, and would not reasonably have been understood, as more than an acknowledgement of what had been said, and, in effect, an invitation to move the conversation on. Similarly, I do not consider that any reasonable

person in the position of Mr Goyal was entitled to take Mr Snodgrass's statement seriously so as to rely on it in entering into the contract. It is important to bear in mind the context. The meeting of 7 November 2018 was only the second management presentation to BGF, and occurred before BGF had been recognised as the preferred bidder. It occurred at what was, despite the Claimants' arguments to the contrary, an early stage in the process, and one at which BGF was seeking to learn information from management. It was not an occasion on which BGF would be understood as giving assurances, or as expressing any settled intentions, as to how the business would look after the investment.

115. Equally, I do not consider that the 'Absence of Intention' representations can be implied from Mr Snodgrass's comment. Given the early stage in the investment process at which the meeting took place, and the context in which the words were spoken, which included a recognition by management that there would need to be changes in the finance function after the divestment, Mr Snodgrass would not be expected, or understood, to be making any representations as to his intention (or lack of intention) as to what Mr Goyal's role would be after the divestment. Because of this, I do not consider that, viewed objectively, any such representations can be implied.

Telephone call on 4 December 2018

116. The Claimants' case, based on Mr Goyal's evidence, is that, on a telephone call on 4 December 2018 between Mr Snodgrass and Mr Goyal who was in Bahrain, there was a discussion as to the allocation of sweet equity and whether it could be the subject of unanimous resolution by the board. Mr Goyal's evidence was that Mr Snodgrass proceeded to say, amongst other things: 'The board decisions will be made by majority, and we [ie BGF] will not have a veto right. You will be part of the management team, a member of the board and remuneration committee in making equity allocation and other key decisions. I and the chairman, as non-executives, will be there only to help and support the decisions of the management team which will continue in their respective roles. Even the Chairman will not have a casting vote. BGF do not buy companies, we invest in management teams and this investment is basically in you.'

117. Mr Snodgrass's evidence was that this call was to discuss the terms of the deal in more detail, and in particular the allocation of sweet equity. He thought that he had said words to the effect that 'we [ie BGF] back the management team', or 'we are backing you as the management team', where 'you' referred to the whole team. That is the sort of thing he has said very many times ('probably 1000 times in my career') as a description of BGF's approach. He thought that he had said that Mr Goyal would be part of the management team, and a member of the board; that the non-executive directors would not be involved in the day-to-day running of the company; and that after the divestment, he, as an Investor Director, and the independent Chair, would be non-executive directors, whose role was to support the executive directors in the management of the business. He believed that he had explained how the BGF group was formed; that it was mandated to hold only a minority shareholding in any portfolio company; and that its approach was not to buy companies.

118. Further, Mr Snodgrass gave evidence that while he had said that there would not be a requirement of unanimous board decisions, he would not have said that BGF would have no veto rights, because in some matters it would, in effect, have such a right. He would not have said or implied that after the divestment, Mr Goyal would be a voting

member of the remuneration committee, as it is not normal or standard for a CFO to sit on a remuneration committee; but he might have said that everyone would be able to give their views on sweet equity allocation. He would not have said 'this is an investment in you', because that would be the sort of 'corny or cheesy sales lines' which he eschews. He did not say that the current management would continue in their respective roles.

119. Neither man kept notes of this call. Doubtless each of their recollections is imperfect. In Mr Goyal's case, as I have already said, he had no recollection of the call which he and Mr Snodgrass had already had on the subject of sweet equity allocation on 30 November 2018. Equally, his suggestion that Mr Snodgrass had said that BGF would not have any veto right is inconsistent with the Heads of Terms which were under discussion. Insofar as their accounts of the 4 December 2018 call differ, I preferred Mr Snodgrass's. The reasons he gave for being sure that he had not said various things which Mr Goyal attributed to him appeared plausible to me. In the case of the suggestion that Mr Snodgrass had said that management would continue 'in their respective roles', I concluded that this was an embellishment by Mr Goyal. As the Defendants pointed out, it is his terminology, as evidenced by the start of his cross-examination by Ms Anderson KC. Furthermore, in circumstances in which it was already in contemplation that there would be 'professionalisation and institutionalisation' of the company's business practices after divestment, it seems to me improbable that Mr Snodgrass would make a statement as to management continuing in their 'respective roles'.

120. Given this finding, I also find that what Mr Snodgrass said did not carry with it any of the pleaded Absence of Intention implied representations. Given that I am not satisfied that Mr Snodgrass said anything about Mr Goyal's future role as CFO, as a 'key person in the executive management team' or as to his keeping the full extent of his existing 'management role' I do not consider that he made implied representations as to his intentions (or absence of intentions) in relation to whether Mr Goyal should continue to perform such roles. From what Mr Snodgrass did say, a reasonable person would not have inferred that he was making any such representations.

Meeting at Holiday Inn, Winnersh Triangle on 19 December 2018

121. In the APOC and RAPOC it was pleaded that this meeting occurred in 'early December 2018'. It became common ground, however, that this one-to-one meeting between Mr Goyal and Mr Snodgrass had occurred on 19 December 2018.

122. The evidence in Mr Goyal's witness statement differed to some extent from the Claimants' pleading about this meeting. Further, only some of what Mr Goyal alleges that Mr Snodgrass said at that meeting is pleaded to have given rise to misrepresentations. Those things of which Mr Goyal gave evidence which are pleaded as giving rise to implied representations which were false were as follows. First, that Mr Snodgrass had said that 'BGF are not buying Invenio but investing in Arun, you and the management team'; and that 'the current Invenio management will continue to run the business in their respective roles and BGF will help catapult the business…' Second that Mr Snodgrass had asked whether Mr Goyal would consider taking money off the table to de-risk himself. Third, that after an explanation by Mr Goyal that he was committed to Invenio, that he loved running the business, that he saw the next exit as being a trade sale, that he did not envisage moving over at that point, and that he

would do his succession planning nearer the time, Mr Snodgrass had said 'your continuity and succession plan will work well with BGF's philosophy and investment timelines.'

123. Mr Snodgrass's initial recollection was that this meeting had been on 10 December 2018. His account in his witness statement was that he said BGF 'were backing the management team, but did not say that BGF were investing in Arun and Manish specifically.' He also said that he did not say that the current management team would continue to run the business in their respective roles or that BGF would help catapult the business, though he did state that BGF had a network that the business would be able to take advantage of. He accepted that he said words to the effect that it was positive that Mr Goyal was rolling over his shares and it was not in BGF's interests that he should cash out. He also agreed that Mr Goyal had said that he would not move to a trade buyer and that there should be planning in place for that to happen.

124. Once again, there is no note of this meeting, nor is what was discussed recorded in any detail by any contemporary documents. Even though Mr Snodgrass realistically accepted that he could not be 100% certain of what had happened because of the passage of time, I considered that his account was the more reliable. In addition to points which I have already set out as to the reliability of Mr Goyal's evidence, there are particular reasons to doubt the accuracy of his account of this meeting. Thus, when the Claimants' case was first set out in the LBA, this meeting was mentioned very briefly, on the basis that the representation as to the management team remaining in place, made on 4 December 2018, 'was repeated'. Furthermore, the change in the date on which Mr Goyal accepted that the meeting had occurred demonstrated an apparent error in his recollection, in that he also gave evidence that he had discussed with Mrs Goyal in early December 2018 matters which, on his evidence, were only discussed with Mr Snodgrass on 19 December 2018 (namely, that Mr Snodgrass had asked about whether he would take some money out).

125. As with the equivalent allegation in relation to the 4 December 2018 call, I do not accept that Mr Snodgrass said that BGF was investing in Mr Balasubramaniam and Mr Goyal specifically. Equally, I consider the suggestion that Mr Snodgrass said that the current management would continue to run the business 'in their respective roles' to be an embellishment. I accept Mr Snodgrass's evidence that 'It wasn't a discussion around roles. It was a general discussion about that we back management teams and the style of BGF as an investor.'

126. In this case, again, I do not consider that the things which I am satisfied were said implied the Absence of Intention representations.

Telephone call on 18 January 2019

127. The Claimants' pleading of what occurred was that, during a discussion as to the contractual terms of the investment, Mr Goyal 'apologised for the work this involved and stated [Mr Snodgrass] should have confidence that with [Mr Goyal] Invenio would remain in a safe pair of hands from a financial point of view'; and that Mr Snodgrass 'acknowledged [Mr Goyal's] comments and did not correct [Mr Goyal's] understanding that he would continue in his position in the management of the business.' In his witness statement, Mr Goyal's account was that he had said that he 'was sorry for raising so many issues on the [Heads of Terms], and the work this had

involved, but that BGF should have confidence [from this] that with me involved, Invenio would remain in a safe pair of hands as far as the finance function was concerned. Alex responded saying that he did not mind difficult questions but made no comment on my statement that the finance function would remain in a safe pair of hands (ie mine).'

128. In his oral evidence, when asked about the difference between the pleading ('… from a financial point of view') and his witness statement ('… as far as the finance function was concerned'), he said that it must have been the latter which he had said 'because I was not the one financing the business'. He confirmed that Mr Snodgrass had not said anything in response to his own comment.

129. I considered that Mr Goyal's recollection of what he said was very imperfect. The account in the pleading was the earlier, and might be assumed to be more likely to be reliable. I considered that the change to the account in the witness statement was because that account better suited his case, and he had persuaded himself that it had been said. I do not regard it as likely that he said any words to the effect that the 'finance function' would remain in good hands: it bears the hallmarks of an embellishment.

130. In any event, Mr Snodgrass did not make any reply. Especially given that the context was a discussion about the economics of the deal for shareholders, I do not consider that his failure to make a response to what appears to have been a somewhat jokey comment carried with it any representation, express or implied. Nor do I consider that Mr Goyal or a reasonable person in his position would have understood it as having done so at the time.

The occasions involving Mr Balasubramaniam

131. I now proceed to consider the Claimants' case as to how and when Mr Balasubramaniam made misrepresentations. Before turning to the four particular occasions relied upon it is important to note that assessing the case that misrepresentations were made by Mr Balasubramaniam involves some different considerations from those involved in assessing the case that Mr Snodgrass did so. Mr Salve KC himself recognised that Mr Balasubramaniam's alleged representations were 'qualitatively different'. What I believe Mr Salve KC was recognising in saying this, and what, in any event, I consider clearly to have been the case, was that what was said between Mr Goyal and Mr Balasubramaniam was in the course of a complex and fluctuating relationship. It was, as I find, one in which neither party, and certainly not Mr Goyal, was likely to rely on isolated statements made by the other as to his intentions.

132. Thus, it is apparent that the relationship of the two men was difficult, and during (and after) the divestment process became more so. They would have what Mr Balasubramaniam called 'multiple fall-outs', some involving serious arguments, with raised tempers, and they would then seek to find a way of cooling matters down and working together. Mr Balasubramaniam's description of a meeting in December 2018, involving the two, and of its aftermath, included: 'I became livid … Manish slammed the phone down, he was intimidating, threatening .. [He was] visibly furious … I was definitely unhappy…' Further, he said, 'Right through that period, it was very difficult because Manish's promises to me and his actions were inconsistent with each other.

There would be a flare up, him doing something and then saying to me, "I will not do it anymore or let's co-exist etc."'.

133. Albeit they occurred after completion of the divestment the up and down nature of the relationship between Mr Goyal and Mr Balasubramaniam is well illustrated by the events of October/November 2019, when Mr Balasubramaniam first resigned amidst complaints by him as to Mr Goyal, then effected a reconciliation with Mr Goyal and withdrew his resignation, and then concurred in Mr Goyal's dismissal.

134. Furthermore, it was a feature of this relationship, as I find, that Mr Goyal did not regard Mr Balasubramaniam as an equal. He regarded him as being a useful employee of the company, but as subordinate to him as founder and a large shareholder. Partho's evidence included this: 'Manish has referred to Mr Balasubramaniam in private conversation with me as 'Mulazim', a bit of a derogatory term in Hindi, which kind of means a personal 'Man-Servant'. In Manish's mind there probably were two classes – 'Owners' and 'Servants'…' Mr Goyal denied that he had said this, but Partho was not cross-examined about it. I consider it likely that Partho is right about the word used; but whether Mr Goyal used the word 'Mulazim' or not, I am sure that Partho was right in describing Mr Goyal's attitude. In my assessment, Partho was far too astute and perceptive to be wrong about that.

135. These matters are significant in deciding what was said, the context in which it was said, and in relation to questions of reliance on what was said.

Email of 20 December 2018

136. On 20 December 2018, Mr Balasubramaniam sent an email to Mr Goyal, in the context of a disagreement between them as to what share of sweet equity Mr Balasubramaniam might get. Mr Balasubramaniam wrote:

'I am not sure what more needs to be discussed on the point of sweet equity but I am happy to get into a call if it has to be discussed. Would be good to have Partho to mediate if required.

My rationale is:

1. When you started Invenio 1.0 you needed a team to get you the value. That team was led by Partho, it had Naveen as a key member, it also had Sharadha, Ganesh, Laura, Shakeel, Ramesh and a possibly a few others. … They were all given a stake...

2. Along the line Invenio transition smoothly to Invenio 2.0 which had me join, Sanjay had left the business and Martin and me joined the business.

3. I was told very clearly in the meeting in February at our Regus office by Partho in your presence that I will be given an ownership. That was a commitment which was honoured nearly 2 years later and only after me almost begging for it and it was a measly 1% and that was disappointing. I was replacing Sanjay and I feel I was cheated by the company by giving me 1% where Sanjay had 22%. I had expected at least 5% at that stage.

4. I decided to continue because I was committed and because of Partho.

> 5. Now, with Invenio 3.0 it is not a transition. We are growing scale from 25M to about 60M with an entirely new leadership team including me. Partho is being replaced by a new partner. A Newco is technically being created. Therefore with a new CEO and new senior members I am asking for a restructuring of the shares irrespective of BGF. With or without a new partner or if we were to do this with Partho as well, we should look at a new structure in my view. You may disagree but this is my view.
>
> 6. If I need to deliver the said value I cannot do it if me and my team are not incentivized by upto 17% at this stage. I see this as a milestone where you can take a decision on whether you wish to do this or you could have other alternatives. I can also pursue other opportunities and set up things on my own or do whatever I can with my career.
>
> 7. I have nothing personal against you and I would continue to benefit from you as the CFO and your ideas and contribution through special projects.
>
> 8. I will continue to report to the board where you are a member and will continue reporting to you as a major shareholder by providing clear visibility of initiatives and progress on a regular basis.
>
> I do not see a need to discuss this anymore as a discussion might lead to reactions and comments which can hurt our relationship. For me my relationship is more important than Invenio and so is my peace of mind. Having sad (sic) that you know about my passion for the business. Ball is in your court, with or without BGF. With BGF, I suppose we need to decide now. You know I was OK with 5% but the recent discussions as well as research tells me I can do it only with a 10% for myself and for the team 7%. I have taken a 6 year journey that started with 2.0 but cannot continue if I am not treated fairly.'

137. The Claimants' case is that paragraph 7 of the email gave rise to the implied Absence of Intention representations and was false because Mr Balasubramaniam did not intend or believe that he would continue to benefit from Mr Goyal's participation, had no intention of permitting Mr Goyal to continue as CFO after the divestment, and knew that BGF intended Mr Goyal to be removed.

138. Even looking at that paragraph alone, in light of what was known by both men about the weaknesses in IBSL's finance function, the reference to 'your ideas and contribution through special projects' tended to indicate that Mr Balasubramaniam saw Mr Goyal's principal contribution being not in the more technical financial functions of a CFO.

139. More generally, I do not consider that, judged objectively, Mr Goyal was entitled to rely on that paragraph when deciding whether to enter into the divestment. It was only one part of an email, the whole of which was putting forward a position as to what Mr Balasubramaniam's equity share should be, divestment or no divestment. Paragraph 7 reads, and would be understood, as a conciliatory comment, designed to sweeten the pill of the remainder, and I do not think that Mr Goyal was entitled to take it seriously so as to rely on it in entering into the divestment.

140. I do not, however, think it necessary to say more as to whether paragraph 7 might constitute or imply an actionable representation. This is because, to anticipate, given the events of the very next day, 21 December 2018, which I will refer to below, I am

quite sure that Mr Goyal did not in fact rely on anything in or implied by this email of 20 December 2018 in entering into the divestment.

Meeting on 2 January 2019

141. The Claimants rely on certain statements which they contend were made by Mr Balasubramaniam at a meeting on 2 January 2019. It is necessary to explain the context of that meeting, as it emerged in the evidence. There was a certain amount of confusion in the evidence as to the dates of the relevant meetings, but the following is, as I find it, the position.

142. After the sending of the email of 20 December 2018, which I have considered immediately above, a meeting was held at the Holiday Inn, Winnersh Triangle, involving Mr Balasubramaniam, Mr Goyal and Partho, on 21 December 2018. It was a very stormy meeting. Mr Goyal's account in his witness statement is that, at the meeting, Mr Balasubramaniam said he would not participate in a scheduled call with an important customer unless he got what he wanted in terms of sweet equity; that 'the discussion became very heated at this, I was of the view that he was trying to hold the company to ransom, I banged the table in frustration and told Arun that it was so unbecoming of a CEO and since he says that it will be either him or me in the company, it was an easy decision, and he was fired. At that Arun said it was unbecoming for a CFO to bang the table…'

143. Partho then set up a further meeting between Mr Balasubramaniam, Mr Goyal and himself on 2 January 2019 in order to attempt to mediate between Mr Balasubramaniam and Mr Goyal. Partho's evidence is that he left the two alone, telling them that they either had to find a way to work together, or they would have to go separate ways, with Mr Balasubramaniam probably leaving. The upshot was that the two concluded that they could find a way of working together.

144. There is no note of that meeting. Clearly it will have involved much said on both sides. The accounts given of it by Mr Goyal and by Mr Balasubramaniam are very different. The Claimants' case and Mr Goyal's evidence is that Mr Balasubramaniam said

> 'of course, you are the founder and key shareholder of the company, fundamental to the operations and finance function of the company. I have already said in my email that you will continue to be the CFO and the company will benefit from it I also understand that you are posing a lot of confidence in me and plan to rollover all your equity which shows your commitment to the [business] plan we have drawn to grow the company in this next phase; we are definitely one team. I now realise that you and Partho were able to work so well because you treated each other as partners whereas I have considered myself only as an executive. Let us treat each other as partners and have complete transparency between us and we will thrive. Invenio is a great company, and we can definitely accomplish the set goals working together.'
>
> Then, in response to Mr Goyal asking whether Mr Balasubramaniam's remark about it being him or Mr Goyal in the company, Mr Balasubramaniam had said: 'Manish, it was definitely an aberration. I have high regards for you and what you have done for the company. We will not only co-exist as we have done in the last so many years, we will thrive and take Invenio to new heights. Please erase that we ever had the disagreement from your memory.'

145. Mr Balasubramaniam's account was that Mr Goyal had said: 'I'm sorry. I shouldn't have lost my temper. I have to control my anger. I'm, you know, keen on working with you and I'm certainly keen on making it happen, but I want you also to ensure that you are able to work with me and we should be able to co-exist and can we co-exist?', to which Mr Balasubramaniam's response had been 'yes, absolutely, we can co-exist but I don't want us to continue with parallel management and all of that.' At another point in his evidence he said, as I understood it in relation to this meeting among others, that they would give each other 'assurances': 'in the sense of reconciliation – it was a case of people shaking hands and agreeing and assuring each other that they could work together going forward.'

146. It is impossible for me to make findings as to all that was said during what Mr Balasubramaniam described as a 'very long discussion'. I consider, however, that Mr Goyal's account is an unreliable reconstruction, and I do not accept it. It is, in the first place, an obviously partial and one-sided account of what must have been a discussion with some reciprocal assurances, otherwise it would not have resulted, as it did, in the two attempting to work together again and move towards the divestment. I consider it implausible that Mr Balasubramaniam would have mentioned an apparently inconsequential paragraph of an email sent several days earlier, before the stormy meeting of 21 December 2018. I also consider that it is unlikely that Mr Balasubramaniam would have been saying that his behaviour (alone) on 21 December 2018 had been an aberration, when Mr Balasubramaniam clearly felt that Mr Goyal had behaved badly. I do not believe that he would have introduced a plea that they should work together as partners by saying that he had always considered himself only an executive. I regard it as very likely that Mr Balasubramaniam raised his dissatisfaction with Mr Goyal's 'parallel management' of the business, and as to Mr Goyal's role in the appointment of Kedia.

147. Furthermore, I accept Mr Balasubramaniam's essential description of what was involved: a reconciliation, a shaking of hands and assuring each other that they would work together. I do not consider that either would have regarded that as giving rise to any implied representations as to the other's intentions on which they could rely in entering into the divestment. This is not least because I consider that each of the participants (and a reasonable person in their position) would have realised that what was being said was part of a 'truce', and that if the truce fell apart, each participant might say things which contradicted what was said on this occasion. This might perhaps be put another way: namely that, if any representations as to intention were made on this occasion, they would have been quickly 'spent' and not have been continuing representations.

148. In my view, the true position was actually suggested by Mr Salve KC himself to Mr Balasubramaniam in cross-examination. He put that 'You are far too seasoned to know that nothing which you agreed or nothing which he [Mr Goyal] said on 2 January would overnight suddenly change his character so much, that all the problems you had been having with him would disappear', to which Mr Balasubramaniam assented. But much the same might be said of what Mr Goyal would have thought in relation to Mr Balasubramaniam. They both knew (or a reasonable person in their position would have known) that the problems between them might recur, and lead them to saying things different from what they said at that meeting; and isolated statements by either

on that occasion could not reasonably be relied upon in entering into the divestment transaction.

The email of 15 January 2019

149. What is relied on here is a letter contained in an email which Mr Goyal himself sent to shareholders on 15 January 2019. Specifically, what is relied on are the statements in that letter that: 'The board set out a selection criteria for shortlisting and final selection which was primarily based on shareholder value maximisation through support of our future plans and accelerated organic & inorganic growth…. As a result of the transaction, we will expand and further professionalise the board however our executive management structure will remain unchanged. BGF will have a board representative but they will neither play a direct executive role nor will they appoint anyone in an executive position in the company.' The Claimants' case, at least by the time of trial, was that these gave rise to implied Absence of Intention representations by Mr Balasubramaniam to Mr Goyal.

150. The genesis of this letter was apparently that, on 10 January 2019, there was a meeting between Partho, Naveen, Mr Balasubramaniam and Mr Goyal, at which it was agreed that Mr Goyal should send an email to IBSL shareholders with smaller shareholdings, including Mrs Goyal, notifying them of the proposed investment by BGF. It was agreed that Mr Goyal should send the email because, in his words, he was 'the founder and key shareholder of the business, rolling over all [his] equity, and many of the shareholders were long-term friends and colleagues of mine and were most likely to follow my recommendation'. Mr Goyal said that he produced the first draft. It was circulated by him to Mr Balasubramaniam, Partho and Naveen on 11 January 2019. At that point the draft did not contain any text to the effect that 'our executive management structure will remain unchanged'. Mr Balasubramaniam commented on it on 12 January 2019. One of his comments was 'Raise the profile of the fact that the new Private Equity investor is expected to help us raise our profile significantly in the market as well as to professionalise our board and management.' Thereafter a number of further drafts were circulated by Mr Goyal, including to solicitors and PwC, and were copied to Mr Balasubramaniam. It was not suggested to Mr Balasubramaniam that he had made any comments in relation to those further drafts. His evidence, which was credible, was that he was not paying particular attention to all the details of this process.

151. In these circumstances, I do not consider that the email of 15 January 2019, or Mr Balasubramaniam's role in its production, constituted or carried with it the alleged implied representation by Mr Balasubramaniam to Mr Goyal (or Mrs Goyal). The allegedly relevant statement was, as between the two, Mr Goyal's, not Mr Balasubramaniam's. Mr Balasubramaniam had not initiated or expressly approved it. His own comment on the draft had actually stressed that the transaction would lead to the professionalisation of the board and management. I do not consider that Mr Goyal or Mrs Goyal (or a reasonable person in their position) could have considered that, by simply being aware of the email and its terms, Mr Balasubramaniam was making a representation to them as to his intentions (or absence of intentions).

152. Moreover, I do not consider that the Claimants have shown that Mr Balasubramaniam intended to make the implied representations which it is alleged the email contained or gave rise to. The evidence indicates that he was unaware that such representations might be being made, and did not have an intention that they should be.

Meeting on 25 February 2019

153. The Claimants' pleaded allegation is that at a meeting on 25 February 2019 between Mr Goyal and Mr Balasubramaniam at IBSL's offices, Mr Balasubramaniam said: 'I am committed to working together with you and we complement each other very well. We have an agreed business plan and we both have a role to play in accomplishing it.' Mr Goyal responded: 'I am not rolling over my equity to just increase its value, I can do that by encashing it all and investing elsewhere. I love running the business and Invenio is my joy and pride and that is why I am rolling over.' Mr Balasubramaniam then said words to the effect that 'my relationship with you is more important than anything else. BGF will be a good partner and we must close the deal and look forward to the next phase of growth for Invenio. All these incidences (sic) have created a trust deficit in our relationship and we will make it good over time.' To which Mr Goyal responded: 'No, Arun, I have no trust deficit in you. I trust you as much as I trusted you before we even started the investment process. I will not agree to a deal if I had trust problems in you.' That account features in Mr Goyal's witness statement.

154. Mr Balasubramaniam's evidence is that he does not recall any such conversation on 25 February 2019. In his witness statement he said that he had multiple fallings out with Mr Goyal; and 'after each such fall-out there was a reconciliation process, mostly mediated by Partho. As part of the reconciliation process, Manish would give me assurances that he would change and that we could work together going forward. It was mostly Manish convincing me, but I would assure him that yes, we could still work together.'

155. Here again, there is no note or other record of the meeting to support, or refute Mr Goyal's account. For reasons similar to those which apply to his account of the meeting on 2 January 2019, I did not find his account persuasive and do not accept it. I consider that the gist of any conversation is more likely to be captured by Mr Balasubramaniam's summary of the discussions they had.

156. Thus, in relation to this alleged meeting of 25 February 2019, Mr Goyal's account in the pleading and his witness evidence is a considerable development on the brief reference to this meeting in the LBA. In particular the LBA contained no reference to 'an agreed business plan' or to their both having a role in accomplishing it. Although Mr Goyal suggested that he had already told his solicitors of his full version of this meeting at that time, and that they had decided not to include it in the LBA, this was on its face surprising, and was not demonstrated. The development of the account after the LBA does therefore, as Ms Anderson KC submitted, tend to suggest that the pleaded version is not recollection (which would be unlikely to have improved after the LBA) but elaboration.

157. Be that point as it may, much of Mr Goyal's account of what was said at the meeting appears to me implausible, and very likely to have been tailored (I am prepared to accept, unconsciously) to fit the case which the Claimants now seek to advance. As with his account of the 2 January 2019 meeting, this account is an improbably one-sided conversation. Mr Balasubramaniam's evidence that assurances were given by both sides, and indeed mainly by Mr Goyal, seemed to me plausible.

158. Further, and even if I had concluded that the conversation included the words alleged to have been spoken by Mr Balasubramaniam in Mr Goyal's witness statement account

of the meeting, which I have not, I do not consider that, in their context, they would reasonably have been understood to carry with them the implied Absence of Intention representations; nor that a reasonable person in Mr Goyal's position would have been entitled to take these statements seriously so as to rely on them in entering into the divestment. They are not quite accurately described as 'sales talk', but they would have amounted to emollient phrases which would have been designed to avoid a flare up between two people who did not fully trust each other. Mr Goyal's own evidence is that at this time he regarded Mr Balasubramaniam's state of mind as being disturbed and that he (Mr Balasubramaniam) was 'flickering in his mind' [ie changing it] about the deal. In these circumstances, Mr Goyal, and a reasonable person in his place, would have realised that the relationship might break down again, and that different things might subsequently be said from what was said on this occasion.

Dishonesty

159. Given that I have found that none of the alleged implied representations was made, that is sufficient to dispose of the Claimants' case in deceit. However, a great deal of time at the trial was devoted to considering the material which the Claimants contend showed that it was the intention of the Defendants, before the divestment completed, to remove Mr Goyal from his role as CFO, and from any executive role in the business, and which showed them to have been dishonest. The Defendants for their part vigorously denied any dishonesty. In fairness to both sides, I consider it appropriate to consider these allegations, and the materials relied on by the Claimants, in some detail.

160. The Claimants relied, in particular on 12 documents which pre-dated the completion of the transaction and 3 which post-dated it.

161. It is necessary to consider separately what these materials show as to Mr Snodgrass's (and thus BGF's) state of mind, and what they show as to Mr Balasubramaniam's.

Mr Snodgrass/BGF

162. Mr Snodgrass was extensively cross-examined on these materials. I concluded that, fairly read, and taken with Mr Snodgrass's evidence, the Claimants had failed to show that it was at any time before the conclusion of the transaction Mr Snodgrass's intention to remove Mr Goyal once the transaction had gone through, from a role which could properly be called that of a CFO, and still less his intention to remove him from any executive position in the business.

163. The following points may be made about various of the materials sought to be relied upon by the Claimants in relation to Mr Snodgrass.

(1) It was Mr Snodgrass's evidence, which I accept, that there is a range of functions which someone with the title CFO may fulfil in a company. Likewise, he gave evidence that his view of Mr Goyal was that he was an excellent negotiator and good at the more commercial aspects of what a CFO may do, but was not experienced with the intricacies of the accounting and financial reporting aspects of such a position.

(2) Equally, he gave evidence that he was not particularly bothered, in what he wrote at the time, about titles as opposed to roles, and that he did not always distinguish between FD, FC, and CFO in what he wrote. I found that that was borne out by what had

demonstrably happened at the time. Thus, the Claimants sought to rely on two drafts and the final version of the Investment Paper produced within BGF, which included the phrase 'we have started the recruitment process for a CFO', as showing that Mr Snodgrass was already intending the removal of Mr Goyal from the role of CFO. Mr Snodgrass said that in that phrase, what had been meant was a senior financial resource, at FC / FD level, below Mr Goyal's level. This, to my mind, was supported by the facts that Mr Snodgrass had, on 13 November 2018, told Mr Watts of BGF's Talent Network that he needed to find 'a senior FC/possibly FD level for Invenio (WIP), needs to be technically very good'; and that Mr Watts had responded with suggestions 'at that senior FC/junior FD level strong on reporting…' That was what was being referred to in these documents as 'recruitment of a CFO'.

(3) One of the documents relied on was a version of an aide memoire (an email from Mr Snodgrass to himself) of 20 December 2018. This had contained the sentence, 'The one weakness is CFO – manish is an entrepreneurial character who founded the business and still adds a lot to the board, but he is not a leader of a relatively large global business. Replacement.' It appeared to me, however, that that had to be treated with considerable caution, given that that version of the aide memoire was replaced by another which said: 'The one weakness is CFO, in that Manish isn't really a CFO. The whole team accept that finance needs to be strengthened and the process has started to recruit an FD…' This clearly represents a fuller expression of Mr Snodgrass's thinking.

(4) Two of the documents relied on were emails from Mr Balasubramaniam to Mr Snodgrass (of 20 January 2019 and of 26 February 2019). I consider them further below in the context of the Claimants' case as to Mr Balasubramaniam. For present purposes, it is sufficient to say that those emails have to be treated with considerable caution as evidence of Mr Snodgrass's intentions.

(5) Certain of the documents seem to me to be clearly inconsistent with the suggestion that Mr Snodgrass intended to remove Mr Goyal from the business. The initial version of the aide memoire of 20 December 2018, on which the Claimants relied, itself stated that Mr Goyal 'still adds a lot to the board'. In the draft of the BGF Pre-Completion Note of 27 January 2019, it is said that 'post-deal we are going to work with [Mr Goyal] as more of an archetypal founder role alongside the more professional core management team we are backing.' What that indicates, in my judgment, is that BGF considered that they would continue to work with Mr Goyal, who would have a role in the business, alongside those they regarded as more professional.

164. My conclusions as to what Mr Snodgrass's intentions were, reached on the basis of a consideration of the evidence as a whole, including the documents relied on by the Claimants as well as the oral evidence, can be stated as follows. At the outset of the process he was finding out information, and did not have settled intentions as to Mr Goyal's role. As the process went on, it became clear to him that Mr Goyal was not performing many of the aspects of the role which many CFOs would perform in a business of IBSL's size, but was performing more commercial and strategic roles. He considered that what was required was the appointment of a senior finance resource to supplement Mr Goyal. He did not intend that on the completion of the deal Mr Goyal should be got rid of as CFO. He thought, as I find, that Mr Goyal could continue in that role, and be, to put it colloquially, 'worked around'. He also contemplated that that might not work indefinitely, in which case Mr Goyal might have to be found another role (consistent with being a 'founder … who adds a lot to the board'), or that Mr Goyal

might in effect be asked to step down. But I do not find that he had formed an intention to bring about Mr Goyal's removal from the role of CFO and still less his removal from some executive role in the business.

165. The Claimants' case in relation to deceit in the making of implied representations of intention must be considered in the light of these conclusions. If I am wrong to say that none of the implied representations can be said to have been made, I would in any event have found that Mr Snodgrass did not intend to make any representation which he knew to be false or did not believe to be true; and specifically he did not make any representation which he intended should be understood in the sense in which it was false. I consider it impossible to conclude that there was any representation of his intentions, express or implied, which was substantially untrue, to his knowledge.

166. The above conclusions as to Mr Snodgrass's intentions, and lack of any dishonesty, appear to me to be significantly supported by what occurred after the deal was finalised. After the first board meeting of IBSHL on 21 March 2019, Mr Balasubramaniam sent Mr Snodgrass and Partho the email of 23 March 2019 which I have quoted in an earlier part of this judgment demanding that Mr Goyal be removed as an executive. Mr Snodgrass's evidence, which was unchallenged, was that he had called Mr Balasubramaniam and told him that he and Mr Goyal needed to work together. It was also Mr Neville's unchallenged evidence that he and Mr Snodgrass had shared the view in the months following March 2019 that Mr Goyal needed to be kept in the business if possible. They did not want a situation in which the founder of the business, who had 'a strong following within the business' was leaving, or being seen to have been pushed. This is inconsistent with Mr Snodgrass having had the intentions before the deal was done which the Claimants attribute to him.

167. In addition, I do not consider that Mr Snodgrass had any significant motive to be dishonest, which is a further factor tending to suggest that it is unlikely that he was.

Mr Balasubramaniam

168. The Claimants relied on a number of matters to indicate what they contended were Mr Balasubramaniam's intentions, before the deal was done, to remove Mr Goyal from any executive role and certainly from the position of CFO once it was completed.

169. A number of these matters appeared to me to carry little or no weight. One of them was Mr Leggett's account of conversations with Mr Balasubramaniam. I have already given my reasons for not placing reliance on Mr Leggett's evidence. A number of others were documents produced within BGF which Mr Balasubramaniam did not see, and which it appeared to me threw very little light on Mr Balasubramaniam's intentions. There were, however, at least five documents which tended to indicate that, at the point at which they were written, Mr Balasubramaniam wished to see Mr Goyal out of the business, and removed from the role he had at that stage. On the other hand, it also appears to me to be clear that Mr Balasubramaniam's views, and intentions, fluctuated over time, as to whether he thought he could work with Mr Goyal or whether it was impossible.

170. One of these documents is Mr Balasubramaniam's email to Partho dated 29 November 2018. In this Mr Balasubramaniam complains to Partho of a supposed instance of Mr Goyal's 'dereliction of duty'. He wrote, amongst other things, that '[a]s the MD of the

company and a Shareholder of the company I would like the Chair of the board and the board to act immediately to terminate Manish in his role as CFO… the Company is in a vulnerable position with Manish continuing in his role even for a day longer…' This shows, clearly, that as at that date, Mr Balasubramaniam wanted Mr Goyal out immediately. It is not consistent with one part of the Claimants' case, which was that Mr Balasubramaniam intended Mr Goyal to be removed after the deal.

171. The email was sent to Partho (copied to Naveen), and Partho's evidence, which was essentially unchallenged, is significant. Partho's evidence was that this reaction from Mr Balasubramaniam came about because he was not as used as Partho to how Mr Goyal operated. Partho says that he had for nine years '[run] the company pretty straight, OK, except for some actions of Manish which I have ignored, and some stray incidences here and there, Arun was still not used to these.' Partho's account was that, in response to this and other occasions on which Mr Balasubramaniam said he wanted Mr Goyal out: 'I explained on every occasion that I genuinely wanted to retire and leave Invenio so removing Manish is not an option. Whether you like him or not, he was a significant shareholder and removing Manish was not possible.' I accept this. I also accept Mr Balasubramaniam's account that, when, on four or five occasions, of which this was clearly one, 'issues came to a head', and he had complained to Partho, there had then been 'a reconciliation process, mostly mediated by Partho.' What this appears to have involved was Partho calming Mr Balasubramaniam down, and saying that he had to work together with Mr Goyal and Mr Balasubramaniam accepting that he would do so. This may be described as a change, at that point, in Mr Balasubramaniam's intentions; though it might also be said that Mr Balasubramaniam's intentions were not fixed.

172. Much the same applies in relation to an email of 1 January 2019, in which Mr Balasubramaniam wrote to Partho including material on the removal of a director. This was written in the period after the stormy meeting on 21 December 2018. During that period, Mr Balasubramaniam had been communicating with Partho, saying that Mr Goyal had to appreciate that if he did not agree to the BGF deal, there was a Plan B, which would involve Partho staying on, and Mr Goyal being asked to leave the business. In a communication of 25 December 2018 Mr Balasubramaniam said, after complaining that Partho had 'pampered' Mr Goyal far too much and that Mr Goyal 'has not contributed at all the business in any way', 'I have done enough to pretend over the last three years and will not do it any longer.' In another (of 27 December 2018) he wrote 'Just call it off. I anyway cannot pretend any more. His relationship is screwed with all. I cannot take this any more Partho.' It was in that context, which was clearly somewhat overwrought as far as Mr Balasubramaniam was concerned, that the email of 1 January 2019 was sent. Yet, on 2 January 2019 there was the more conciliatory meeting which I have described above at which the two agreed to work together.

173. Mr Balasubramaniam's email of 20 January 2019 to Mr Snodgrass was relied on. In it, Mr Balasubramaniam expressed a concern that Mr Goyal's shareholding would increase to 50.1%, and asked 'does this … mean, we cannot appoint a new CFO if required, and if required can we still get Manish not to work in the business (this had been discussed earlier).' This indicates that Mr Balasubramaniam wished to be sure that, after the deal, Mr Goyal could be got out of the role of CFO, and indeed stopped from working for the company, 'if required'. It seems likely that Mr Balasubramaniam had raised the possibility that such a situation might arise with Mr Snodgrass. The

email does not suggest that what had been discussed was an intention or plan to get rid of Mr Goyal in any event.

174. It is difficult, from this email, to form a view as to whether, at the time it was written, Mr Balasubramaniam was in one of the phases in which he saw no possibility of working with Mr Goyal after the deal, or instead was hoping that they might be able to work together, but seeking to make provision for what he recognised was the possibility that they might not.

175. Mr Balasubramaniam's email of 26 February 2019 to Mr Snodgrass was the subject of much evidence and argument. In it, Mr Balasubramaniam said that he agreed with a proposal Mr Snodgrass had made that there should be a meeting between Mr Goyal and Mr Neville. He continued that there were two matters which he wanted Mr Snodgrass to speak to Mr Neville 'transparently' about 'so he does not have a surprise later'. The first of these was 'That I do not want Manish in the CFO role moving forward, my relationship with Manish is awkward and a few things are being stage managed for the transaction to go through. I cannot afford to establish a relationship with Geoff which lacks transparency'. The second was that Mr Neville 'need not talk to Manish about meeting the team etc.' Mr Snodgrass responded to that email: 'Hi Arun – that makes sense. Geoff is stopping by tomorrow, so I will speak to him then.'

176. This shows that at this stage, Mr Balasubramaniam was stating that he wanted Mr Goyal not to be CFO after the deal. I do not consider, however, Mr Snodgrass's response to the email as indicating that he shared that desire: I think that response, which was sent at 21.32, and has all the appearance of being an off the cuff and unconsidered one, was probably only intended as an acknowledgement that Mr Balasubramaniam agreed that there should be a meeting between Mr Goyal and Mr Neville, and as agreement that there should be transparency with Mr Neville, who should be told that, to use the phrase employed by Mr Snodgrass in evidence, 'things aren't all happy families' within the board.

177. What Mr Balasubramaniam had meant by 'a few things are being stage managed for the transaction to go through' was the subject of controversy. The Claimants submitted that it meant that Mr Balasubramaniam and Mr Snodgrass were 'stage managing' Mr Goyal, by deceiving him into believing that they intended him to remain as CFO following the transaction, to enable the transaction to go through. Mr Balasubramaniam's evidence was that there were several things being 'stage managed'. One was that he wanted to facilitate the appointment of Mr Neville; he considered that Mr Goyal was interfering in the process; and had arranged for Mr Neville to meet the senior team without informing Mr Goyal. The second is that he was seeking to avoid saying anything which might be emotive, and lead to Mr Goyal flaring up.

178. I accepted Mr Balasubramaniam's explanation as basically correct. It indicates that he was trying to avoid saying anything controversial to which Mr Goyal might react. It does not show that Mr Balasubramaniam said anything which was or implied an actionable misrepresentation, and as I have already said, I am not satisfied that he did. As the Defendants submitted, it is one thing to say that a relationship is being carefully managed to get a transaction over the line. It is another to say that the other party to the relationship is being actively deceived. I would accept that this email demonstrates the former; it does not prove the latter.

179. The final document relied on by the Claimants to which I should refer in this connexion is the email sent by Mr Balasubramaniam to Partho and Mr Snodgrass on 23 March 2019, quoted above. In this Mr Balasubramaniam set out a number of complaints about Mr Goyal including the inadequacy of his control of the finance function, and that he ran a parallel command structure. The email continued: 'I recommend that we would need Manish to move out of any Exec position in Invenio and certainly from his CFO role. I request for a board meeting to pass this as this is a board level appointment.' What this represents is that the position which Mr Balasubramaniam had adopted several times before the deal, and from which he had climbed down on a number of occasions, had firmed up into a position which he wanted to put to the board of the new company. He had, as I find, been contemplating such a move since before the deal completed, as evidenced by his email of 26 February 2019, but was confirmed in his decision to take it by Mr Goyal's continuing after completion to engage in what, to Mr Balasubramaniam's mind, and in his phrase, was 'parallel management', including by his expressing a negative view on the recruitment of Manoj Narang to a role of Head of Digital Supply Chain Practice.

180. Thus, looking at Mr Balasubramaniam's intentions regarding Mr Goyal's continuing role in the business during the entire period during which the Claimants contend he made actionable misrepresentations, up to the conclusion of the transaction, I consider that the position is this. His intentions fluctuated, as I have found. This was not through dishonesty, but because of competing considerations. To the extent that he made statements about whether they could work together in the future, I consider that, when he said them, he meant them. I accept that in the period shortly before the conclusion of the transaction, at least from 26 February 2019, his mind was made up that he did not want Manish to continue to be CFO after the transaction. As I have set out above, I do not, however, find that during that period Mr Balasubramaniam made the implied misrepresentations of his intentions for which the Claimants contended.

Inducement of Mr Goyal

181. In view of my conclusion that the Claimants have not established that the alleged misrepresentations were made, Mr Goyal cannot have been induced by them. There is little therefore that can or needs to be said on this issue.

182. I should however record the following:

(1) Even if I had found that any of the implied misrepresentations were made, I would have agreed with the Defendants that the evidence did not establish that the particular misrepresentations relied on, in the terms contended for by the Claimants, were present to Mr Goyal's mind, or relied upon by him in entering into the transaction.

(2) I would not have accepted that Mr Goyal was materially influenced by any representations as to Mr Balasubramaniam's intentions, or absence of intentions. This is because, as I have already said, he did not regard Mr Balasubramaniam as an equal, and would have regarded himself as being able to get what he wanted whether Mr Balasubramaniam wished it or not; he did not trust Mr Balasubramaniam to adhere to a particular position or stance in relation to the running of the business, and indeed, by the end, regarded Mr Balasubramaniam's mind as 'flickering'.

(3) Had I concluded that Mr Goyal was induced by misrepresentations by either the First or Fourth, or the Fifth, Defendants, in the sense that the misrepresentations had been actively present to his mind in entering into the divestment transaction, I would nevertheless have concluded that he would have entered into that transaction had no misrepresentations been made. He had a series of other reasons why he needed and wished to enter the transaction, irrespective of what Mr Balasubramaniam or Mr Snodgrass might have said about his future role, including the facts: that Partho required a sale to occur; that the transaction afforded a vehicle for him to settle his dispute with Partho; that he stood to gain substantially by the transaction, given that the involvement of BGF held out the prospect of his subsequently exiting at a higher value than would have been the case had the transaction not taken place; and that not to enter the transaction would have meant throwing away the work done by PwC. At most, he might have sought some form of entrenched director's rights; and had he done so, Mr Snodgrass's evidence was that he would not have ruled that out, but such rights would not have extended to an undertaking that Mr Goyal could remain CFO indefinitely. I find that, even had there been such a discussion, which there never was, it would have led to the conclusion of the transaction on essentially the same terms as that which occurred.

Mrs Goyal's case

183. Mrs Goyal makes the case that the alleged misrepresentations were made by Mr Snodgrass and Mr Balasubramaniam knowing or expecting that they would be relayed by Mr Goyal to Mrs Goyal. She further contends that they were indeed relayed to her. She and Mr Goyal gave evidence in relation to three occasions in which the representations were conveyed. The first was in early December 2018, during a conversation at the dinner table at which Mr Goyal, Mrs Goyal, her sister and her brother-in-law were present. The second was a conversation later in December 2018 involving Mr Banga, the Goyals' accountant. The third was a conversation towards the end of February 2019, when Mr Goyal, Mrs Goyal, her sister and brother-in-law were sitting informally at home. Her case was that she relied on the misrepresentations so relayed in agreeing to enter into the transaction.

184. As I have found that the misrepresentations alleged were not made, clearly Mrs Goyal's claim in deceit fails for that reason. I consider, however, that it would have failed for other reasons.

185. In the first place, I would not have found that Mr Snodgrass or Mr Balasubramaniam intended the representations which they are alleged to have been made to Mr Goyal to be relayed to Mrs Goyal and relied on by her. Almost all were of a type which Mr Snodgrass or Mr Balasubramaniam would not reasonably have expected to have been relayed to Mrs Goyal (or other shareholders of IBSL). They are alleged to have concerned Mr Snodgrass's and Mr Balasubramaniam's state of mind in relation to Mr Goyal's role in the company and his suitability, and thus of a nature which would reasonably be expected to be of concern to, interpreted by and relied on only by Mr Goyal. Had Mr Snodgrass or Mr Balasubramaniam intended that representations should be relied on by Mrs Goyal (or other shareholders) it might be expected that they would have been set out in a transaction document or other document addressed to shareholders, and not have been the subject of an exclusion clause in the SPA.

186. In what I have said in the last paragraph, I have not lost sight of the fact that the one of the representations allegedly made by Mr Balasubramaniam was in the 15 January 2019 email, sent by Mr Goyal. I have, however, given my reasons for finding that that email did not, in any event, constitute or embody any representations made by Mr Balasubramaniam

187. Secondly, and in any event, I considered it clear that Mrs Goyal was not induced to enter into the transaction by the representations allegedly conveyed to her. She entered into the transaction because Mr Goyal had decided to roll over his shares. Mrs Goyal said in evidence:

> 'We [ie Mrs and Mr Goyal] had this where I was investing in my family and he was investing in the business so we both had some financial stake in each other and I would not question him on a small thing, I would not question him on a big thing, and similarly when it came to family, he would not question me because though I am a chartered accountant and a company secretary, I am fully knowledgeable but still I keep back side because I play a major role in my family and he plays a major role in business, in Invenio Business Solutions. So, that is how we work. If Manish had said something, I did not question it because I have got such faith in him.'

188. This appeared to me credible evidence. Having seen and heard Mr Goyal's evidence, as well as Mrs Goyal's, I was in no doubt that Mrs Goyal relied on Mr Goyal's assessment of what was the best thing for him to do.

Common Design

189. As I have found that there were no misrepresentations made as alleged, the claim that the First and Fourth Defendants were jointly liable with the Fifth Defendant for deceit, on the basis of common design fails for that reason. I also found the case of any common design not to have been established.

Misrepresentation Act 1967

190. The Claimants pleaded a claim for damages for misrepresentation under s. 2(1) Misrepresentation Act 1967, on the basis of the same alleged misrepresentations as were relied on for their case in deceit.

191. As I have found that it is not established that any of those misrepresentations were made, the claim under s. 2(1) Misrepresentation Act must fail.

Conspiracy

192. The Claimants' case of unlawful means conspiracy did not feature prominently at the trial. In my judgment it is clear that it must fail.

193. The case of conspiracy was always a striking one as it was to the effect that, from an early stage in BGF's involvement, probably at the time of the meetings on 7 and 14 November 2018, Mr Snodgrass and Mr Balasubramaniam had entered into an understanding or combination to remove Mr Goyal after the transaction completed, and dishonestly to conceal this from Mr Goyal and to mislead him by making the alleged misrepresentations.

194. No motive which might have induced Mr Snodgrass to enter into such a conspiracy was shown. Furthermore, while the Claimants sought to rely on the number of contacts between Mr Balasubramaniam and Mr Snodgrass before the conclusion of the transaction as being, in some way, unusual and perhaps suspicious, I find that they were neither. Indeed, I accept Mr Snodgrass's evidence that he had, if anything, more interactions with Mr Goyal than with Mr Balasubramaniam during the process, including on a trip he and Mr Goyal made to Delhi, on which Mr Balasubramaniam was not present. The case was also difficult to square with what happened after the completion of the transaction, when Mr Snodgrass responded to Mr Balasubramaniam's pressing for the removal of Mr Goyal from an executive position by telling Mr Balasubramaniam that the two would have to work together; and then participated in the transition of Mr Goyal to a CIO role, with a view to retaining him in a senior role, but one in which he was kept away from Mr Balasubramaniam. Mr Snodgrass only concluded, with the remainder of the IBSHL Board, that Mr Goyal should be dismissed following the events of October 2019, and in the circumstances, described above.

195. The conspiracy case, though, as I say, little emphasised at trial, was not abandoned. I consider that there are a number of clear answers to it.

196. In the first place, I did not consider that the Claimants had put a sufficient case to either Mr Snodgrass or Mr Balasubramaniam which might allow the court to make the findings which would be necessary for a determination that there had been a conspiracy. In particular, no case was properly put to either (1) that he knew that the other proposed to make or had made representations to Mr Goyal; (2) that he knew that those representations were false; or (3) that they were made with a state of mind which rendered them unlawful. Without these matters having been put, it would not be possible to find that the alleged conspirators were acting in concert at the time, and in the making, of the representations. Given the nature and seriousness of an allegation of conspiracy, these are not technical matters.

197. Secondly, the conspiracy claim is dependent on the misrepresentation case, in that the unlawful means which it is alleged were employed were the making of fraudulent misrepresentations. As I have found that there were no such fraudulent misrepresentations made, the conspiracy case fails.

198. Thirdly, it was not established that Mr Balasubramaniam and Mr Snodgrass had a shared intention to injure Mr Goyal and Mrs Goyal. Both men, I find, considered and intended that the financial effect of the transaction would be beneficial to those involved, including Mr Goyal and Mrs Goyal as shareholders in IBSL who were 'rolling over' their shares. Insofar as the case is that the two men intended that Mr Goyal should be injured by virtue of his being removed from the role of CFO, I do not consider that this, of itself, would have counted as an intention to injure him. His ceasing to be CFO might have been regarded as being compensated by the (intended) increased value and success of the business of which he would be a major shareholder. In any event, I do not consider that Mr Snodgrass, before the completion of the transaction, did have the intention that Mr Goyal should be removed from a role which could properly be called that of CFO.

Loss and Damage

199. The Claimants' claim is that they suffered loss and damage on the basis that the misrepresentations and conspiracy of the Defendants caused them to enter into the SPA.

The Development of the Claimants' case

200. In the RAPOC the Claimants pleaded that they had suffered loss and damage on the basis of the difference between the value of their shares in IBSHL, and what their position would have been in one of three alternative scenarios, as follows: (a) that IBSL and its shareholders would have pursued the investment proposal of THCP and entered into an investment agreement with TCHP; (b) the shareholders of IBSL would not have pursued a private equity investment agreement and IBSL would have been sold as a business to a third party; and (c) no sale or private equity agreement would have been agreed and IBSL would have continued in business substantially under the ownership structure as at November 2018, and IBSL would have achieved a cumulative growth of 87% by year ended March 2021 based on the business plan which formed part of the BGF Investment Agreement. These three scenarios were referred to as the 'THCP Counterfactual', the 'Trade Sale Counterfactual' and the 'No Sale Counterfactual' respectively.

201. In light of the Claimants' pleading, expert evidence was sanctioned by the court on the following:

(1) The value of the Claimants' shares in IBSHL and options to purchase shares as at (a) 5 March 2019; and (b) 14 October 2022.

(2) The value of the Claimants' shares in IBSL (and the additional shares claimed to have been beneficially owned by Mrs Goyal) as at 5 March 2019, immediately before the transaction.

(3) Whether there was a difference in value between the Claimants' shares in IBSL immediately before the transaction and their shares and options in IBSHL immediately after it, and if so what it was.

(4) What would the difference between the value of the Claimants' shares in IBSL have been on the basis that the transaction had not been proceeded with, but that each of the Counterfactuals I have referred to had occurred.

202. Pursuant to that permission, the Claimants served and relied on expert evidence from Ms Kate Lilleyman, a Director at Kroll Advisory; and the Defendants served and relied on expert evidence from Mr David Mitchell, Managing Director of the Valuations Team at Interpath Ltd.

203. In their Skeleton Argument for the Trial, the Claimants stated that the normal measure of damages was the difference between the purchase price (in effect the value of the Claimants' shares in IBSL immediately before the transaction) and the value of the shares in IBSHL received in return as of that date. The Claimants stated that, if the court considered that to be appropriate, then the Counterfactuals would be irrelevant. On the other hand, it was submitted that the Court could depart from that measure, and if it was persuaded to do so, might award damages based on the occurrence of one of the Counterfactuals. The Claimants stated, however, that the Claimants' current

position (for which the experts had used 14 October 2022 as a proxy) was only of relevance to the No Sale Counterfactual.

204. When the case was opened orally, the Claimants' counsel informed the court that the THCP Counterfactual would not be pursued. Subsequently, after the evidence was closed, the Claimants informed the Defendants and thereafter the Court that they would not be contending for the No Sale Counterfactual either.

205. In his closing submissions on the issue, Counsel for the Claimants said that their opening Skeleton had not been correct in saying that the Claimants' present position and the present value of IBSHL was only relevant to the Trade Sale Counterfactual. Instead, he submitted, it could be taken into account by way of the primary measure of damages on the basis that the usual date taken for that assessment (the transaction date) was not appropriate because the Claimants' shares were not 'readily marketable'.

Analysis

206. In light of my earlier findings that there were no misrepresentations as pleaded, and that even had there been, Mr Goyal and Mrs Goyal would have entered into the divestment transaction in any event, no issues of loss or damage arise.

207. I will nevertheless express my conclusions on the points argued, in case I am wrong in relation to my primary findings on liability.

The Primary measure

208. If it were right that the Claimants were induced to enter into the transaction by misrepresentations, and would not have done so without any such misrepresentations, then the primary and normal measure of damages would be the difference between the value of the Claimants' shares in IBSL immediately before the transaction, and the value of their shares and options in IBSHL immediately after the transaction, unless the court is persuaded that a different date for the comparison should be taken.

209. Before turning to the issue of the appropriate date, I should make explicit two preliminary matters as to the comparison to be effected. In the first place, the Claimants' shares in IBSL must be taken to be only the 240,000 B Ordinary Shares and the 40,000 B Ordinary Shares of which Mr Goyal and Mrs Goyal were, respectively, the registered holders. They do not include the additional shares registered in the names of Partho (38,400 B Ordinary Shares) and Naveen (24,400 B Ordinary Shares) which Mrs Goyal claimed, during the dispute I have referred to above, that she beneficially owned. No basis for that contention was made out, or indeed seriously argued, before me.

210. Secondly, the options which Mrs Goyal was granted to purchase IBSHL shares by Naveen and Partho in the Deeds of Settlement and Release must be taken into account because they were a part of the transaction which, on this hypothesis, was entered into as a result of the misrepresentations.

211. I therefore turn to consider what is the appropriate date for making the comparison between the value of the Claimants' shares in IBSL with their shares and options in IBSHL. I do not consider that the Claimants have established that a later date should

be taken for the purposes of the primary measure of damages. Counsel for the Claimants contended that the present was an example of a case where there should be a departure from the transaction date, of the sort referred to in *Smith New Court Securities Ltd v Citibank N.A.* [1997] AC 254 at 266-267 per Lord Browne-Wilkinson, on the basis that the shares acquired in IBSHL were not 'readily marketable'. The Claimants contended for a current date (for which 14 October 2022 had been taken as a proxy) for the comparison.

212. While this issue was not examined in any detail during the trial, doubtless in part because of the way in which the case had been pleaded and opened by the Claimants, I do not consider that the extent to which the shares in IBSHL lacked 'ready marketability' justified taking a current valuation date. There was no restriction on disposal of the shares contained in IBSHL's Articles, though there were provisions as to pre-emption. While they were doubtless not as readily marketable as shares in a publicly listed company, it was not established that they could not be sold. The Claimants have not shown that this situation made it appropriate to take a current valuation date, and they put forward no evidence as to intermediate dates.

213. I considered that to take a current valuation date would lead to the potential of a recovery by the Claimants of damages unrelated to the fraud for which they contended. Specifically, there have been movements in the market price of IBSHL shares, including movement associated with the pandemic, which are not, on any view, the result of the fraud. To award damages based on a current value date would give the Claimants compensation for losses which are unrelated to the alleged fraud, and which, moreover, they would have been likely to suffer even had there been no transaction, and they had continued to hold IBSL shares.

214. I turn therefore to the issue of whether there was a difference in the value of the Claimants' shares in IBSL prior to the transaction and of their shares in IBSHL and their options immediately after the transaction. On this there was a difference between the experts.

215. Both agreed that the market value of the Claimants' shares in IBSL was £24.797m. This is on the basis that the price per share paid for the acquisition of IBSL by IBSHL in the transaction, which equates to £88.56 per share, was reflective of market value.

216. The experts disagreed as to the value of the Claimants' shares in IBSHL and options to purchase shares, immediately after the transaction. Ms Lilleyman considered them to have had a value of some £19.9 million. Mr Mitchell considered that they had a value at least as great as the value of the shares in IBSL which they had had prior to the transaction, and potentially more as IBSHL had access to additional support to help achieve forecast growth.

217. This difference was not the result of a difference as to the appropriate valuation methodology. The experts agreed that the appropriate methodology was to consider the value of IBSHL's shares on 5 March 2019 based on the expected return in five years after the valuation date (taken as up to 31 March 2024) based on an exit of 100% of IBSHL, discounted to a value as at 5 March 2019, and then considering whether it was appropriate to apply a minority and/or a liquidity discount.

218. The main differences between the experts were, in summary, as follows:

(1) Ms Lilleyman used an Enterprise Value ['EV']/EBITDA multiple of 5.9x of the 2024 estimated EBITDA to calculate the EV of IBSHL at 31 March 2024. This was based on 5.9x being the assumption used for the purposes of her Discounted Cash Flow calculation of the value of IBSL. Mr Mitchell considered that the most appropriate multiple to use was that used for IBSL in the transaction itself, which was 7.6x (63.872/8.433).

(2) They disagreed as to what level of minority discount should be applied. Ms Lilleyman applied a discount of 34%, comprised of (a) 29%, which she considered to have been implicit in the valuation of £88.56 per IBSL share used in the transaction, on the basis that this had been the valuation of a minority not a controlling interest, and (b) 5% to account for the additional restrictions placed on the Claimants' shares in IBSHL after the transaction. Mr Mitchell considered that the value of £88.56 per IBSL share had been a pro-rata valuation, ie the value for the portion of 100% of the company which was being acquired by BGF, and not a minority valuation. In his view, only at most a 5% minority discount should be applied, to reflect the enhanced shareholders' rights of BGF compared to the Claimants' IBSHL holding after the transaction.

(3) They disagreed as to what level of liquidity discount should be applied. Ms Lilleyman considered that a liquidity discount of 19.5%, based on an assumed exit in 2024, should be applied to the valuation of the IBSHL shares. Mr Mitchell considered that the BGF Transaction indicated that there was liquidity for the Claimants' shareholding, and no liquidity discount was appropriate.

219. Both experts were well-qualified and gave their evidence helpfully. Ms Lilleyman's evidence was characterised by high intelligence, diligence and articulateness. Mr Mitchell's evidence was clear and measured. Having considered their reasoning and conclusions, I prefer Mr Mitchell's evidence on the points on which they disagreed. Mr Mitchell has more experience of performing valuations, for both contentious and non-contentious purposes, than has Ms Lilleyman. Furthermore, I considered that Mr Mitchell's evidence was more practical, less theoretical, and more in accordance with commercial realities and with an understanding of how the relevant markets work.

220. As a general, but significant, point, I considered that it was inherently implausible that the value of the shares and options which the Claimants acquired in IBSHL were, as soon as they were acquired, worth significantly less than their shares in IBSL had been. Shareholders would not, exceptional circumstances apart, roll over shares into a near-equivalent shareholding in a holding company if there would be a reduction in the value of the shares. Here, furthermore, if anything, it would be expected that the value of the shares in IBSHL would be rather higher. The underlying business would be the same, but it would now be backed by a professional investment firm which brought access to other sources of capital, assistance with the professionalisation of governance and access to a talent network.

221. As to the more specific points of difference which led Ms Lilleyman to her lower valuation of the IBSHL shares and options, it is sufficient to say this:

(1) I preferred Mr Mitchell's approach to deriving the EV/EBITDA multiple, of taking that from the nearest comparable actual transaction, namely the divestment itself. I accept that that is a more traditional approach. Ms Lilleyman's approach of deriving

the multiple from her DCF valuation of the shares in IBSL immediately prior to the transaction is unconventional, and liable to introduce distortions.

(2) I was not persuaded that the transaction value for IBSL shares was reflective of a minority discount in the region of 29%, or that the valuation of the IBSHL shares should be subject to such a large discount. Pre-transaction, the Claimants' shareholdings were the largest of all the shareholders; they were influential minority shareholders. It is not appropriate to apply a discount derived from data, such as the Mergerstat data to which Ms Lilleyman made reference, based on the control premium relative to the price of a listed share implied in listed company transactions that deliver control. After the transaction, the Claimants' shareholdings were similarly influential.

(3) Ms Lilleyman applied no liquidity discount to the valuation of the Claimants' shares in IBSL pre-transaction but applied a discount to the value of their shares in IBSHL post transaction. This was on the basis that the liquidity of the Claimants' shares changed as a result of the transaction, because there was then no expected liquidity event and there would be no opportunity for a sale in less than five years' time. That approach appeared to me to be unsound. The transaction would not have given liquidity to the Claimants' shares in IBSL as at 5 March 2019, as the Claimants had elected not to participate in the cashing out of shareholdings, and thus potential acquirers of the Claimants' IBSL shares would be aware that the transaction did not give them liquidity. That there would be no further sale for five years appeared speculative. I considered that Mr Mitchell's approach, namely that there should be no liquidity discount, was preferable. The transaction demonstrated the availability of a market for a shareholding such as the Claimants'. There was no good reason to assume that BGF would not be willing to invest alongside another substantial minority investor. It is possible that the transaction may have increased liquidity on the basis that the shareholder group now included a professional investor who would look to realise the value of their shares and the drag and tag rights in the Articles increased the prospect of such a liquidity event for all shareholders.

222. Accordingly, I find that the Claimants have failed to show that the value of their IBSHL shares and options on the completion of the transaction was materially lower than the value of their IBSL shares immediately prior to the completion of the transaction. They have therefore not established a direct loss.

Consequential loss

223. There remains the Claimants' case for consequential loss, based on the contention that, had it not been for the misrepresentations, the transaction would not have proceeded, and what would have happened instead is the Trade Sale Counterfactual. As I have already set out, it is my finding that there were no misrepresentations, and that, had there been, the transaction would still have taken place, at least on terms which were materially the same (ie any differences would not have affected value). The consideration of this counterfactual only arises if I am wrong in those regards.

224. While the Claimants' pleading did not put a date on when the Trade Sale would have occurred, the order for expert evidence, which was the product of agreement between the parties, provided that the experts were to consider the value of the Claimants' shares if the shareholders of IBSL had all sold their shares to a third party by way of a sale of the entire business of IBSL 'as at the financial year ended March 2019'. The experts

were asked to consider no other date in this context. Further, in the Claimants' skeleton argument in advance of the trial, the Trade Sale Counterfactual was said to be that 'The shareholders of Invenio would not have pursued a private equity investment, and Invenio would have been sold as a business to a third party on or around 5 March 2019.' There was no evidence adduced in relation to the possibility or practicability of a trade sale at a later date, and Mr Goyal was generally reluctant to engage in what he described as speculation as to what might have happened on a counterfactual analysis.

225. In light of these matters, I consider that the counterfactual which I have to consider is of a trade sale in March 2019 which had completed by about the end of that month. I do not consider that the Claimants can avoid this approach by saying that the exercise the court is embarked on is the assessment of the loss of a chance, and that it can assess the chance of a sale at some other point. Insofar as the exercise is one of the assessment of the loss of a chance, the court cannot make any assessment of the chance of a sale at an entirely indefinite point, and with no evidence relating to the possibility / practicability of a sale at such a point.

226. This is significant because I am quite clear that on the hypothesis that the divestment had been called off because the misrepresentations had not been made to Mr Goyal, no trade sale would have occurred in March 2019 or thereabouts. Furthermore, if there were any actionable misrepresentations, those which would most likely have been relevant to Mr Goyal's decision as to whether or not to proceed would have been those alleged to have occurred later rather than earlier, namely those after BGF became the preferred bidder in relation to the misrepresentations involving Mr Snodgrass, and after the 21 December 2018 meeting in the case of those involving Mr Balasubramaniam. Those alleged to have occurred earlier would have been the more obviously matters which could not reasonably be relied upon. The period between such later misrepresentations and the date of the putative trade sale was, therefore, a short one.

227. The reasons why I am of the view that a trade sale could not have happened by the end of March 2019 or thereabouts include the following:

(1) PwC had commenced Project Ipala on 4 September 2018 and it completed on 5 March 2019. Had it been called off at some point, to be replaced by an attempt to effect a trade sale, that would have involved a new sale process, and the marketing of the company to a different set of buyers. Mr Goyal himself gave evidence that PwC had advised that a trade sale would have involved 'a completely different set of potential investors'. It seems clear that the VDDR would have needed to be updated, and clearly, if buyers could be identified, a new suite of contractual documents would have been necessary.

(2) A trade sale would have been more difficult to achieve. PwC had advised the company that a majority sale would be more difficult to achieve than the sale of a minority stake. It is unclear what bidders there might have been, or the timescale in which they could have been identified, but no reason to think that it could have been done very quickly.

(3) The abandonment of the divestment would have left the dispute between Mr Goyal and Partho unresolved. It would also, in all likelihood, either have involved or precipitated an exacerbation of the poor relations between Mr Goyal and Mr Balasubramaniam. If this had got out, and it seems likely that it would have done given

that what would have been involved was a change of course by the company, it would have been more difficult to find a buyer, as Mr Bessant of PwC had advised. On any view, the differences between the three would have been likely to have delayed the process of switching to a trade sale, and of finding and agreeing on a buyer, if one could be found.

(4) A sale might have been speeded up, if at a fire sale price, but that would have been most unlikely to have been agreed by the shareholders (including Mr Goyal and Mrs Goyal).

228. Thus, in so far as this is a matter of determining what the Claimants would have done, in the event of the transaction not proceeding, I find on the balance of probabilities that they would not have entered into a trade sale by the end of March 2019 or shortly thereafter. Insofar as this amounts to a question of the assessment of the acts of third parties, I am of the view that there was no real and substantial chance, for the purposes of the test established in *Allied Maples Ltd v Simmons & Simmons* [1995] 1 WLR 1602 and applied in *4 Eng Ltd v Harper* [2009] Ch 91, at [56]-[58], of there being a trade sale in the timeframe I have referred to.

229. I should add that, in my judgment, a trade sale was less likely than all those involved seeking to continue with the business arrangements as they were before Project Ipala, pregnant with difficulties and tensions though they were. But, in fact, the difficulties of both a trade sale, and of continuing as they were reinforce my conclusion, reached at an earlier point in the analysis, that the Claimants would have entered into the transaction irrespective of the misrepresentations alleged.

230. For the sake of completeness, I should also state that I considered that the Claimants had failed to establish that they would have been in a financially better position in the event of a trade sale than they were in entering into the transaction. Consistently with my acceptance of Mr Mitchell's evidence that the actual transaction was on a pro rata basis, there is no reason to conclude that the price which would have been achieved for the Claimants' shares on the counterfactual assumption would have been any different from the 'price' of the Claimants' shares implicit in the actual transaction.

Conclusion

231. For the reasons given the Claimants' claims fail.