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Case No: BL-2023-000899

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 23/06/2026

**Before :**

**MR JUSTICE ADAM JOHNSON**

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**Between:**

**HIPGNOSIS MUSIC LIMITED**

**Claimant**

**- and -**

**(1) MERCK MERCURIADIS**  
**(2) HIPGNOSIS SONGS FUND LIMITED**  
**(3) HIPGNOSIS SONG MANAGEMENT LIMITED**

**Defendants**

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**Edward Davies KC and Anna Scharnetzky (instructed by Forsters LLP) for the Claimant**  
**Edmund Cullen KC and Edward Granger (instructed by Payne Hicks Beach LLP) for the**  
**First Defendant**

**Neil Kitchener KC, Patrick Harty and Dominic Li (instructed by Herbert Smith**  
**Freehills Kramer LLP) for the Second and Third Defendants**

Hearing dates: 26-27 February and 2-6, 9-13, 16-17, 23-27 March 2026

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on Tuesday 23 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Mr Justice Adam Johnson:**

**I. Introduction**

1. This case gives rise to two broad issues. The first concerns the circumstances in which someone who is a company director can become inhibited, as a result of steps taken to pursue a business idea or opportunity on behalf of the company, from pursuing that same (or a similar) idea or opportunity after he has ceased to be a director. The second concerns the circumstances in which, if the former director pursues the business idea or opportunity via a new corporate vehicle, that new vehicle can become liable to account as an accessory for knowingly assisting the former director in breach of duty, assuming the director is so liable.
2. The case comes about because in the period 2016 to early 2018, Mr Merck Mercuriadis was a director of two companies which pursued a business venture involving the intended acquisition of music publishing catalogues. The two companies were Hipgnosis Music Limited (“*HML*”) and its subsidiary, Hipgnosis Copyrights Plc (“*Copyrights*”). The business venture did not work out, however. No music catalogues were ever acquired by HML or Copyrights. A proposed fund-raising by way of a bond issue by Copyrights stalled in early 2017 and was never resurrected.
3. What happened instead is that the same basic idea was pursued by Mr Mercuriadis and others via other corporate vehicles. The first was called Hipgnosis Songs Fund Limited (referred to as “*HSFL1*”). HSFL1 was intended to operate as a closed-ended investment trust, to which Mr Mercuriadis would provide advisory services via his company Hipgnosis Songs Limited (“*HSL*”). In the end, however, the Initial Public Offering (“*IPO*”), via which HSFL1 was to raise investment capital, failed and was aborted in September 2017.
4. Following that, HML was wound-up in February 2018, and in May 2018 Copyrights was dissolved by way of compulsory strike-off.
5. In June 2018, though, another company was set up, also called Hipgnosis Songs Fund Limited (but referred to in this claim as “*HSFL2*”). HSFL2 – a further closed-ended investment trust – was then successful in raising equity via an IPO in July 2018. It went on to acquire a large number of music publishing catalogues, and Mr Mercuriadis benefited from this, mainly through the provision of advisory services to HSFL2 via another company associated with him, originally called The Family (Music) Limited but later called Hipgnosis Song Management Limited (“*HSML*”).
6. The claims in this case are brought by the original companies, HML and Copyrights. Copyrights was restored to the register on 19 October 2022, and has since assigned all its rights and causes of action to HML, which brings these proceedings via its Liquidators. Although, in light of the assignment, there is only one named Claimant in the proceedings, where relevant below I will aim to distinguish between HML and Copyrights, and propose to refer to them together as “*the Claimants*”.
7. The Claimants’ claims are essentially as follows: (1) claims against Mr Mercuriadis, for breach of duties owed to them in pursuing via HSFL1 and then HSFL2 what HML and Copyrights say was their business opportunity; and (2) claims against HSFL2 and HSML for dishonestly assisting Mr Mercuriadis in breach of the duties he owed to

HML and Copyrights. HML and Copyrights say that, if their claims are made out, they are entitled to an account of profits from Mr Mercuriadis, from HSFL2 and from HSML. (There is also another, minor claim brought by HML specifically, concerning diversion of income from managing music artists. I will deal with that separately below: see Section XI, starting at [364].)

## II. Background

8. I will start with an overview of the facts. As I will explain below, very little of the basic factual background is in dispute. The main areas of disagreement are dealt with separately in Section V below, beginning at para. [168].

### Mr Mercuriadis

9. Mr Mercuriadis is a music industry professional, whose roles over a long career have included managing a number of famous names including Sir Elton John, Guns N' Roses, Beyoncé and the former lead singer of The Smiths, Morrissey. After starting his career with the Virgin group, between 1987 and 2007 he worked for the Sanctuary group, and rose to become CEO. He left Sanctuary in 2007 and in 2011 incorporated Hipgnosis Artists Group Inc as his personal services company.

### "Hipgnosis"

10. The name "*Hipgnosis*" was originally associated with a graphic art group founded in the late 1960's by Storm Thorgerson. They designed album covers for a number of influential musicians, including most famously Pink Floyd. Mr Mercuriadis' evidence was that, many years later, in the mid-2000's, he reached an arrangement with Mr Thorgerson allowing him use of the "*Hipgnosis*" name. Mr Thorgerson also supplied artwork for use by Mr Mercuriadis: one of the images was a picture of an upside-down elephant, which was to become the standard logo for the Hipgnosis brand.

### Introduction to Mr Ingmanson and Mr Gergeo

11. In November 2014, Mr Mercuriadis was introduced to two Swedish investors, Mr Emil Ingmanson and Mr Afram Gergeo, by Mr Aeon Beaumont Manahan. Mr Manahan (who goes by the name of "*Step*") is a successful music producer. There were meetings in Los Angeles and Atlanta. The idea emerged of starting a business together, and so HML came to be formed.

### The music publishing catalogues opportunity

12. Part of HML's business was to involve the management of music artists. But there was also another idea in circulation at the time, which was the possibility of acquiring music publishing catalogues. The concept was to acquire the copyright in back catalogues of songs by composers of popular music. The business proposition was that such catalogues might represent a profitable investment, given the anticipated growth in music streaming via platforms such as Spotify. The opportunity presented by this insight or idea is at the heart of the present dispute.

### Shareholdings in HML

13. Mr Mercuriadis took a 47.5% stake in HML. Another 47.5% was held by a company, Solid Venture Capital Limited (“SVCL”), in which Mr Ingmanson and Mr Gergeo were originally shareholders (although Mr Gergeo’s evidence was that he then acquired Mr Ingmanson’s interest in the Autumn of 2015). SVCL paid some £500,000 for its shareholding in HML. The remaining, 5% shareholder in HML was Mr Manahan.

### The source of SVCL’s seed capital

14. What has now become clear is that SVCL’s £500,000 seed capital in HML, and various other sums used to finance HML in later periods, had their origin in a fraud involving the unauthorised use of monies under the control of the Swedish Pensions Agency.
15. The nature of the fraud (so far as relevant) was that pension monies were invested in a UCITS investment vehicle incorporated in Malta called Falcon Funds SICAV plc, which was under the control of Mr Ingmanson (also known by the name Max Serwin). Monies from the so-called “Falcon Funds” were then siphoned off by Mr Ingmanson for his own benefit using a number of different means, including investments in a Swedish energy company, Werel AB (“Werel”), associated with Mr Gergeo. More detail about the fraud is given in a detailed judgment dated 8 July 2025 of HHJ Pelling KC, in a claim by the Kingdom of Sweden against Mr Ingmanson/Mr Serwin and others, including Mr Gergeo and a company owned by him, Gergeo Invest AB (“Gergeo Invest”). The Judgment is reported at [2025] EWHC 1620 (Comm).
16. None of this background was known to Mr Mercuriadis at the time of SVCL’s original investment in HML, but came to be known as HML’s business developed.

### Directors of HML

17. The directors of HML were Mr Mercuriadis and Mr Gergeo.

### Shareholders’ Agreement and Service Agreement

18. The shareholders in HML entered into a Shareholders’ Agreement (the “Shareholders’ Agreement”) dated 6 August 2015. Amongst other provisions imposing obligations on Mr Mercuriadis, Clause 11.2(a) required him to devote substantially the whole of his time and attention to the business and affairs of HML, and by Clause 11.2(f) he covenanted not to use the name “Hipgnosis” or “any colourable imitation thereof”.
19. Also on 6 August 2015, Mr Mercuriadis entered into a director’s service agreement with HML (the “Service Agreement”). Under clause 10.1, Mr Mercuriadis agreed not to engage in any other business in competition with the business of HML.

### Copyrights is formed as the vehicle for a bond issue

20. The music catalogues business was slow to develop, but by June 2016 the idea had crystallised of forming a subsidiary company which would be a vehicle for a fundraising exercise.
21. Fundraising for the venture was proposed in the form of a bond issue. By the early Autumn of 2016, efforts were being undertaken to launch a bond issue on the Gibraltar

Stock Exchange. Copyrights was established as a subsidiary of HML on 9 September 2016.

#### Directors and company secretary of Copyrights

22. The directors of Copyrights were Mr Mercuriadis and a Mr Mathiesen-Ohman (Mr Gergeo was originally a director as well but resigned in October 2016).
23. Mr Christopher Helm was appointed company secretary. Mr Helm was an accountant who had worked as a senior finance professional in the music industry. He was also appointed Copyrights' chief financial officer. Amongst other matters, he assisted in the preparation of financial projections for Copyrights.

#### Role of Mr Ingmanson

24. Mr Mercuriadis' evidence was that Mr Ingmanson had a continuing role in the venture, which was to introduce potential investors in the bond. This was disputed by the Claimants, but is consistent with other evidence. For example, in an email chain between Mr Ingmanson, Mr Mercuriadis, Mr Gergeo and Mr Alcraft (Copyrights' then solicitor) in September 2016, Mr Ingmanson gave advice as to how the proposed bond could be structured in such a way that it was investible to UCITS funds. Falcon Funds SICAV plc was a UCITS investment vehicle.

#### Features of Copyrights' proposed business

25. In terms of how the business would operate in practice, three particular features may be noted.
26. First, certain high-profile figures in the music industry were identified and recruited under consultancy arrangements with HML, to lend assistance in the identification of valuable music publishing catalogues – these individuals included Nile Rodgers, Lance Freed and Terius Youngdell-Nash, better known in the industry as “*The-Dream*”. Mr Mercuriadis' evidence was that he had known Nile Rodgers for about 20 years prior to the incorporation of HML, had known Lance Freed since the 1990s, and had been the manager of The-Dream (a songwriter for Rihanna, Justin Bieber and Beyoncé) prior to starting HML.
27. A second feature was that an entity called Kobalt Music Group Limited (“*Kobalt*”) was identified and retained as Copyrights' “*administrative partner*”, to carry out the collection of royalties on behalf of Copyrights. Kobalt had carried on business as a specialist royalty collection service since 2000.
28. A third feature was that, as part of the overall business proposition, publishing rights would where possible be actively managed – for example, to derive “*synchronisation income*”, which arises when music is used in (amongst other things) TV coverage or in advertisements.

#### Possible IPO

29. At some point during the same period (i.e., the early Autumn of 2016), another fundraising idea also began to be discussed. This was the idea of raising funds by way of an IPO. It seems the idea was originally suggested to Mr Mercuriadis by Mr Richard

Pavry of Jupiter Asset Management. Mr Pavry was introduced to Mr Mercuriadis by Michael Naylor, a well-known investment professional.

30. Mr Mercuriadis began discussions with an intended IPO sponsor, Cenkos Securities plc (“Cenkos”). The evidence shows that Mr Pavry and Mr Naylor were also involved in those discussions.
31. As matters developed, the overall plan came to be that the bond issue would seek to raise some £50m, to be used in a limited number of initial catalogue acquisitions; but that would be followed by an IPO for a more ambitious amount – it would seek to raise some £200m, also to be used in the acquisition of music publishing catalogues.

#### The Lunch with Mr Naylor and the “Red Flag” Report

32. At this point, difficulties began to emerge. In September 2016, Mr Mercuriadis and Mr Ingmanson attended a lunch at a restaurant in London with Mr Naylor. Mr Naylor had undertaken some background checks and had discovered references in the Swedish press to ongoing investigations into the activities of Mr Ingmanson and Mr Gergeo. On 4 October 2016, a “Red Flag” report produced as part of the due diligence exercise in connection with the bond issue identified similar concerns.

#### HML borrows £200,000 from Gergeo Invest

33. Mr Mercuriadis’ evidence was that he was nonetheless comforted by reassurances given to him by Mr Gergeo, so much so that on 21 November 2016, HML borrowed some £200,000 from Mr Gergeo’s company, Gergeo Invest.

#### Mr Gergeo relocates and relinquishes control of Gergeo Invest

34. In November 2016, Mr Gergeo moved from Sweden to London. In January 2017 Mr Gergeo indicated to Mr Mercuriadis that his wife was taking over control of Gergeo Invest. Mr Mercuriadis’ evidence was that the latter point in particular began to increase his concerns about Mr Gergeo’s bona fides, notwithstanding the assurances he had earlier been given.

#### Progress on the IPO

35. In the meantime, plans for the IPO were proceeding. Emails in December 2016 and January 2017 show Mr Mercuriadis keeping Mr Gergeo informed about progress. For example, on 27 January 2017, Mr Mercuriadis forwarded to Mr Gergeo copies of two long emails dealing with structuring and tax issues, saying in his covering email, “FYI mate”. It is clear that Mr Manahan was in the picture as well at this stage. In an email to his friend Gordon Cyrus dated 7 March 2017, he referred to having started a new company in London with Swedish investors, and to “negotiating a 200 mill fund to by (sic.) songs ...”.

#### Fundraising for Copyrights’ bond

36. Consistent with Mr Mercuriadis’ evidence that Mr Ingmanson continued in a fundraising role for the bond, the trial documents include an email dated 1 February 2017 from Mr Mercuriadis to Mr Alcraft, referring to “Emil ... travelling to Zurich today”,

and thus wishing to have “*the latest prospectus*”. Questioned about this, Mr Gergeo conceded, “*He would help us try and get funds in the bond, that is correct*”.

37. Whatever efforts Mr Ingmanson was undertaking, however, by this stage it was becoming clear that assistance would be required from other sources. Discussions took place with Jodi Bartin, a senior representative at Citicourt & Co, with a view to them coming on board as an additional fundraiser. This presented a potential problem, however, because their proposed engagement terms required exclusivity. In a handwritten mark-up of 13 February 2017, Mr Alcraft queried the practicability of this, given Mr Ingmanson’s continued interest: “*Do not like the concept of exclusivity – how does that cut across UCITS/EAI etc?*”
38. In the end, however, that particular problem appears to have solved itself. In a conversation in February 2017, according to Mr Mercuriadis, Mr Ingmanson conceded that he “*couldn’t deliver*” on the bond. Moreover, Mr Mercuriadis’ account was that when he asked Mr Ingmanson in the same conversation about the possible IPO, Mr Ingmanson said he wanted nothing to do with it.

#### HML borrows £35,000 from Macor Limited

39. Notwithstanding that, on 27 February 2017, Macor Limited, a company associated with Mr Gergeo/Mr Ingmanson, provided a further loan to HML of £35,000.

#### The Bond Prospectus

40. Work on the proposed bond continued nonetheless. A registration document and associated securities note were prepared (referred to together as the “*Bond Prospectus*”). The executive summary described Copyrights’ aim as being:

*“ ... to acquire, manage and extract revenue from the commercial rights to music song catalogues. Two back catalogues of publishing rights have been identified as potential targets, with an objective to identify and buy a further three catalogues during a five-year acquisition strategy.”*

41. The business opportunity underpinning this aim was described as follows:

*“The Directors believe that due to depressed revenues caused by the decline in both the physical purchase of music and digital downloads and separately due to the ageing of well-known rock stars a unique opportunity exists to buy these commercial rights at well below their true value”.*

42. The business proposition set out in the Bond Prospectus was that summarised above: i.e., it included use of the consultants (Nile Rodgers, Lance Freed and The-Dream); it included use of Kobalt as the dedicated royalty collection service; and it involved where possible the active management of copyright interests.

#### Mr Gergeo accuses Mr Mercuriadis of misusing HML funds

43. There was a falling out between Mr Mercuriadis and Mr Gergeo in about March 2017. Mr Gergeo’s evidence was that he was in contact with HML’s accountant, Mr Elias,

who in the course of preparing HML's accounts had noticed substantial payments – as far as Mr Gergeo could remember totalling about £200,000 – being made from HML to Mr Mercuriadis' personal American Express account. HML's Metro Bank statements do indeed show substantial payments from HML to Mr Mercuriadis totalling over £200,000.

44. Mr Gergeo's account was that he spoke to Mr Mercuriadis about this, whose explanation was that the payments were in relation to HML expenses he had personally incurred. Mr Gergeo said he did not believe that explanation. Mr Mercuriadis in his witness statement gave evidence that shortly afterwards, Mr Gergeo had confronted him during a lunch on Kensington High Street, and during the lunch "... *Mr Gergeo put his hands on me and tried to choke me*". In his oral evidence he said that nonetheless the restaurant was full and he had not wanted to make a fuss, so he had simply left the restaurant and did not file a police report.

Work on the bond is suspended

45. One of the two principal catalogue acquisitions targeted for Copyrights via the bond was the purchase of the Wayne Hector catalogue (Wayne Hector is a British composer who had achieved success writing for artists such as One Direction and Nicki Minaj). By mid-March 2017, however, Wayne Hector had done a deal with another purchaser.
46. Moreover, Mr Mercuriadis said in his evidence that his growing concerns about Mr Ingmanson's and Mr Gergeo's backgrounds led him to lose confidence in the viability of any business venture involving them. He referred to having undertaken some online research of his own in about February or March 2017, which revealed that they were being investigated in Sweden and in Malta. He also said that his discussions with Jodi Bartin of Citicourt had quickly revealed concerns on her part about involvement in any fundraising structure connected to Mr Ingmanson and Mr Gergeo.
47. In his written evidence, Mr Mercuriadis summarised the position in April as follows:

*"From around April 2017, I believed there were no prospects in Copyrights pursuing a business of the acquisition and exploitation of music publishing catalogues if it maintained its connection with Ingmanson, Gergeo and SVCL".*

48. Work on the bond was suspended from April 2017 onwards.

The IPO business model: income as "investment adviser"

49. The IPO was to have a somewhat different structure to the bond. The idea behind the bond was that funds would be borrowed from investors in fixed-income securities issued by Copyrights, which Copyrights would then use to acquire music catalogues in its own name. Revenue from those catalogues would then flow up through the company structure to Copyrights' parent company, HML.
50. The IPO was to operate in a different way. A new IPO vehicle would be created, which would take the form of a closed-ended investment trust. The IPO vehicle would raise funds from third-party equity investors, and would then use that capital to acquire music catalogues. The old HML/Copyrights structure would no longer be relevant, because

neither was intended to be an equity investor in the new IPO vehicle. Instead, HML and/or Mr Mercuriadis would have a separate income stream: they would act as “*investment adviser*” to the new IPO vehicle, and would earn remuneration under an investment advisory agreement.

### Due diligence for the IPO

51. Mr Alan Ray of Cenkos gave evidence about the due diligence process in connection with HSFL1. He indicated in cross-examination that during due-diligence Mr Mercuriadis had not given any information about Mr Gergeo and the allegations of fraudulent behaviour against him:

*“Q. ... It is right, is it not, that at no point at all, let alone in the due diligence, did you hear anything from Mr. Mercuriadis about his associate, Mr. Gergeo, being implicated in some kind of fraudulent behaviour?”*

*A. No.*

*Q. You heard nothing of that nature from any of your colleagues at Cenkos?”*

*A. No.*

*Q. Any indication that Mr. Gergeo, a former business partner of Mr. Mercuriadis, had been involved in crime or fraud would have been a red flag for Cenkos, would it not?”*

*A. Depending on the structure. Well, yes, it would have certainly been something we would have wanted more information on, yes.*

*Q. Just to finish the point about whether you heard anything about fraud, on the part of Mr. Gergeo, you did not hear anything from any investors that you were speaking to either, did you?”*

*A. No.”*

### Engagement with Mr Gergeo after April 2017

52. There was some disagreement between the parties about the extent to which Mr Mercuriadis maintained contact with Mr Gergeo and Mr Mathiesen-Ohman (the other director of Copyrights) after April 2017. The evidence is consistent with the information flow slowing down after that point, but it also suggests that Mr Gergeo was not entirely in the dark, and that Mr Mathiesen-Ohman, although less well informed, was reasonably indifferent about it.
53. Mr Mercuriadis’ evidence was that, having determined there was no prospect of continuing to work within any structure linked to Mr Ingmanson or Mr Gergeo, he started the process of trying to acquire SVCL’s interest in HML and take Mr Gergeo and Mr Ingmanson out of the picture. That would essentially involve returning the investment they had made, and paying back the funding they had advanced.

54. Mr Gergeo's evidence suggests that, although he was uncertain after April as to the precise status of the proposed bond in particular, he did know that work was ongoing in some form, and that it might well not involve HML. That is consistent with his earlier knowledge, from emails in late 2016 and early 2017, of ongoing work in connection with a proposed IPO.
55. In his witness statement Mr Gergeo said the following:

*“By this stage [i.e., April 2017], I was almost certain that Merck was now doing the bond and/or establishing a fund via an alternative structure outside HML ...”.*

HSL becomes the “investment adviser” to the IPO vehicle

56. When work was ongoing on a draft prospectus in early May 2017, an initial version of 1 May 2017 identified HSL as the intended investment adviser to the IPO vehicle, but described it as a subsidiary of HML. That, of course, would have left Mr Gergeo to benefit from the structure, because (via SVCL) he was still a 47.5% shareholder in HML. But by 4 May 2017, the position had changed – a revised draft continued to show HSL as investment adviser, but it was now described as a company wholly owned by Mr Mercuriadis, as indeed HSL was. In cross-examination, Mr Mercuriadis accepted that he was the person who had given instruction for the change in the proposed ownership structure between the two drafts.
57. At about the same time, the intended IPO vehicle was also incorporated – as already noted, this was the company referred to in the proceedings as HSFL 1.

The IPO Prospectus

58. Although the IPO structure was different to the bond, it is worth noting that the basic business opportunity underlying it was essentially the same. When a final version of the prospectus (the “*HSFL1 Prospectus*”) came to be published on 23 June 2017, it described the opportunity as follows:

*“There is currently a unique market opportunity as technology disruption is changing the way music is consumed. The pace at which revenues from music streaming replace and increase those earned from physical and permanent download sales is forecast to grow significantly”.*

59. Other structural features were essentially the same as those described in the Bond Prospectus. More particularly, (1) HSFL1 would have the benefit of input from an “*Advisory Board*”, whose members were to include Nile Rodgers, Lance Freed and The-Dream; (2) Kobalt would act as royalty collection agent; and (3) music publishing rights would be actively managed so as to maximise income in particular from synchronisation usage.

The HSFL1 non-executive directors

60. The HSFL1 Board comprised four non-executive directors, Mr Andrew Sutch, Mr Simon Holden, Mr James Wilkinson and Mr Rupert Perry. Mr Sutch is a lawyer: the

former senior partner of Stephenson Harwood, solicitors. Mr Holden is an experienced private equity investor. Mr Wilkinson is an accountant, but with extensive music industry experience, which included managing the financial and business affairs of The Rolling Stones. Mr Perry is a music industry professional, who held a number of senior roles at EMI.

61. Mr Sutch affirmed in his evidence at the trial that he was never informed by Mr Mercuriadis that he was a director and shareholder of another company bearing the “*Hipgnosis*” name that had been involved in a music catalogues venture. Mr Sutch did have some recollection of having been told by Mr Pavry that Mr Mercuriadis had previously tried and failed to raise money for such a venture by way of a bond, but did not think he had ever been told there were other shareholders involved in that project. Mr Holden said in his evidence that although at the time of the HSFL1 IPO he was aware that Mr Mercuriadis had a talent management company called Hipgnosis Music Limited (i.e., HML), he was not aware that that company had other shareholders or that it had previously explored the possibility of a bond issue in Gibraltar or the idea of acquiring music catalogues. Mr Wilkinson in his written evidence said that he first came to be aware of Mr Mercuriadis’ involvement in a previous music catalogues business only at the beginning of 2019. I accept these accounts, which are consistent and mutually reinforcing.

Proposed buy-out of SVCL’s shareholding in HML

62. I have mentioned above that, post-April 2017, Mr Mercuriadis said that his strategy had been to seek to acquire SVCL’s shareholding in HML, and cut ties with Mr Gergeo and Mr Ingmanson.
63. The documents show that by late June 2017, the terms of a share purchase agreement (“*SPA*”) for the sale of the majority of SVCL’s interest in HML had been agreed in principle between Mr Gergeo and Mr Mercuriadis.
64. The basic terms were that Mr Mercuriadis would pay £1,046,000 for 42.5% of the shares in HML . That would refund to SVCL (and therefore Mr Gergeo) the amount of its original capital investment (£500,000), plus the further funds advanced over time, including the £200,000 provided by Gergeo Invest in November 2016 and the further £35,000 advanced by Macor Limited in February 2017 (Mr Gergeo in his oral evidence said the plan was for him to pay the £35,000 to Mr Ingmanson from whatever funds he received, and “*[t]he rest of the Hipgnosis business was mine*”).
65. The arrangement would leave SVCL with a 5% holding in HML.
66. The terms provided for payment of the purchase price on completion, with a “*Completion Date*” of 12 July 2017. This was subject to the possibility of the Completion Date being extended, but with a final “*Longstop Date*” of 18 July. The SPA provided that if the purchase price was not paid by 18 July, either party would be entitled to terminate it.
67. Having reached agreement in principle, email exchanges between Mr Mercuriadis and Mr Gergeo in late June 2017 show them discussing the mechanics for signature of the SPA. The documents at trial included a copy of the final version of the SPA. Email

correspondence early in the day on 3 July shows signed counterparts being held in escrow pending exchange.

### The proposed Deed of Variation

68. Events moved on, however.
69. In an email of 10 July 2017, Mr Mercuriadis' solicitor, Mr Crellin, said to Mr Alcraft (who was now acting for Mr Gergeo), "*Merck has been in touch with Afram [i.e. Mr Gergeo] to say we are now unable to complete until 5 August*". It is apparent from other documents in the record, including in particular a draft Stock Exchange announcement dated 7 July, that in the meantime problems had arisen with proposed timings for the HSFL1 IPO (the draft announcement concerns proposed timetable changes, with the proposed admission of shares to be pushed back to 4 August).
70. Emails between the two solicitors thereafter show negotiations about a possible extension of the Longstop Date. After some to-ing and fro-ing, the end point reached was a proposal from Mr Alcraft on 18 July, to extend the Longstop Date to 5 August, provided Mr Mercuriadis would pay £20,000 on or before that date, "*regardless of whether or not completion actually takes place*". That found favour in principle with Mr Crellin in his reply of 19 July, although he sounded a note of caution by saying, "*The financing of the completion monies is conditional upon a listing date which is not totally in our hands*".
71. The idea that payment of completion monies was contingent on "*a listing date*" did not surprise Mr Alcraft. In his response of the same day, he said:

*"Ok that is good ... Are you able to draft what is necessary?"*

### Mr Alcraft's email of 13 August: Mr Gergeo threatens proceedings

72. The problem was not resolved, however. Exchanges between the solicitors show efforts to finalise a Deed of Variation of the SPA, but this did not come to fruition. In an email dated 13 August to Mr Crellin, Mr Alcraft accused Mr Mercuriadis of dragging his heels. He pressed for execution of the proposed Deed of Variation. In his email he said:

*"My client requires that the draft Deed of Variation be entered into by no later than Wednesday, 16<sup>th</sup> August 2017 with payment of the £20,000 referred to above being made before (i.e. in anticipation of completion) or on that date.*

*Although the proposed Longstop Date in the attached draft Deed of Variation is 21<sup>st</sup> August 2017 my client would be prepared to extend this to 31<sup>st</sup> August 2017.*

*If the Deed of Variation has not been entered into by 16<sup>th</sup> August 2017 and the sum of £20,000 has not been received by my client by that date then I now have clear instructions to pass this matter to my litigation partner, Richard Curtin, who I anticipate being instructed to ... [advise] on a claim against Merck personally for*

*... breach of fiduciary duties as a director of Hipgnosis Music Limited as well as a claim for damages arising out of Merck's decision to abort the GSX bond listing which was to take place using Hipgnosis Music Limited as the corporate vehicle and instead incorporate a company by the name of Hipgnosis Songs Limited to act as investment adviser to Hipgnosis Songs Fund Limited (of which Merck would be a shareholder) which is currently pursuing a London Main Market equity listing”.*

Mr Mathiesen-Ohman

73. It is useful at this point briefly to mention Mr Mathiesen-Ohman, the other director of Copyrights aside from Mr Mercuriadis. One useful reference point as to his state of knowledge is an email from him to Mr Mercuriadis dated 12 July 2017, in which he said:

*“Merck, still haven't heard from you despite several attempts with you getting back to me on email for a phone call that's not happening. It's getting to a point where I'm not comfortable with our project being released to the press under a slightly different name without you giving any information nor update ...”.*

74. Mr Mercuriadis sent a non-committal reply on the same day, and there is then a response from Mr Mathiesen-Ohman on 24 July saying:

*“Mate, I will not hunt you further but need an update ... If you are launching in an other (sic.) entity I will need to know since I have a stake in it. I want you/us to succeed in this venture but the least you have to do is provide information on you (sic.) actions”.*

The HSFL1 IPO is abandoned

75. In the event, the IPO of HSFL1 did not proceed. It was aborted in September 2017. The evidence is that this was for technical reasons. The concept underlying it appeared to find attraction in the market and a degree of interest, but the Prospectus required HSFL 1 to raise at least £100m, and in the end – perhaps because of an error as to the number and level of prior commitments made by potential investors – the amount raised was only £73-£74m.
76. One consequence of the IPO failing was that payment of the purchase price under the SPA was never made. Indeed, it appears that the proposed Deed of Variation was never executed. That left SVCL as a 47.5% shareholder in HML.

Proposed acquisition of Mr Manahan's shareholding

77. As well as the proposal to acquire SVCL's shareholding in HML, Mr Manahan gave evidence that he also had discussions with Mr Mercuriadis about a possible sale of his 5% shareholding in HML. Mr Manahan said that he thought Mr Mercuriadis had gone as far as to draw up a contract to buy him out in mid-to-late 2017, but no written

document was available at trial, and in any event it is clear that no deal was reached and that Mr Manahan therefore remained a 5% shareholder.

#### HML and Copyrights are “de-banked”

78. On 8 September 2017, HML’s and Copyright’s bank accounts were closed by its bankers, Metro Bank. Mr Mercuriadis in his evidence said he was informed by a representative of the Bank that this was because of suspicions of money-laundering arising from the association of Mr Ingmanson and Mr Gergeo with HML’s business.

#### Mr Gergeo resigns as a director of HML

79. Shortly afterwards, on 11 September 2017, Mr Gergeo resigned as a director of HML, leaving Mr Mercuriadis as sole director.

#### The Bond Withdrawal Notice

80. At some point between 7 and 9 November 2017, Mr Mercuriadis then administered the last rites to the idea of Copyrights issuing its proposed bonds by filing a formal notice (the “*Bond Withdrawal Notice*”) withdrawing the Prospectus and the still pending (but suspended) application for listing the proposed bonds on the Gibraltar Stock Exchange.

#### Mr Ingmanson and Mr Gergeo are arrested

81. In December 2017, both Mr Ingmanson and Mr Gergeo were arrested in the UK under a European Arrest Warrant, on suspicion of involvement in defrauding Swedish pensioners.

#### Mr Mercuriadis supports Mr Gergeo’s application for bail

82. Mr Mercuriadis supported Mr Gergeo’s application for bail. He provided a £25,000 guarantee, and also made a witness statement in which he described Mr Gergeo as “*both a business colleague and a friend*” and a “*person of integrity*”. In his oral evidence, Mr Mercuriadis said that he had felt under duress at the time of making this statement. Mr Gergeo was eventually released on bail in January 2018.

#### Winding-up of HML

83. In the meantime, on 22 December 2017, Mr Mercuriadis presented a winding-up Petition in connection with HML. The Petition sought a winding-up order on the ground that HML was unable to pay its debts. This was put on the basis (*inter alia*) that HML “... *no longer has an operating bank account from which to pay its creditors, the account having been closed at the behest of its bank*”.
84. A winding up Order was made in respect of HML on 21 February 2018.

#### The “Confirmation of Employment” letter

85. Notwithstanding that, in a letter on the letterhead of HML dated 23 February 2018, Mr Mercuriadis provided a “*Confirmation of Employment*” to Mr Gergeo, apparently to be used in providing reassurance to a potential landlord. The letter read:

*“My name is Merck Mercuriadis and I hold the position of Director at Hipgnosis Management Limited.*

*This letter is to confirm that you are in the employment of Hipgnosis Music Limited and that your staff reference number is H28904”.*

#### The s.235 Statement

86. A month or so later, on 27 March 2018, Mr Mercuriadis signed a statement under s.235 of the Insolvency Act 1986 (the “s.235 Statement”), addressing HML’s affairs. In it he said, “[t]he company was incorporated in June 2015 & the company was meant to provide management services to musical artists”. The statement made no reference to HML’s subsidiary, Copyrights, or to the venture involving the acquisition of music catalogues which Copyrights had sought to pursue by means of the Gibraltar bond issue.

#### Dissolution of Copyrights

87. In fact, roughly 3 weeks earlier on 6 March 2018, Copyrights had been served at its registered office with a notice under s.1000(3) Companies Act 2006 (“CA 2006”) indicating that, unless cause was shown to the contrary, it would be struck off the register of companies and dissolved. No action was taken in response, and about two months later Copyrights was dissolved by way of compulsory strike-off. That was on 22 May 2018.

#### Early preparations for further IPO – the “Sliver Period”

88. During this same period of time between March and May 2018, the evidence shows early efforts being undertaken in relation to what was to become a second, and this time successful, attempt to launch an IPO based on the music catalogues idea.
89. Mr Mercuriadis met a new sponsor/investment bank, N+1 Singer (“Singers”), on 6 March 2018. Documentation relating to the aborted HSFL1 IPO was provided by way of background, including a list of investors who had intended to subscribe in that IPO. Singers were engaged in about April 2018 (there is a draft engagement letter showing HSL as the “Client” dated April 2018). They undertook test marketing in around May 2018, and on about 20 May approaches were made to Mr Sutch, Mr Wilkinson and Mr Holden, who agreed to reprise their roles and to act as non-executive directors of a new fund.
90. During the trial, this period between March and May 2018 came to be referred to as the “Sliver Period”. It has relevance to a point raised about the pleadings, which I will come back to below (see [315]-[317]).

#### HSFL2 and HSML

91. Preparations for the further IPO attempt quickly gathered pace. A new IPO vehicle, which we have referred to as HSFL2, was incorporated in Guernsey on 8 June 2018, with HSL (Mr Mercuriadis’ company, which was to have been the investment adviser to HSFL1 under the first IPO) as sole shareholder. The directors on incorporation were Mr Sutch, Mr Holden and Mr Wilkinson, mentioned above.

92. About 10 days later, a further company called The Family (Music) Limited was incorporated. As explained, this has been referred in the proceedings as HSML (given its later change of name to Hipgnosis Song Management Limited). Like HSL, HSML was also owned by Mr Mercuriadis: he was the sole shareholder and director on incorporation. The idea was for HSML to act as investment adviser to HSFL2 under the investment structure proposed for the new IPO.

Approvals by the HSFL2 board; Investment Advisory Agreement

93. The HSFL2 Board met in Guernsey on 25 June 2018.
94. Prior to that meeting HSL (via Mr Mercuriadis), as (at that stage) sole shareholder in HSFL2, gave written approval to a resolution for the allotment of new shares by HSFL2, to allow the IPO to proceed.
95. There are detailed minutes of the Board Meeting. They show Mr Sutch, Mr Holden and Mr Wilkinson as present, and describe all as having been appointed “*at the Company’s incorporation*”. Mr Sutch was identified as Chair. Among other resolutions, the Board (1) approved the proposed IPO Prospectus (the “*HSFL2 Prospectus*”), and (2) approved the proposed Investment Advisory Agreement with HSML. As to the latter, the Minutes recorded the role of the Investment Advisor under the proposed Investment Advisory Agreement. HSML in short was to provide the following services:

*“12.4.1 assisting the Company in sourcing opportunities in Songs or Catalogues and informing the Company on pipeline investment opportunities on an ongoing basis;*

*12.4.2 advising on acquisition of any Songs or Catalogues including a recommendation as to price ...”.*

96. There were limits on HSML’s intended functions, however, as explained in the previous paragraph 12.3:

*“The Investment Adviser is not regulated by the FCA or any other regulatory authority and as such, cannot advise or make recommendation in relation to financial instruments or carry out any regulated activity under FSMA. Therefore, the Investment Adviser’s role will be strictly limited to advising on Songs and Catalogues.”*

97. The division of responsibilities was then underscored at paragraph 24.1, under the heading “*AIFM Directive*”:

*“IT WAS NOTED that for the purposes of the AIFM Directive, the Company would be considered a self-managed non-EEA AIF. Accordingly, the Board is responsible for the determination of the Company’s investment objective and investment policy and has overall responsibility for its activities. While the Company will enter into an Investment Advisory Agreement under which the Investment Adviser will advise the Company (as further*

*described in paragraph 12 above), it is intended that the Board would have sole responsibility for each decision relating to:*

*24.1.1 acquisition, holding or disposal of any investments of the Company;*

*24.1.2 exercise of any rights in relation to any investments including voting rights; and*

*24.1.3 structuring the acquisition or holding of any investment.”*

98. The Investment Advisory Agreement itself reflected the same principles. HSFL2 was described (Recital (D)) as “*an internally managed AIF for the purposes of the AIFM Directive*”. By Clause 3.1, HSML was appointed to “*advise ListCo [HSFL2] and its Subsidiaries in relation to the acquisition, holding, disposal and management of Songs ...*”, but only within the parameters of Clause 3 which included recognition (see Clause 3.4) of the “*obligations of ListCo as a company admitted to trading on the Specialist Fund Segment of the Main Market of the LSE.*”
99. Schedule 2 then set out an “*Allocation of Responsibilities*” as between HSML and HSFL2. As regards the acquisition and disposal of Songs, it was for the former to “*advise ListCo and its Subsidiaries on which Songs ... it should acquire*”, but it was for the latter to “*make the final decision as to the acquisition of any Song*”.

#### The HSFL2 Prospectus

100. HSFL2 published the HSFL2 Prospectus on 27 June 2018. This described the basic business proposition underpinning the IPO in more or less the same terms as the HSFL1 Prospectus (see above at [58]-[59]) – i.e., exploitation of the idea that at present, music publishing catalogues were undervalued by reference to their likely future income streams, and thus represented an attractive asset class for investment. Once more, the structural features included (1) input from an “*Advisory Board*” including Nile Rodgers, (2) use of Kobalt as the royalty collection agent, and (3) active management of music rights in particular to promote synchronisation usage.

#### Inquiry about Mr Gergeo

101. On the same day, 27 June, a fund manager at Seneca Investment Managers Limited sent an email to Singers saying that some research he had conducted had revealed a link between Mr Mercuriadis and Mr Gergeo, via their involvement in HML and Copyrights. This prompted an email from Sam Greatrex at Singers to Mr Mercuriadis, who replied to say:

*“I had a short association with this person Sam and I ended it almost 18 months ago”.*

102. In a subsequent email on the same day Mr Pavry developed the point as follows:

*“I can confirm Afram Gergeo has no association whatsoever with the Investment Adviser. There is no intention for him to have any future involvement. While I have never met him, I understand that he made an equity investment years ago into*

*Merck's artist management business which has now been exited. The IA team want nothing to do with him and he has no influence or claim over Merck or our intended business”.*

103. Mr Mercuriadis then added:

*“That is 100% correct Sam.”*

104. Relatedly, Mr Mercuriadis did not appear to contest the submission that he did not disclose to Singers the facts that (i) he had never reached any agreement for a formal parting of the ways with Mr Gergeo or Mr Manahan, and (ii) he had in fact received a threat of litigation from Mr Gergeo (via Mr Alcraft's email of 13 August 2017). In cross-examination, he contested the relevance and materiality of either point to the HSFL2 IPO.

#### Completion of the HSFL2 IPO

105. The IPO successfully completed on 11 July 2018, raising some £202,176,800. HSML acquired a small shareholding in HSFL2 (some 100,000 shares) as part of the IPO. Mr Mercuriadis later acquired some 94,614 HSFL2 shares personally. Shortly after the launch of the IPO, HSFL2 completed its first catalogue acquisition: a 75% interest in a catalogue of works by the artist known as The-Dream.

#### Appointment of Mr Burger

106. On 30 July 2018, a further non-executive director was appointed to HSFL2: Mr Paul Burger. Mr Burger is a well-known music industry professional, who spent many years at Sony Music before founding his own artist management company, Soho Artists, in 2003.

#### Further discussions with Mr Gergeo and Mr Manahan

107. In August or September 2018, Mr Mercuriadis, Mr Gergeo and Mr Manahan met at Soho House in London. According to Mr Manahan's evidence, Mr Gergeo and Mr Mercuriadis had a heated discussion. The detail is obscure. At any rate, Mr Gergeo's position in his written evidence was that he said he wanted *“my share of the profits of the Hipgnosis Songs Fund”*. In his oral evidence he appeared to put the point as follows: *“I wanted what was rightfully mine ... so if Merck received £1, I wanted 47.5% of that pound”* (Day 5, p. 116).

108. Mr Mercuriadis in his oral evidence conceded that he had offered Mr Gergeo a share of what he called *“the performance fee”* (Day 8, p. 136).

109. Mr Manahan in his written evidence said that he had been happy to let Mr Gergeo negotiate with Mr Mercuriadis, and then he and Mr Gergeo would sort out his (Mr Manahan's) position between themselves (*“... any money I received would be coming out of Afram's share”*).

110. No agreed position was reached at the lunch or in the period up to early 2019, although according to Mr Gergeo there was a *“protracted series of exchanges regarding the terms of a potential deal”*. However, Mr Gergeo was *“still trying to get Merck to provide me with copies of the contracts”*. In his oral evidence (Day 5, p.113) Mr Gergeo

explained that he did not trust Mr Mercuriadis: before agreeing to a share of what Mr Mercuriadis was to receive by way of “*performance fee*”, he wanted to be reassured what the “*performance fee*” actually was.

Mr Gergeo is extradited

111. Mr Gergeo was extradited to Sweden in April 2019, but it is clear from the evidence that the negotiations with Mr Mercuriadis continued, with Mr Manahan taking the lead. No agreed position was ever arrived at, and the detail of the negotiations is shielded by without prejudice privilege.

The September 2019 “*q+a*”

112. The Claimants placed emphasis on an isolated event occurring in September 2019. Invesco, one of the investors in HSFL2, had raised a concern about the mix of old and new songs in the portfolio of music catalogues HSFL2 was building up. Mr Holden proposed preparing a “*q+a*” to address likely issues if there was a meeting. In the course of working up the “*q+a*” Mr Waterlow of Singers sent an email dated 11 September 2019, saying:

*“The only think (sic.) I would add to James Moat’s questions is that last week Invesco was asking about Merck’s association with Afram Gergeo as one of Fred’s colleagues had been digging around Sanctuary and what Merck had been doing since, and seen some negative press about him - to which I replied*

***Afram Gergeo***

*Before the IPO we asked Merck about Afram Gergeo and he said that he had a short association with him which had ended nearly 18 months before. Mr Gergeo had made an equity investment in Merck’s artist management business which had since been exited, and there had been no association whatsoever with the investment advisor. The IA confirmed it had nothing to do with him and he has no influence or claim over Merck or their intended business. We also asked Merck at the time if he had any links with Emil Amir Ingmanson or Max Emil Serwin and he confirmed he had no association with either of those names’.*”

113. Mr Mercuriadis, who was copied, responded to say:

*“That’s correct”.*

HSFL2 acquires a portfolio of music publishing catalogues

114. In the period up to July 2021, HSFL2 raised approximately £1.3bn in equity finance via a series of further fundraising rounds. On the basis of advice provided by HSML as Investment Adviser, the funds were used to acquire a large number of music publishing catalogues, by many well-known musicians and songwriters.

### Blackstone acquires a majority interest in HSML

115. HSML diversified in October 2021. By that stage, Blackstone, the venture capital firm, had come to be focused on music-related copyright interests as an asset-class. In October 2021, Blackstone and HSML announced a partnership: private funds managed by Blackstone were to deliver circa US\$1bn to acquire music rights and catalogues, to be identified by HSML. As part of the partnership, Blackstone acquired a 51% ownership stake in HSML. Mr Mercuriadis received cash consideration of US\$23,803,200 on the sale of that majority holding.

### HSFL2 meets with mixed fortunes

116. As to HSFL2 itself, despite its early period of strong growth, by 2023 it was meeting with mixed fortunes. There were growing concerns about its leadership at director level, related in part to its debt position. A programme of catalogue disposals was proposed, for consideration at an EGM to be held on 26 October 2023. The intended buyer was the partnership between HSML and Blackstone mentioned above, via a vehicle called Hipgnosis Song Capital. On the same day, at HSFL2's AGM, a so-called "*Continuation Resolution*" was to be put to shareholders, to seek a mandate to continue HSFL2 for a further five-year period as a closed-end investment trust.
117. To add to the uncertainties, at about the same time, problems arose as to the valuation of HSFL2's portfolio of catalogues. The portfolio was valued for reporting purposes by an independent valuer, Massarsky Consulting ("*Massarsky*" – also referred to as Citrin Cooperman, following its acquisition by the latter in 2022). The Massarsky valuations applied a discounted cash flow ("*DCF*") methodology to income streams expected from the collection of copyright royalties under the catalogues. In about September 2023, Massarsky materially reduced its assessment of likely royalty payments, following a decision by the US Copyright Royalty Board to recalculate royalty rates. This led HSFL2 to announce on 16 October 2023 that it had suspended plans to declare a dividend.

### Meetings on 26 October 2023

118. In the event, at the meetings on 26 October 2023 the HSFL2 shareholders voted against both the resolution to sell catalogues to Hipgnosis Songs Capital and against the Continuation Resolution. Instead the board was given a mandate to restructure HSFL2. Mr Sutch resigned as Chair and Mr Wilkinson and Mr Burger resigned as non-executive directors. New board members were appointed, including a new Chair, Mr Robert Naylor.

### HSFL2's Interim Results

119. Publication of HSFL2's interim results for the period to 30 September 2023, which should have occurred by mid-December, was briefly delayed because of concerns about the Massarsky valuations. When the interim results to September were published on 20 December 2023, the new Chair, Mr Naylor, announced that the Board had begun due diligence on the value of HSFL2's assets, and had engaged a new specialist music rights practice and valuer, Shot Tower LLC ("*Shot Tower*").

### Acquisition by Blackstone/Lyra Bidco

120. In the event, the future of HSFL2 as a publicly owned investment fund was short-lived. Two bidders soon emerged, with an interest in acquiring its business: one was an entity called Concord Chorus Limited, and the other was Blackstone. The latter engaged via Blackstone Europe LLP and an entity called Lyra Bidco Limited (“*Lyra Bidco*”). In the end, the Blackstone bid prevailed: Lyra Bidco made a recommended cash offer on 3 June 2024, to acquire the entire issued share capital of HSFL2 for some US\$1.58bn. This figure reflected a value for HSFL2’s catalogue portfolio of US\$2,162,351,000 less net liabilities of US\$578,280,000, giving an equity value for the issued share capital of US\$1,584,071,000.

### Sale value of Mr Mercuriadis’ shareholding in HSFL2

121. As part of the sale, Mr Mercuriadis realised some £95,970 in respect of his shareholding in HSFL2.

### Other benefits flowing to Mr Mercuriadis

122. As to other benefits flowing to Mr Mercuriadis, the experts were agreed that he received dividends from HSML and HSFL2 amounting to £259,722, the majority from HSML.

123. In addition, in the period up to July 2024, HSML paid both consultancy fees and salary to Mr Mercuriadis and to another company controlled by him. The experts were again agreed on the figures: £810,425 (in respect of consultancy fees), and £7,336,588 (in respect of salary).

### Mr Ingmanson and Mr Gergeo are convicted in Sweden

124. I should note three final points to complete the overall picture.

125. The first is that, while these events were happening, both Mr Ingmanson and Mr Gergeo were convicted of criminal offences in Sweden in March 2021, Mr Gergeo of money laundering offences for which he was given a 6-year prison sentence.

### Restoration of Copyrights and assignment

126. The second is that, as already noted, Copyrights was restored to the Register by Order of DJ Wilkinson on 6 October 2022, on the application of the Liquidators of HML. Copyrights later assigned all claims and causes of action against the present Defendants to HML, which in these proceedings is the sole named Claimant.

### Kingdom of Sweden Proceedings

127. The third point is to note the outcome of the proceedings by the Kingdom of Sweden, mentioned at [15] above. The claims against Mr Gergeo and SVCL were settled in June 2025, on terms entitling the Kingdom of Sweden to enter judgment against them in the sum of EUR 36.5m. That sum remains outstanding against both Mr Gergeo and SVCL. The position is secured by means of a worldwide freezing order and proprietary injunction against Mr Gergeo granted by Foxton J on 28 February 2020, which prohibits Mr Gergeo from disposing of, dealing with, or diminishing the value of his shares in SVCL.

128. As far as Mr Serwin/Ingmanson is concerned, judgment was entered against him by means of the Judgment of HHJ Pelling KC, referenced above at [15].

### III. The Statutory Provisions

129. A central question in this case is whether, and if so in what respects, Mr Mercuriadis was in breach of certain duties owed by him both to HML and Copyrights under provisions of the CA 2006. The particular provisions relied on are s. 172 and s. 175. It is useful to set out the relevant language of these provisions, to act as points of reference for what follows.

#### Section 172

130. Section 172 CA 2006 is headed, “*Duty to promote the success of the company*”. Section 172(1) provides, so far as relevant, as follows:

*“A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—*

...

*(f) the need to act fairly as between members of the company.”*

#### Section 175

131. Section 175 is headed, “*Duty to avoid conflicts of interest*”. So far as material, this provides as follows:

*“(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.*

*(2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).*

...

*(4) This duty is not infringed-*

*(a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or*

*(b) if the matter has been authorised by the directors.*

*(5) Authorisation may be given by the directors –*

*(a) where the company is a private company and nothing in the company’s constitution invalidates*

*such authorisation by the matter being proposed to and authorised by the directors, or*

- (b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.*
- (6) The authorisation is effective only if-*
  - (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and*
  - (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.*
- (7) Any reference in this s to a conflict of interest includes a conflict of interest and duty and a conflict of duties.”*

Section 170(4)

132. I should note two other provisions. The first is s.170(4), which makes it clear that because the general duties set out in ss. 171-177 (including those in s.172 and 175) are based on certain common law rules and equitable principles: “*The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties*”. In Towers v. Premier Waste Management Limited [2011] EWCA Civ. 923 at [4], the Court of Appeal confirmed that the CA 2006 duties are intended to “*extract and express the essence of the rules and principles which they have replaced*”.

Section 170(2)(a)

133. The second is s.170(2)(a), which is of particular importance in this case because it makes clear that certain aspects of the duty under s.175 extend beyond the duration of a person’s life as a director. It provides as follows:

*“(2) A person who ceases to be a director continues to be subject—*

- (a) to the duty in s 175 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director, and*

...

*To that extent those duties apply to a former director as to a director, subject to any necessary adaptations.”*

#### **IV. Preliminary Analysis and Issues**

134. It is now useful to consider the main issues which arise in a little more detail. In order to do so, some preliminary analysis is required.

##### The claims for equitable compensation and damages

135. I should make one important point at the outset. This is that, shortly before the trial, as a result of a Judgment delivered following the Pre-Trial Review (“PTR”), the nature of the Claimants’ case shifted significantly.
136. The mainstay of the case has always been the complaint that, in breach of the duties owed by him under s.172 and s.175 CA 2006, Mr Mercuriadis illegitimately diverted for his own benefit the opportunity to invest in music publishing catalogues, which had originally been intended to be pursued via Copyrights.
137. Before the PTR, the case based on diversion of the music catalogues opportunity included – in addition to claims for an account of profits – claims for equitable compensation. Such claims were based on the premise that, had it not been for Mr Mercuriadis’ breaches of duty vis-à-vis Copyrights in particular, Copyrights itself (rather than HSFL2) could and would have raised funds by means of an IPO on the London Stock Exchange, at some point in 2017. That in turn would have produced benefits for Copyrights and for HML as shareholder and/or investment adviser. The case advanced was that they were thus entitled to claim compensation for their losses. The pleaded case also advanced claims for damages for breaches of the Shareholders’ Agreement and of the Service Agreement, including claims for losses based on the obligation not to use the Hipgnosis name, and based on diversion of the arrangements HML had had with Nile Rodgers and the other consultants, and with Kobalt.
138. In the event, this part of the case ran into a problem, because HML’s own financial markets expert, Mr Colin Christie, shed serious doubt on the ability of Copyrights to launch an IPO after the Spring of 2017, in light of the developing situation affecting Mr Ingmanson and Mr Gergeo. His opinion was that an IPO would not have been possible without some form of mitigation in place to limit the effects of the association between Copyrights/HML and Mr Ingmanson/Mr Gergeo. At para. 126 of his Report dated 29 October 2025, in dealing with the possibility of Copyrights launching an IPO, he said that the “*association risk could have had an adverse effect on the feasibility of such an IPO prior to Mr Gergeo’s and Mr Ingmanson’s arrests in December 2017*”, and at para. 127 he said:
- “In my opinion, it would have been unwise to attempt such an IPO without a means of mitigating those risks in place, because of the risk to feasibility without mitigation and the obvious benefits to feasibility with suitable mitigation.”*
139. The issue at the PTR was that no pleaded case was advanced as to how such a mitigation strategy might work. HML thus made an application to amend, but that application was refused by me in a Judgment dated 20 January 2026 (see [2026] EWHC 82 (Ch)), on

the basis that the proposed new case was insufficiently particularised and raised complicated issues which could not sensibly be accommodated without unfairness to the Defendants.

140. There was no appeal against that decision. Instead HML determined to abandon its claims for equitable compensation, and to maintain only its claims for an account of profits. It made that clear in a letter from its solicitors dated 27 January 2026. In the same letter, it also explained that it no longer intended to pursue at trial any remedy of damages for breach of contract, based on breaches of the Shareholders' Agreement and the Service Agreement.
141. What this means in terms of analysis is that one must be careful to focus attention on the claims for an account, which are the only targets HML is now aiming at in relation to the diversion of opportunity case, and not be distracted by aspects of the story and evidence which, although perhaps once relevant, have no bearing on that issue.

#### The claims for an account

142. In light of that, it seems to me that a sensible way of proceeding is to start at the end and work backwards. This involves taking as the starting point the profits the Claimants say the Defendants should be accounting for.
143. The law on the scope of a fiduciary's duty to account has recently been the subject of consideration by the Supreme Court, in Recovery Partners GP Ltd and anor v. Rukhadze and others [2025] UKSC 10, [2025] 2 WLR 529. The issue there was whether the scope of the duty to account, if there has been a breach of fiduciary duty, involves considering whether the fiduciary would have made the same profit had there not been a breach (a but for test of causation), or something else. The Supreme Court determined that a different test applies. Lord Briggs (with whom Lord Reed, Lord Hodge and Lord Richards agreed) stated the test as follows, at [36]):

*“The question is not, would the profit have been made even if there had been no antecedent breach of fiduciary duty, but did the profit owe its existence to a significant extent to the application by the fiduciary of property, information or some other advantage which he enjoyed as a result of his fiduciary position, or from some activity undertaken while he remained a fiduciary which the conflict duty required him to avoid altogether. For that purpose the court looks closely at the facts, i.e. what actually did happen, but does not concern itself with what might have happened in a hypothetical ‘but for’ situation which did not in fact occur.”*

144. Lord Leggatt, Lord Burrows and Lady Rose all delivered concurring judgments. The judgment of Lord Leggatt contains a detailed analysis of the law on maturing business opportunities, which is of relevance to the outcome of the present matter, and which I will come back to below.
145. I should mention that in developing their claims for an account, the Claimants relied on the evidence of an expert accountant, Mr Ben Hobby. In response, Mr Mercuriadis relied on the expert evidence of Mr Daniel Ryan, and HSFL2 and HSML relied on the

expert evidence of Mr Michael Pilgrem. By the time of the trial the experts were agreed on a large number of issues, including almost all basic points of calculation. The remaining material points of disagreement were between Mr Hobby and Mr Pilgrem, as regards the account sought from HSFL2.

146. The relevant claims for an account are essentially threefold.

(a) *Account from Mr Mercuriadis*

147. The first is a set of claims against Mr Mercuriadis, arising from his alleged breaches of duty vis-à-vis Copyrights, “ ... in connection with the wrongful diversion and exploitation of Copyrights’ intended business, as set out above ...” (Re-Re-Re-Amended Particulars of Claim (“PoC”) at para. 115). As I read it, Copyrights is in substance the claimant in respect of these claims, albeit that HML sues as assignee. By the time of the Closing Submissions, the precise forms of relief sought flowing from such breaches were said to be as follows: (1) an account of the consultancy fees (£810,425) and salary (£7,336,588) said to have accrued to Mr Mercuriadis via HSML, as Investment Adviser to the HSFL2 fund (see [123] above); (2) an account of the cash consideration received by Mr Mercuriadis on the sale to Backstone of the majority stake in HSML in October 2021 (see [115] above); (3) an account of the sale proceeds (£95,970) received by Mr Mercuriadis in respect of his shareholding in HSFL2 (see [121] above); and (4) an account of the dividends (£259,722) received by Mr Mercuriadis in respect of his shareholdings in HSML and HSFL2 (see above at [122]).

(b) *Account from HSFL2*

148. The second claim for an account is against HSFL2. This arises from alleged acts of dishonest assistance in “*Mr Mercuriadis’ breaches of his duties as a director of Copyrights in connection with the wrongful diversion and exploitation of Copyrights’ intended business, which was a maturing business opportunity ...*” (PoC at para. 129A). As I read it, Copyrights is again in substance the claimant here, although the claim is brought by HML as assignee. As to the form of relief sought, by the time of the Closing Submissions, the Claimants’ primary case was to claim an account of profits based essentially on the market value of the music catalogues held by HSFL2 at the end of its life in July 2024 (i.e. at the time of the Lyra Bidco acquisition), minus their book value and accumulated, realised losses, giving a final figure of US\$365,444,464. In calculating the market value of the music catalogues in July 2024, the Claimants took the mid-point between (i) the corrected Massarsky valuations, relied on in HSFL2’s interim accounts to September, published in December 2023 (US\$2,622,000,000), and (ii) the valuations later produced by Shot Tower in July 2024 (US\$2,014,724,000).

149. In the alternative, the Claimants indicated they would be content to rely on the figure for HSFL2’s profits calculated by HSFL2’s expert, Mr Pilgrem: i.e., US\$120,735,000.

(c) *Account from HSML*

150. The third claim for an account is brought against HSML. Unlike the first two claims, this depends on breaches of duty owed to HML (not Copyrights), and so HML is the claimant in substance as well as form (see PoC at para. 137: “*By reason of its dishonest assistance in Mr Mercuriadis’ breaches of his duties as a director of HML, HSML is liable for ... the profits HSML has made as a result of such breaches*”).

151. As I understand it, the basic allegation underpinning this claim is that HSML was used by Mr Mercuriadis in breach of duty, to replace HML in the IPO structure as the vehicle through which the “*financial benefit from the exploitation of Copyrights’ intended business*” would be shared (PoC at para. 133.2). The upshot was to channel such financial benefit to Mr Mercuriadis alone, rather than via HML to its shareholders, including SVCL and Mr Manahan.
152. The key point which emerged on the evidence in relation to this claim is that in fact HSML made cumulative net *losses* during its life up to 29 July 2024 (i.e., the date of completion of the Lyra Bidco acquisition). In the event, therefore, the Claimants’ submission was that HSML should instead provide an account of its profits up until October 2021 - the date of Blackstone’s acquisition of its 51% interest in HSML, as part of its proposed partnership and decision to invest circa US\$1bn in music rights and catalogues (see [115] above). The Claimants submitted this was a logical break-point in the history of HSML, and it made good sense to take it as a valuation date. Doing so, they calculated a figure of £747,172 for HSML’s accumulated profits after tax up to that point, and sought that figure by way of account.

### The Central Issue

153. What is immediately notable and significant is that all the forms of profit in respect of which the Claimants seek an account arose at points in time after both (i) the winding-up of HML on 18 February 2018, and (ii) the dissolution of Copyrights on 22 May 2018, and thus at points in time after (on the face of it at any rate) Mr Mercuriadis had ceased to be a director of either company, and had ceased to owe them the full range of duties as director. To put it another way, all the profits claimed arose following the successful HSFL2 IPO, but that took place only in June/July 2018, after the winding-up and dissolution of HML and Copyrights respectively.
154. The central problem in this case, therefore, is about the circumstances in which a former fiduciary can be liable to account for profits accruing after they have ceased to be a fiduciary.
155. As to this, a number of points are made by the Claimants. As finally expressed in the Closing Submissions, these can be summarised as follows.
- (a) *Breaches of duty while a director*
156. First, the Claimants rely on the effect of breaches of duty owed by Mr Mercuriadis *while still a director of HML and Copyrights*. In the taxonomy adopted between the parties at trial, the period up to and including the dissolution of Copyrights in May 2018 was referred to as “*Phase 1*”, and later periods were referred to as “*Phase 2*”.
157. It is accepted that, during Phase 1, Mr Mercuriadis continued to owe the full range of duties under ss. 172 and 175 CA 2006 both to HML and to Copyrights (or at any rate up until February 2018 in respect of HML, when it was wound up). As developed during their Closing Submissions, the Claimants’ argument was that the breaches occurring during Phase 1 – which included initial efforts to divert the music catalogues opportunity away from Copyrights via the HSFL1 IPO – had a continuing effect, such that the later activity in Phase 2 which generated the profits the Claimants now seek to target “... *had its origin in the fiduciary allowing his interest to come into conflict with*

*his duty, such that the [later] activity should not have been undertaken at all ...”* (see per Lord Briggs JSC in Recovery Partners at [42] – emphasis added).

(b) *Section 1032(1) CA 2006*

158. The second main point is specific to Copyrights, and arises from the fact that Copyrights was not wound up like HML, but instead was dissolved in May 2018, and then restored to the register of companies by order of the Court in October 2022. That being so, Copyrights points to the deeming effect of CA 2006 s. 1032(1), which provides that the “*general effect of an order by the court for restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register*”.
159. Copyrights relies on this provision to say that deeming it to have continued in existence as if it had not been dissolved should include treating Mr Mercuriadis as having been a director during the period of its dissolution: if it had not been dissolved, that is what would have happened. And if that is right, argues Copyrights, then the Court should treat Mr Mercuriadis as having been subject to the full rigours of at least the s.175 duty during periods after May 2018, including in June and July 2018 when the successful IPO took place. There is a legal question whether this is the correct approach.

(c) *Section 170(2)(a) CA 2006*

160. The third main point relied on by the Claimants concerns the effect of s.170(2)(a) CA 2006. This serves to extend the life of certain aspects of the s.175 duty even after a person has ceased to be a director of a company – that is to say, under s.170(2)(a), a person who ceases to be a director nonetheless continues to be subject to the duty under s. 175, “*... as regards the exploitation of any property information or opportunity of which he became aware at a time when he was a director*”. The Claimants allege that here, the opportunity to invest in music publishing catalogues was an “*opportunity*” in the sense described in s.170(2)(a), and thus Mr Mercuriadis continued even after the winding-up of HML and the dissolution of Copyrights to be subject to a duty which prevented him from exploiting that opportunity for his personal benefit. There is a legal question whether the Claimants are correct in their characterisation of the music publishing catalogues “*opportunity*” or “*maturing business opportunity*”.

Accessory liability of HSFL2 and HSML

161. Those are the main routes via which the Claimants seek to establish breaches of duty vis-à-vis Mr Mercuriadis, and thus provide a basis for their claims for an account. Further, specific issues arise as regards HSFL2 and HSML, who owed no duties themselves, but are said to be liable as accessories.
162. The first is that, since the case against both of them is one of dishonest assistance in breach of fiduciary duty by Mr Mercuriadis, important questions arise as to (i) whether Mr Mercuriadis was in fact dishonest, and (ii) if so, whether his dishonest breaches of duty can be attributed to HSFL2 and/or HSML.
163. The Claimants allege that Mr Mercuriadis *was* dishonest, in essence because it is said he covertly engineered the diversion of the music publishing catalogues opportunity from HML/Copyrights for his own account, in a manner designed to exclude Mr Gergeo

and Mr Manahan from sharing in any benefits from that opportunity. The Claimants allege that Mr Mercuriadis' dishonesty can and should be attributed to both HSFL2 and HSML, because they were the vehicles via which his dishonest scheme came to be realised.

164. Mr Mercuriadis, together with HSFL2 and HSML, deny that he acted dishonestly. They say there was no illegitimate diversion of any relevant corporate opportunity by Mr Mercuriadis, only an acceptance by him, by the Spring of 2017, of the stark reality of the situation, which was that any business venture (and certainly any public fundraising) having a connection with Mr Gergeo and Mr Ingmanson was impossible given their backgrounds. There was nothing dishonest in Mr Mercuriadis acknowledging that fact, in him trying to reach terms with both Mr Gergeo and Mr Manahan in order to seek to accommodate them, and in him thereafter pursuing a similar business venture by another route. None of that was calculated to harm HML or Copyrights, neither of whom, given the taint arising from their association with Mr Ingmanson and Mr Gergeo, had anything to lose.
165. In any event, argue HSFL2 and HSML, it is wrong to say that the actions and/or state of mind of Mr Mercuriadis can be attributed to them in law. They are corporate vehicles with an independent existence, and HSFL2 in particular was a listed company with an independent board of directors, who are not alleged to have known anything about Mr Mercuriadis' wrongdoing.
166. On behalf of HSFL2, Mr Kitchener KC took issue with the idea that there should be any account of profits at all, even assuming wrongdoing by Mr Mercuriadis. Mr Kitchener emphasised the open-ended nature of the discretion to award an account: relying on comments of Foxton J in Hotel Portfolio II (UK) Limited (In Liquidation) & Anor v. Andrew Ruhan [2022] EWHC 383 (Comm), Mr Kitchener described the discretion as a "*strong*" or "*free*" discretion. Mr Kitchener submitted it would be a perverse exercise of such a discretion to award any form of account against HSFL2 in this case, having regard in particular to the facts that (i) the profits which accrued to HSFL2 were not in any meaningful sense attributable to Mr Mercuriadis' wrongdoing – instead they arose as a result of HSFL2's investors putting their capital at risk, and of investment decisions made by HSFL2's independent board of directors; and moreover (ii) they were profits which neither HML nor Copyrights could ever have made, because of the association of those companies with Mr Gergeo and Mr Ingmanson – thus, an account of profits would operate as a vehicle for the unjust enrichment of HML, Copyrights and indirectly HML's shareholders (including, potentially, Mr Gergeo, who was a convicted fraudster). Mr Kitchener further submitted that, if it came to it, the figure to take for any account should in any event be Mr Pilgrim's profit figure of US\$120,735,000, and not HML's primary figure of US\$365,444,464.
167. For HSML, Mr Kitchener submitted that the version of the claim advanced at trial (seeking an account of profits as at October 2021) was not HML's pleaded case; that there had been no disclosure directed at October 2021 as a valuation date; that accordingly, there were no reliable figures showing HSML's accumulated profits at that point; and consequently, HML's claim for an account should on any view be rejected.

## V. Contested Facts

168. Before turning to resolve the issues, I will say something further about the facts, both in order to resolve some points of difference on the evidence and in order to deal in more detail with certain matters having an impact on the overall outcome.

### General Points

169. I should start with some general points about the factual evidence at trial.
170. For the Claimants I heard live factual evidence at trial from Mr Gergeo and Mr Manahan. For the Defendants, I heard live evidence from Mr Mercuriadis, Mr Sutch, Mr Holden and Mr Burger (the directors of HSFL2), and from Mr Alan Ray (part of the corporate finance team at Cenkos which worked on the HSFL2 IPO). I also had the benefit of written evidence from Mr Andrew Wilkinson, the other of the HSFL2 directors.
171. Oral history has obvious limitations: memories fade and sometimes become distorted as the past is viewed through the lens of later developments, which in a case like this can include growing resentment between former business partners. All the same, it has its uses, principally in adding context and colour to the picture presented by the documents.
172. In this case, as matters unfolded, it became clear that there was in fact little disagreement about the basic factual background, at least as regards the facts having a bearing on the legal issues in play. The overall story is made clear from the available documents. That is the story I have attempted to set out above. The main area of contention was as to Mr Mercuriadis' bona fides. In assessing that I was assisted by the oral evidence given by (principally) Mr Gergeo, Mr Manahan and by Mr Mercuriadis himself. That oral evidence, taken together with the documentary evidence, has enabled me to form a more complete assessment of the interests and motivations of these principal characters at what seems to me the critical time, during the period from late 2017 through to the Summer of 2018, when plans for the Copyrights bond issue faltered, and were overtaken by plans for the HSFL2 IPO.
173. Mr Gergeo showed conviction in the present claims, and gave the impression of feeling genuinely that he had been treated unfairly by Mr Mercuriadis. All the same, beyond such matters of generality, I feel I must treat his evidence with some caution. It carried less conviction on points of detail. For example, he was cross-examined about a transaction in around mid-2015, when Mr Ingmanson sold to him and to his company, Gergeo Invest, 90% of the shares in Werel (this was linked to the Falcon Funds: see above at [15]). The agreed sale price for the 90% stake was EUR100,000, but then just a few months later, in September/October 2015, the Falcon Funds acquired a 20% stake in Werel for EUR10m. In his evidence Mr Gergeo affirmed that he considered the latter a fair price, notwithstanding that it implied an enormous and implausible increase in the value of Werel over a short period. This demonstrated either huge naivety or dishonesty. Either way, the result was unconvincing and unreliable.
174. Mr Manahan was a more straightforward witness. His position was a more difficult one at the time: caught in the middle as a relatively minor investor in a project which had great potential, but which in the end had foundered through no fault of his own. He

plainly felt cheated by the outcome, and his sense of grievance against Mr Mercuriadis was at times palpable – at one point he described Mr Mercuriadis’ conduct as “*stealing*”. These matters of general impression are helpful in contextualising parts of the chronology – they show that at times tensions were high and tempers short among the key protagonists – but they do not assist greatly in determining the key point of factual dispute, which is whether Mr Mercuriadis was actually dishonest vis-à-vis the Claimants in the manner alleged. That question is better addressed by reference to the background as a whole, which contains helpful clues as to what was happening, but also (as I will explain below) some red herrings.

175. As to the Defendants’ witnesses, I deal with the position of Mr Mercuriadis in some detail below, and where relevant comment on the reliability of his evidence. I found Mr Ray, Mr Sutch, Mr Holden and Mr Burger to be entirely straightforward witnesses who gave clear and helpful evidence. I found nothing objectionable in the written evidence of Mr Wilkinson, which in general terms was consistent with the evidence given by the other directors of HSFL2.

#### The music publishing catalogues idea

176. Before turning to the question of Mr Mercuriadis’ bona fides, I will deal with a discrete point of disagreement, which was about who first came up with the idea of acquiring music publishing catalogues as a business proposition.

177. It was common ground that it was discussed at some point during the meetings in Los Angeles and Atlanta I have referred to above (see at [11]), but was the original source Mr Mercuriadis or Mr Gergeo? Nothing much turns on this, but in my view it is more likely to have been Mr Mercuriadis given his greater music industry experience. Further, when Mr Gergeo gave evidence at trial, he was somewhat confused as to what the business proposition was, and at first appeared to think it was about acquiring the copyright interest in master recordings by musicians, rather than the copyright interest in music publishing catalogues. The latter is a different form of interest, and it is that interest which is at the heart of the Claimants’ case.

#### Mr Mercuriadis’ bona fides

178. The issue here concerns Mr Mercuriadis’ subjective state of mind in periods after April 2017.

#### *Summary Conclusion*

179. In summary, my view on this topic is as follows. Certainly, there is evidence of a tendency on the part of Mr Mercuriadis to be economical with the truth, but the evidence overall does not make good the Claimants’ assertion that after April 2017, Mr Mercuriadis’ basic motivation was a desire dishonestly to divert the music publishing catalogues opportunity away from HML/Copyrights for his own benefit.

#### *The Claimants’ Submissions*

180. The Claimants’ essential submissions were as follows:

- i) Mr Mercuriadis had only ever needed Mr Gergeo and Mr Ingmanson for their money, but by April of 2017 (i) Mr Ingmanson had dropped out of the picture, and (ii) Mr Mercuriadis and Mr Gergeo had fallen out, and so it suited Mr Mercuriadis – who by that stage had other people to help him (via the IPO route) - to jettison Mr Gergeo and Mr Ingmanson, by cutting them out of the picture.
  - ii) Consistently with that, in periods after April 2017, Mr Mercuriadis had stopped communicating with Mr Gergeo, and for that matter also with Mr Mathiesen-Ohman (his fellow director of Copyrights). Mr Gergeo was not given proper information about what was happening with the bond issue, or about the status of the IPO. The interests of Mr Manahan – who was not implicated in any fraud – were essentially ignored.
  - iii) Also consistent with this general thesis is the fact that on Mr Mercuriadis’ instructions, on about 1 May 2017 (see above at [56]), the ownership structure of HSL was changed, so as to exclude HML and instead have Mr Mercuriadis himself as shareholder. That was a surreptitious move designed to exclude HML/Mr Gergeo altogether from any benefits flowing from the HSFL1 IPO.
  - iv) Furthermore, Mr Mercuriadis took an entirely cavalier approach to the obligations he owed under both the HML Shareholders’ Agreement and his Service Agreement (see above at [18]-[19]). That is evidence of his lack of good faith and dishonest motivation.
  - v) Moreover, Mr Mercuriadis gave obviously incomplete and misleading information to the Official Receiver by means of his s.235 Statement of 23 February 2018 (see above at [86]), which made no mention at all of the music publishing catalogues idea, of HML’s subsidiary Copyrights which had been incorporated to develop that idea, or of the attempted bond issue. Indeed, the whole process of winding-up HML was part of an ongoing strategy by which Mr Mercuriadis sought to divert the music publishing catalogues opportunity for his own benefit.
181. The Claimants also relied on a number of Mr Mercuriadis’ dealings with other parties (i.e., other than HML/Copyrights, Mr Gergeo and Mr Manahan), as evidence of his willingness to dissemble, and of his lack of *bona fides*. The main points were:
- i) the fact that during the due diligence process for the HSFL1 IPO, no mention was made of Mr Gergeo and of the allegations against him (see above at [51]);
  - ii) the fact that Mr Mercuriadis was coy with the non-executive directors of HSFL1 about his previous efforts to launch a music publishing catalogues business using the Hipgnosis name (see above at [61]);
  - iii) the fact that when Mr Gergeo was arrested, Mr Mercuriadis, contrary to the case he now advances, made a witness statement describing Mr Gergeo as a “*person of integrity*” (see above at [82]) – a description which Mr Mercuriadis himself accepted in cross-examination involved embellishment of the truth;
  - iv) the fact that Mr Mercuriadis was willing to provide the “*Confirmation of Employment*” letter to Mr Gergeo, which misleadingly gave the impression that

he continued to be employed by HML even after it had been wound-up (above at [85]);

- v) the fact that Mr Mercuriadis gave an incomplete and misleading response to the inquiry raised in June 2018 about the extent of his involvement with Mr Gergeo (see above at [101]); and was then willing to endorse that same misleading statement in the September 2019 “*q+a*” just over a year later (above at [112] to [113]); and
- vi) the fact that Mr Mercuriadis never disclosed to Singers or to the directors of HSFL2 in the course of the HSFL2 IPO that he had failed to resolve matters with his former business partners Mr Gergeo and Mr Manahan, and that in fact, Mr Gergeo had threatened legal proceedings against him based on alleged diversion of a corporate opportunity from Copyrights (see above at [72]).

*The alternative explanation*

- 182. I should say straightaway that this is a formidable list of points, and a number are of serious concern. I would single out in particular: (1) the information provided in the s.235 Statement, which was obviously deficient and moreover was provided under a statement of truth referencing the Perjury Act; (2) the response given in connection with the June 2018 inquiry as to Mr Gergeo (“*I had a short association with this person Sam and I ended it almost 18 months ago*”), which was misleading because the association was not short and there was still an unresolved dispute stemming from the HML/Copyrights venture; and (3) the embellished account of Mr Gergeo given in Mr Mercuriadis’ statement in support of his bail application, again provided under a statement of truth.
- 183. All the same, none of these matters persuade me that Mr Mercuriadis was dishonest in the manner alleged – i.e., in the sense that from about April 2017 onwards his basic motivation, subjectively speaking, was dishonestly to seek to divert the music catalogues idea from HML/Copyrights for his own benefit and thus to deprive Mr Gergeo and Mr Manahan of something of real value to them.
- 184. The weakness in the Claimants’ submissions is that they make no allowance at all for the obvious alternative explanation, which is that Mr Mercuriadis had honestly come to believe by about April 2017 that (as per his evidence at [47] above), there were no prospects of Copyrights ever pursuing a business in acquiring music publishing catalogues given its connection with Mr Gergeo and Mr Ingmanson.
- 185. The idea that this was his honest belief derives powerful support from a number of sources. Perhaps the most significant is the Claimants’ own expert evidence from Mr Christie – as explained above (see at [138]), he expressed very serious doubts about the practicability of any public fundraising by any entity associated with Mr Gergeo or Mr Ingmanson, without a compelling mitigation strategy in place – by which he meant, some means of distancing any fundraising from the taint of any association with Mr Gergeo or Mr Ingmanson. It is entirely reasonable to think that (as he said) Mr Mercuriadis was given similar advice at the time by Jodi Bartin of Citicourt. Mr Naylor had expressed doubts of his own as early as September 2016, at the lunch he attended with Mr Ingmanson. In any event, it is a matter of common sense that a public fundraising with allegations of a serious fraud in the background would present a

serious practical challenge. I would think the same to be true, though perhaps less acutely so, as regards any private fundraising: investors would still be sensitive and seriously concerned.

186. At any rate, I accept Mr Mercuriadis' evidence that his actual belief at the time was that there were no real prospects for Copyrights, and that was a prime factor motivating him. As far as he was concerned, none of that involved illegitimately cutting Mr Gergeo out of the picture. On the contrary, it involved recognising the reality they were both faced with. Mr Mercuriadis did not think he was "*stealing*" anything from Mr Gergeo, or for that matter from Mr Manahan, because as far as he was concerned, they had nothing of value to be stolen. All they had were shareholdings in a business which could not achieve its planned objective because of serious practical limitations on how it could operate.
187. I should also say that, to the extent relevant, I accept Mr Mercuriadis' evidence that Mr Ingmanson told him in about February 2017 that he wanted nothing to do with any IPO (see above at [38]). It seems to me entirely plausible that someone with Mr Ingmanson's background would not wish to attract the exposure likely to be involved in a public offering of securities, and that he would therefore have wished to distance himself from any such exercise. In pursuing the IPO alternative, therefore, Mr Mercuriadis was entitled to think that neither was he depriving Mr Ingmanson of anything of value.
188. In my opinion, this overall view of things is consistent with the Claimants' evidence as well. The fact that, by April 2017, Mr Gergeo was phlegmatic about the idea of Mr Mercuriadis "*establishing a fund via an alternative structure outside HML ...*" (see above at [55]), suggests that he too accepted the limitations operating on HML and Copyrights as vehicles for any proposed business. I acknowledge that, by about April 2017, the flow of information to Mr Gergeo was slowing down, or perhaps had even stopped; but Mr Gergeo's own evidence suggests an awareness of the big picture and an apparent indifference to the details. Moreover, Mr Gergeo was willing against that background to enter into detailed negotiations to sell the majority of SVCL's shareholding in HML on terms that were principally focused on giving him and Mr Ingmanson their money back. When, in the course of those negotiations, Mr Alcraft came to be told that payment of the purchase price under the intended SPA was contingent on a "*listing date*" (see above at [71]), his response did not indicate any sense of surprise or alarm. That suggests he already knew about the IPO, or if not, then like his client did not much care how the purchase price was to be funded.
189. It is true that, under the terms of the proposed SPA, SVCL would retain a 5% shareholding in HML, but Mr Gergeo appears to have been realistic even about what that would bring him.
190. I say that because, by mid-August 2017, it must already have been clear to Mr Gergeo that *HSL* (not HML) was proposed as investment adviser to HSFL2. That is apparent from the email from Mr Gergeo's solicitor Mr Alcraft dated 13 August 2017 (above at [72]), in which he threatened claims against Mr Mercuriadis for (emphasis added):

*"... breach of fiduciary duties as a director of Hipgnosis Music Limited as well as a claim for damages arising out of Merck's decision to abort the GSX bond listing which was to take place*

*using Hipgnosis Music Limited as the corporate vehicle and instead incorporate a company by the name of Hipgnosis Songs Limited to act as investment adviser to Hipgnosis Songs Fund Limited (of which Merck would be a shareholder) which is currently pursuing a London Main Market equity listing.*”

191. It is clear that what Mr Alcraft was pressing for in his email, and thus what Mr Gergeo apparently wanted, was execution of the Deed of Variation and completion of the SPA *as agreed*. Although that would leave SVCL with a small stake in HML, that would not carry with it any prospect of receiving income from the giving of investment advice to HSFL2: as Mr Alcraft’s email acknowledged, that role would be carried out by HSL, a company having no apparent connection with HML and which in fact was wholly-owned by Mr Mercuriadis.
192. This indicates strongly that what Mr Gergeo was principally interested in at the time was return of his original investment and of the monies later advanced to HML by way of loan finance, including the £200,000 advanced by Gergeo Invest in November 2016 and the further £35,000 advanced by Macor Limited in February 2017. That is perhaps not surprising, given the personal difficulties Mr Gergeo was facing. It does though support the idea that at the time, neither did he regard HML as a viable business, in light of the taint attaching to it.

*Other aspects of Mr Mercuriadis’ behaviour*

193. Taking this as the thesis also explains many of the other aspects of Mr Mercuriadis’ behaviour highlighted by the Claimants. He no doubt regarded the music publishing catalogues idea as a valuable one, and moreover one which represented his insight (as I have now held, see at [177] above). That being so, it is natural to think that he was highly sensitive about the prospect of future efforts to exploit it being derailed because of his links to Mr Ingmanson and Mr Gergeo. He therefore sought to downplay or disguise those links. That serves to explain why his s.235 Statement was incomplete; why he did not disclose the relevant background during the HSFL1 due diligence process; why the non-executive directors of HSFL1 were not told about the detail of that background; and why he was less than candid in responding to later requests for information about his association with Mr Gergeo during the period of the HSFL2 IPO. But none of those matters indicate to me a dishonest intention to divert the Copyrights’ business away from, in particular, Mr Gergeo. They are equally consistent with the idea that Mr Mercuriadis honestly thought Mr Gergeo had nothing of value left, but he himself did, and did not want to put it at risk by revealing the taint arising from his links to Mr Gergeo.

*Breaches of contract*

194. I think it likely that Mr Mercuriadis was, as alleged, in breach of certain provisions in the Shareholders’ Agreement and in his Service Agreement from April 2017 onwards (for example, of the provisions requiring him to devote the majority of his time to the affairs of HML and limiting his use of the Hipgnosis name). If he thought about them at all at the time I doubt that Mr Mercuriadis would have let such technical restrictions stand in the way of the intended IPO. Again, however, a party can be in breach of contract without intending to be dishonest about it, and to my mind the same basic logic applies here: Mr Mercuriadis’ mindset was not to damage HML’s business because he

did not think it had any viable business. He thought the music publishing catalogues opportunity, if it was to be pursued, would have to be pursued via alternative means. The expert evidence of Mr Christie suggests he was right about that.

*Specific points*

195. I should deal with certain discrete points relevant to the case on dishonesty, namely (1) the decision by Mr Mercuriadis in November 2017 finally to serve the Bond Withdrawal Notice, terminating efforts to bring the Copyrights bond issue to fruition; (2) the steps taken by Mr Mercuriadis in late 2017 and early 2018 to procure the winding-up of HML; and (3) the steps taken (or not taken) by Mr Mercuriadis in the Spring of 2018 which led to the dissolution of Copyrights.
196. I accept Mr Mercuriadis' evidence that he was not motivated by a dishonest motive in taking any of these steps, which in any event were objectively justifiable.
197. As to (1), the evidence indicates to me that, looked at on its own terms, it was entirely correct for the Bond Withdrawal Notice to be served when it was. By November 2017, the proposed bond issue had been stalled since April of that year and the Bond Prospectus was out of date. There was no prospect of it being resurrected in light of the "*de-banking*" of HML and Copyrights in September 2017.
198. That same point is critical in assessing points (2) and (3). Indeed, withdrawal of HML's banking facilities was precisely the basis on which Mr Mercuriadis petitioned for the winding-up of HML. Without a bank account, it could not function and could not pay its debts. Copyrights was in no better position: like HML it had no ability to trade, at least from September 2017 onwards. So both steps were justifiable and indeed appropriate.
199. There is also a timing point, which is that all three steps took place *after* failure of the HSFL1 IPO. Had they really been motivated by a dishonest desire to clear the way for misappropriation of a maturing business opportunity, one would have expected Mr Mercuriadis to have engineered them *before* the HSFL1 IPO. The fact that they took place afterwards, in the changed circumstances which included the closure of both HML's and Copyrights' bank accounts, strongly supports Mr Mercuriadis' position that in his mind they were part of an exercise of tidying up loose ends, rather than core elements of a dishonest scheme to steal something of value from Copyrights.

*Ongoing communications with Mr Gergeo*

200. There is one final matter under this heading, which relates to Mr Mercuriadis' protestations in his evidence that as soon as he was alerted to their background, "... *I did what I had to do to distance myself from the fraudsters as quickly as possible ...*" (see Day 9, p.26). At many points in his evidence, Mr Mercuriadis defaulted to the mantra of referring to Mr Ingmanson and Mr Gergeo as convicted fraudsters, to expressing his distaste for their behaviour, and even implicitly to criticising Mr Davies KC. For example, Mr Mercuriadis was asked (Day 8, p. 19) about the lack of documentary evidence suggesting any concern on his part about Mr Gergeo's background and involvement in the Swedish pension fraud ("*There is not a single email where you even mention to Mr Gergeo any concerns about the investigation in Sweden?*"). Mr Mercuriadis replied:

*“There are phone calls. And I am not sure what you find to be so difficult about the fact that you are again representing two convicted Swedish fraudsters and you do not think that this would cause alarm to somebody as a legitimate businessman that has a reputation to uphold ...”.*

201. I am afraid I find these protestations somewhat unconvincing, when measured against the available facts. These include the facts that (1) as revealed in the exchange above, there is no reference in any document to Mr Mercuriadis expressing any reservations at the time; (2) Mr Mercuriadis was content to borrow some £200,000 from Mr Gergeo’s vehicle, Gergeo Invest, in November 2016, after both the lunch with Mr Naylor in September 2016 at which Mr Naylor had raised initial concerns, and after the “*Red Flag*” Report produced in connection with the proposed bond issue; (3) he was likewise content for HML to borrow a further sum of £35,000 in February 2017 from Macor Limited, another company associated with Mr Ingmanson and Mr Gergeo; (4) he was content, in December 2017, after Mr Gergeo’s arrest, to make a witness statement supporting his bail application and testifying to his good character, and to provide a £25,000 guarantee; and (5) he was willing to provide the “*Confirmation of Employment*” letter in February 2018.
202. In his oral evidence, Mr Mercuriadis said that he had supported Mr Gergeo’s bail application at the time only because he was under duress and in fear for his physical safety, but I reject that version of events. It is inconsistent with the documentary record (there is nothing in writing to support it, whether contemporaneous or otherwise), and in any event strikes me as implausible when measured against the rest of the available evidence. What is much more likely is that Mr Mercuriadis sought to maintain a degree of cordiality with Mr Gergeo in order to try and manage the possible fallout from their past relationship, and to prevent any flare up of their historic disagreements which might endanger any future efforts at fundraising. Again, however, none of that means that Mr Mercuriadis was dishonest in the manner the Claimants suggest. It is all consistent with the idea that he was not, but rather was seeking to protect his own interests, which seems to me the more likely explanation for everything.

#### Decision making within HSFL2

203. This was another area of controversy, because the Claimants submitted that the directors of HSFL2 (Mr Sutch, Mr Holden, Mr Wilkinson and Mr Burger) were all in practice accustomed to acting in accordance with the directions and instructions of Mr Mercuriadis, thus making Mr Mercuriadis a shadow director of HSFL2 (see s.251(1) CA 2006 and Secretary of State for Trade and Industry v. Deverell [2001] Ch 340).
204. I reject that notion. Mr Sutch, Mr Holden and Mr Burger all gave evidence at trial. I had written evidence from Mr Wilkinson. They all gave essentially the same account. Mr Sutch in his witness statement, although he accepted that HSFL2 was established by Mr Mercuriadis and was “*his creation*”, also explained that the directors of HSFL2 were mindful from the outset of the obligations they owed under the IPO structure to exercise their independent judgment, and said that he was confident they did so “*from day one*”. He said:

*“HSFL2’s board listened to the advice of its investment adviser, but there is no doubt in my mind that HSFL2’s non-executive directors had the final say on all key decisions.”*

205. Those key decisions included, most importantly, decisions about the acquisition of song catalogues. In practice, such decisions were taken by HSFL2’s Portfolio Committee, of which Mr Burger was Chair. All the non-executive directors were members of the Portfolio Committee. Mr Holden in his Witness Statement described the typical process, which involved HSML providing its recommendation (which would include HSML’s own projections), together with an independent third-party valuation from one of a panel of valuers. Consideration would also typically be given to legal due diligence, covering such matters as title to the assets in question, the existence of any charges, and understanding the package of rights to be acquired. Mr Sutch in his oral evidence said:

*“... just as boards rely on advice from lawyers, from financial advisers, we relied on the advice of the investment adviser, but at the same time we queried it, tested it and challenged it.”*

206. And Mr Burger said there were:

*“ ... numerous cases, quite frequent I might say, where the Portfolio Committee might send instructions back to the IA, the investment adviser, for further information ... chairing the committee ... we perused the documentation that was provided to us carefully.”*

207. The Claimants’ challenge to the independence of the HSFL2 board rested on the proposition that the directors chose, in the vast majority of cases, to act in accordance with the recommendations made by HSML as Investment Advisor. That is certainly true. Out of around 150 catalogues acquired, the parties’ research identified only two instances of the board declining to follow the advice given (the Harmony Samuels catalogue, which was initially rejected at a meeting of the Portfolio Committee on 13 September 2018 although later acquired; and the Sparks catalogue, which was rejected at a meeting on 30 November 2021).

208. In my opinion, however, that fact on its own is neutral. It is no more and no less than one might expect given the agreed structure. After all, the whole point of the structure was to leverage Mr Mercuriadis’ detailed music industry expertise and contacts, and it was in his interests as well as everyone else’s that HSFL2 assemble a strong portfolio. Mr Burger gave evidence that in his opinion as a music industry professional, that is what happened.

209. Given the structure and the incentives, it seems to me to push the point too far to say that because the directors almost always chose to accept the advice given by HSML, they were accustomed to act at the direction or on the instructions of Mr Mercuriadis. To justify that conclusion, one would need to find evidence of a degree of unthinking subservience to the will of Mr Mercuriadis. The evidence here does not support that conclusion. The fact pattern is equally (if not more) consistent with the opposite view, because (1) the directors, themselves all senior individuals with a range of different but relevant backgrounds, spoke with one voice as to the diligence with which they

approached their individual roles, and all either expressly or impliedly rejected the notion that they acted unthinkingly (see above); (2) they would no doubt have been aware of the importance in regulatory terms of the board of HSFL2 (and not HSML or Mr Mercuriadis) having the final say in acquisitions and disposals of catalogues (as to which see the Minutes of HSFL2's initial Board Meeting at [93]-[99] above); and (3) the phenomenon can straightforwardly be explained on the ground that, as expected, HSML as Investment Adviser consistently made sensible and attractive recommendations which, after due testing and review, the Portfolio Committee was almost invariably minded to approve.

## **VI. Alleged breaches of duty by Mr Mercuriadis – the Phase 1 claims**

210. The fact that Mr Mercuriadis' subjective state of mind was honest does not mean that he cannot have been in breach of his duties under ss. 172 and 175 CA 2006, or even that his behaviour was honest as a matter of law. A person can be in breach of duty even if he is honest; and the fact that a person subjectively believes they are acting honestly does not mean their behaviour is exempt from censure if, objectively speaking, it is behaviour that an ordinary, honest person would regard as dishonest. So the Claimants' allegations remain to be considered on their own terms, against the relevant legal tests.
211. I will come back to the issue of dishonesty below, when considering the issue of accessory liability (see at [310]-[313]). I will first turn to the allegations of breach of duty by Mr Mercuriadis himself, starting with those concerning Phase 1.

### The Primary Allegations as to Phase 1

212. The Claimants' case placed particular emphasis on breaches of duty by Mr Mercuriadis during Phase 1 – that is to say, during the period up to and including the dissolution of Copyrights when Mr Mercuriadis was a director of HML (at least up until February 2018), and of Copyrights itself (up to May 2018).
213. This aspect of the case was anchored in the submission that, by the time of the Copyrights Bond Prospectus in March 2017, the music publishing catalogues idea had developed into a maturing business opportunity, because by then the complete business proposition was in place. That involved key structural features such as the use of specialist consultants as a means of identifying attractive investments, the use of Kobalt as collection agent in order to maximise royalty income, and the active management of rights in particular in order to promote synchronisation usage.
214. The logic of the Claimants' argument was that after this point, Mr Mercuriadis placed himself in a position of conflict during Phase 1 by promoting the HSFL1 IPO. More specifically, the main pleaded allegation is that "*in circumstances where ... Copyrights' intended business comprised a maturing business opportunity*", Mr Mercuriadis put himself in a position of conflict by taking steps designed to exploit that opportunity via HSFL1 rather than Copyrights, namely (1) procuring the incorporations of HSL and HSFL1, (2) becoming a director of HSL, (3) promoting the business of HSL and HSFL1 as described in the HSFL1 Prospectus, and (4) procuring the publication of the HSFL1 Prospectus for the purpose of raising funds for such business (PoC at para. 63). The same basic allegations are relied on as the basis for claims against Mr Mercuriadis under s.175 CA 2006 by both Copyrights and HML (PoC at paras 64-65), and also claims

against him by both companies under s.172 (as to the latter, for example, the basic allegation in PoC para. 66 is that Mr Mercuriadis breached his duty under s.172 by “... *taking steps over a period of months for the purpose of diverting Copyrights’ intended business from Copyrights to HSL and HSFL1 ...*”).

215. As to establishing a causal link between the alleged breaches in Phase 1, and the profits earned later in Phase 2, in their written Closing Submissions the Claimants’ case was that the profits eventually made by HSFL2/HSML were sufficiently closely connected to these earlier Phase 1 breaches, because the business opportunity was the same. The breaches of duty by Mr Mercuriadis which occurred when he sought to exploit that opportunity via HSFL1 did not dissolve after the Phase 1 period came to an end: instead, their effects continued into the Phase 2 period, and materially impacted the HSFL2 IPO, because the whole course of events had to be looked at together as a continuum involving diversion by Mr Mercuriadis of the same opportunity. The point was expressed (for example) as follows:

*“The business opportunity had been diverted by Mr Mercuriadis ... around the beginning of May 2017 ... and from then onwards, the music catalogues opportunity was afflicted by and/or was the product of Mr Mercuriadis’s conflict of interest and breaches of duty”* (Claimants Closing Submissions at para. 33).

#### Analysis of Primary Case on Phase 1

216. What is notable about this analysis is its emphasis, even during the Phase 1 period, on the source of Mr Mercuriadis’ liability being the status of the music publishing catalogues idea as a “*maturing business opportunity*”. I think it must follow that the success of the argument depends on that basic proposition being correct. That topic will be examined separately below, in Section VIII of this Judgment, starting at para. [260]. I agree that, if it is proper to look at the music publishing catalogues idea as a “*maturing business opportunity*” by about March 2017, then Mr Mercuriadis will have been in breach of duty thereafter, during Phase 1, in promoting the HSFL1 IPO through the Summer of 2017 (and thus within periods falling within 6 years of the issue of the claim on 23 June 2023).
217. In dealing with this part of the case, the Defendants said this logic did not follow, even on the assumption that there *was* a maturing business opportunity, because after about March or April 2017, neither Copyrights nor HML had any real interests to protect, with which the interests of Mr Mercuriadis could conflict.
218. The Defendants relied on section 175(4)(a) CA 2006, which provides expressly that the duty under s.175 to avoid a situation of conflict is not infringed “*if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest ...*”. Their argument ran as follows. In this case, it was clear from at least April 2017 that there was no possibility of any public (or other) fundraising involving Copyrights or HML. Their links with Mr Ingmanson and Mr Gergeo made that entirely impractical, as the capital markets experts were agreed. Consequently, from that point on, Copyrights and HML had no relevant “*interest*” in pursuing the music publishing catalogues opportunity with which any interest of Mr Mercuriadis could conflict.

219. In developing the point, Mr Cullen KC relied on Miller v. Stonier [2015] EWHC 2796 (Ch)), a decision of Newey J (as he then was). In that case the Defendant Mr Stonier was a director of a company called Domestic Fire Appliances Limited. Up until November 2011, that company had traded in the market for gas fire appliances, but had then sold its trading business (including premises and goodwill) to another company, BFM Europe Limited, retaining only certain IP rights and thus becoming, in effect, a vehicle providing a royalty income to its directors. Mr Stonier then commenced trading in gas fire appliances via a different entity, Hearth Products Limited. Newey J decided that he was entitled to, without infringing the duty owed to Domestic Fire Appliances Limited under s.175 CA 2006, because that company had no ongoing presence in the market for gas fire appliances and there was no prospect of it ever re-entering that market. It therefore had no relevant interest to protect. Mr Cullen KC relied on this decision for the proposition that the s.175 duty is not breached where the company has no actual interest in relation to a given matter with which the director's personal interest can conflict.
220. I am not persuaded by this line of argument. Miller v. Stonier seems to me a different sort of case, which was not premised on the diversion by Mr Stonier of any maturing business opportunity. There could be none, because Domestic Fire Appliances Limited was not pursuing any prospects in the relevant field. The position here would be different, on the assumption that there *was* a maturing business opportunity, because the law is settled in such cases: the duty of single-minded loyalty owed by the fiduciary requires him to exploit the opportunity only for the benefit of his principal and not on his own account, and it does not matter that the principal cannot take up the opportunity for himself. That has been clear since the decision in Keech v. Sandford (1726) Sel Cas Ch 61, where the trustee was in breach for taking up a lease of profits of a market which he had come to know about through his position as trustee, even though the lease was not available for adoption by the trust itself. The point now finds statutory expression in s.175(2) CA 2006, which states expressly that so far as concerns the duty not to profit from any "*property, information or opportunity*", it is immaterial whether the company itself could take advantage of the property information or opportunity.
221. I find the issue of causation based on any Phase 1 breaches more difficult. That is principally because, if the music publishing catalogues idea really *was* a maturing business opportunity, I find it rather artificial for the Claimants to seek to anchor their claims for an account of profits arising in Phase 2, on breaches of duty said to have occurred in Phase 1. It seems to me that, on this hypothesis, they would not need to: exploitation of the opportunity in Phase 2 would involve Mr Mercuriadis in breaches of duty during that later phase anyway, even though he was no longer a director of either Copyrights or HML; and the profits earned would more naturally be attributable to those later acts of exploitation, rather than to any earlier steps which (although involving breaches of duty) were not successful in earning any profits.
222. In my view, that follows from the operation of the extended duty not to profit from any corporate "*opportunity*" under s.170(2)(a) CA 2006, which is expressly stated to be a continuing duty, enduring beyond the defendant's period in office as a director. That is what the section says in terms (see above at [133]): "*A person who ceases to be a director continues to be subject ... to the duty in s 175 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity ...*" (my emphasis).

223. On this point, I agree with the views expressed by Mr Ashley Greenbank (sitting as a Deputy High Court Judge) in Burnell v. Trans-Tag Limited [2021] EWHC 1457 (Ch) at [411], to the effect that it is entirely possible for a breach of the continuing duty to be founded solely on acts which take place after the director has resigned his or her directorship. Although he was dealing with BVI law (which mirrors the English common law position), Lord Leggatt said the same thing in the Recovery Partners case at [134]. In fact, Lord Leggatt expressly rejected the notion that, in the usual case where the director resigns to take up a corporate opportunity, liability for post-resignation steps of exploitation somehow has to be anchored in earlier, pre-resignation breaches. He said (emphasis added):

*“In such a case the question whether the director made plans or took any preparatory steps before leaving office seems to me of peripheral significance. If he did, they are not the real object of complaint. The essence of the wrong is exploiting the information or opportunity by getting the contract for himself. Whether or not he began preparations before he resigned is hardly to the point.”*

224. And on the question of causation, Lord Leggatt added (again, my emphasis):

*“Even if some plans or preparations were made before the director left office, it would generally be unrealistic to regard the profits made from the contract as the result of those preliminary steps. The profits are a consequence of getting the contract, which might well have been won and would have been just as objectionable without those steps.”*

225. My view in this case, therefore, is that if the music publishing catalogues idea *is* a maturing business opportunity, there will be no difficulty in showing the relevant causal link – i.e., in the language of the Recovery Partners case, in showing that the profit made in Phase 2 owes its existence to a significant extent to some activity undertaken by the fiduciary which conflicted with his duty to the principal. But that is because, on the stated hypothesis, there would be breaches in Phase 2 which obviously gave rise to the profits. One would not need to trace the thread of liability back to breaches in Phase 1.

### The Possible Secondary Case

226. I should deal with a further aspect, because in certain of his submissions Mr Davies KC seemed to hedge his bets. Although he conceded that the pleaded case is put in the traditional language of maturing business opportunity, he also said at one point, referencing the comments of Lord Briggs in Recovery Partners where Lord Briggs spoke of the situation in which later profits have their “*origin*” in an earlier situation of conflict (see above at [157]):

*“ ... none of that requires us to grapple with whether the opportunity was a maturing business opportunity. They are talking about situations of conflict which arise when the director is a director, and on that basis they are prepared to say if, as a consequence of what you have done in conflict of interest whilst*

*you were a director, you subsequently earned a profit, you are liable for that profit”.*

227. This appears to be postulating that, irrespective of whether the music publishing catalogues idea was a maturing business opportunity, by simultaneously acting on behalf of (on the one hand) Copyrights and HML, and (on the other) HSFL1 and HSL, during Phase 1, in pursuing essentially the same or a very similar business venture, Mr Mercuriadis had allowed himself to occupy a position of conflict of interest, and that breach had a continuing effect such that it is possible to say that any later profit generated during Phase 2 can be attributed to it, and can therefore be made the subject of an order for an account.
228. I accept of course that a fiduciary may be in a position of conflict without the source of the conflict being the intention to profit from any property, information or opportunity coming into his possession by reason of his fiduciary position. The Supreme Court in Recovery Partners endorsed the idea that the profit rule and the conflict rule are different, though closely related concepts (see per Lord Briggs at [25]); and the language of s.175 CA 2006 is consistent with that, because the duty not to profit from exploitation of any property, information or opportunity is expressed in s.175(2) only as a particular instance of a situation in which a conflict may arise.
229. All the same, in this case, the argument that there was a conflict of interest irrespective of there being an “*opportunity*” was not clearly developed as a stand-alone point, and in any event I am unpersuaded by it.
230. To begin with, the question of liability does not seem to me to be at all straightforward. Even accepting that Copyrights did have its own continuing commercial interests to protect, notwithstanding the taint arising from the association with Mr Ingmanson and Mr Gergeo, the Claimants’ argument proceeds on the basis that there would necessarily have been a conflict simply because Copyrights and HSFL1 were occupying the same space in business terms and were both interested in acquiring music catalogues. In my opinion, however, that does not necessarily follow.
231. It would follow if, for example, the two entities were pursuing acquisitions in the same limited pool of music catalogues, and if it were thus a zero-sum game in which the success of one would automatically mean the failure of the other. That was the position for example in Davies v. Ford [2020] EWHC 686 (Ch), where Mr Monks undertook steps to clear a site for use as a waste disposal facility by a company called Greenbox Recycling (Kent) Ltd (“*GBRK*”) while still a director of another waste management company called Greenbox Recycling Limited (“*GBR*”): the issue was that there was only one site, and each company had an equal and opposite interest in establishing a trading business operating from it, thus producing a zero-sum game in which *GBRK*’s success would automatically mean *GBR*’s failure (see at [275]). But the same logic does not necessarily follow in other cases. For example, it would not follow here (or not necessarily follow) if the pool of catalogues available for acquisition was sufficiently large for the aspirations of both Copyrights and HSFL1 to be satisfied. In that case, the two sets of interests might be said to be aligned, not in conflict. I note that here, the Copyrights bond issue was only ever intended to raise £50m, which in theory would have left plenty of scope for activity by another acquisition vehicle with no real possibility of conflict between them. On that view of things, the market was

large enough to sustain both initiatives. Indeed initially, that was the plan, and the two ran in parallel for a while until the bond issue stalled in about March 2017.

232. The truth of it is that none of these nuances was sufficiently explored, either in the evidence or in argument. The reason is that the real substance of the case was put on a different basis, as the pleadings make clear, i.e. on the basis that the true source of the conflict Mr Mercuriadis was exposed to during Phase 1 was the fact that he was seeking to hijack and exploit for his own purposes a corporate “*opportunity*” which belonged to Copyrights, and which was fully developed by about March 2017. That is the main point in the case.
233. In any event, even if liability were established, there would be very serious causation problems. The hypothesis would have to be that, in Phase 2, Mr Mercuriadis made profits through exploiting a business idea which was *not* an opportunity attributable to Copyrights; but that, by reason of having been in a stand-alone position of conflict vis-à-vis Copyrights and HML during Phase 1, he should nonetheless be liable to account to Copyrights and HML for the Phase 2 profits.
234. This does not seem to me to be tenable. The later profits would not owe their existence to a significant extent to any breaches of duty in Phase 1, but instead to exploitation of a business idea in Phase 2 which (in the terms of the hypothetical) Mr Mercuriadis was free to exploit for his own benefit and on his own terms.

#### Section 172 CA 2006

235. For completeness, I should say that the Claimants did not press their case based on breaches of the s.172 duty during Phase 1 with any real vigour, perhaps recognising that in practice it would be likely to add little of value to the case based on breaches of s.175.
236. I think that was a correct approach. I will make just a few brief comments.
237. To begin with, the argument based on s.172, like that based on s.175, was really only developed on the premise that the music publishing catalogues idea was a corporate “*opportunity*” belonging to Copyrights. If it was, then as I have said already, I can see that the same activities of Mr Mercuriadis during Phase 1 would entail breaches of both the duty under s. 175 and that under s.172.
238. If the music publishing idea was *not* a maturing business opportunity, however, then the picture is more complex. Some of the same problems identified above would arise. In order to find that Mr Mercuriadis failed to act in a manner he considered in good faith was likely to promote the success of Copyrights and HML, one would need to understand clearly why promoting the success of HSFL2 was said to be incompatible with the success of Copyrights. That is not a given: as I see it one cannot simply assume that the two objectives could not co-exist and were thus necessarily incompatible, because originally the vision was that they would operate together.
239. In any event, the duty under s.172 operates subjectively, so that an honest belief by the director that the particular exercise of power is in the best interests of the company will not be a breach, even if the belief was unreasonable: see Saxon Woods Investments Ltd v. Costa [2025] EWCA Civ. 708. Here, I have already held that Mr Mercuriadis’ honest

belief from April 2017 onwards was that neither HML nor Copyrights had any viable future prospects, given their association with Mr Gergeo and Mr Ingmanson. That being so, it seems to me he had wide latitude to pursue the music publishing catalogues idea via HSFL1 and HSFL2, without infringing the duty under s.172.

240. As to the more specific matters relied on as constituting breaches of s.172 during Phase 1:
- i) As I have already held above, in the circumstances obtaining from late 2017 onwards, which included the “*de-banking*” of both HML and Copyrights in September 2017, it seems to me that there were objectively sound reasons for Mr Mercuriadis (a) to serve the Copyrights Bond Withdrawal Notice, (b) to petition for the winding-up of HML, and (c) to permit the dissolution of Copyrights. Indeed, there is a strong case for saying that it would have been irresponsible to do otherwise. That reinforces the credibility of Mr Mercuriadis’ account that, in his mind, taking such steps was consistent with the interests of HML and Copyrights. Certainly, I do not consider that the contrary has been sufficiently proven.
  - ii) I do not consider it has been shown that Mr Mercuriadis misappropriated any sum of £200,000 from HML. This allegation had its origin in Mr Gergeo’s recollection that he was told by HML’s accountant Mr Elias that he had noticed payments being made to Mr Mercuriadis totalling that amount (see above at [43]-[44]). It is correct that substantial payments were made from HML to Mr Mercuriadis, but the pattern of activity across the HML account is consistent with the idea that the payments were made to defray expenses incurred by Mr Mercuriadis personally in connection with HML’s business. The inquiries conducted during the trial, principally by means of cross-examination of Mr Mercuriadis, did not cast any serious doubt on his evidence on this point.

## VII. Section 1032 CA 2006

241. The next issue to address is the operation of the deeming provision in s.1032 CA 2006.

### The Argument

242. Copyrights was restored to the register of companies by means of an application under s.1029 CA 2006. The effect of an order under s.1029 is described in s.1032 CA, as follows:

*“(1) The general effect of an order by the court for restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register.*

*[...]*

*(3) The court may give such directions or make such provision as seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register. [...]*”

243. The deeming effect of s.1032 is relied on by the Claimants in support of their case that Mr Mercuriadis should in law be treated as having continued in post as a director, and therefore subject to the full suite of directors duties, between the date of Copyrights' dissolution and the date of its restoration to the Register on 19 October 2022.

244. The pleaded case in the Reply at para. 5 is as follows:

*“By reason of the restoration of Copyrights to the Register of Companies, whereupon Copyrights was, by virtue of section 1032(1) CA 2006, deemed to have continued in existence as if it had not been dissolved, Mr Mercuriadis is to be treated in law as having remained a director of Copyrights over the entire period from its incorporation until 19 October 2022”.*

245. In their written Closing Submissions, the Claimants put the argument as follows:

*“Given that the cessation of the directors' office is one of the automatic consequences of dissolution, that is one of the matters that falls to be treated as reversed upon restoration by virtue of the deeming provision” (see at para. 501).*

246. They also said:

*“HML's case is merely that the effect of the restoration of a dissolved company, as far as the company's directors are concerned, is that the directors are not to be treated as having automatically left office as a result of and upon the company's dissolution” (see at para. 504).*

#### Authorities

247. The question is whether these arguments are sustainable in law. The matter has been the subject of recent judicial commentary, including in the Supreme Court. I will deal briefly with the relevant authorities.

#### *Davies v. Ford*

248. In Davies v. Ford (mentioned above at [231]), Mr Monks and Mr Ford had both at the time of its dissolution been directors of GBR (Greenbox Recycling Limited). It was later restored to the register by order under s.1029. The Claimant, Mr Davies, argued that the effect of s.1032 was to deem them to have continued in post as directors during the period of dissolution. Mr Davies said that was the consequence of the company being deemed *“to have continued in existence”* (see at [376]).

249. I rejected that argument for the reasons developed at [391]-[395]. In short, I said it appeared to be highly undesirable in policy terms for a person who had been a director of a dissolved company to be left in a position of uncertainty as to whether his status as a director continued or not post-dissolution, and for this to depend on whether an application was made at a later date for restoration, which could not be known at the time. At [393] I offered the view that in any event, a person who ceased to be a director would continue to be subject (*inter alia*) to the continuing duty imposed by operation

of s.170(2)(a) (i.e. the duty “*in section 175 ... as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director ...*”). At [394] I said that, if the circumstances of any given case required the deemed effects of restoration to be broadened so as to embrace the position of former directors specifically, then that could easily be achieved by the registrar or the Court giving a direction under s.1032(3).

### *Bilta*

250. In Bilta (UK) Limited v. Tradition Financial Services Limited [2023] EWCA Civ 112, [2023] Ch. 343, Lewison LJ, with whom Stuart-Smith and Falk LJJ agreed, endorsed the view that s.1032 does not, irrespective of the facts of any particular case, require the assumption that the directors in office at the date of dissolution remained in office throughout the period of the company’s enforced non-existence (see at [131]). At [142], Lewison LJ described the reasoning in Davies v. Ford at [391]-[392] and [394] as compelling, but did not so affirm the reasoning at [393] (as to the effect in this context of s.170(2)(a)).
251. The context of the Bilta decision in the Court of Appeal was a dispute about limitation. Two claimant companies submitted that they should not be treated as having been able with reasonable diligence to have discovered that they were victims of a fraud, because by means of s.1032, the directors who were deemed to have been in post during the period of the dissolution were the same directors who had committed the fraud, and their knowledge could not be attributed to the companies for the purposes of s.32 Limitation Act 1980. That argument was rejected, for the reasons given.
252. In the Supreme Court, the companies ran an alternative argument, which was that they should be deemed to have had no directors at all during the period of dissolution. That argument too was rejected. Lord Hodge and Lord Briggs (in a judgment with which Lord Hamblen, Lord Burrows and Lord Briggs agreed), said that the wording of section 1032 required no such assumption to be made. At [80] they held that the application of established principles to the statutory wording “... *means that all which is to be deemed to be true about the restored company is that it continued in existence during the period of its dissolution, no more and no less*”. At [81] they went on to say that the question whether the company is to be assumed to have had officers of some kind and if so of what type and for what periods, was a matter that the deeming provision in s.1032 had no bearing on. Instead, that issue had to be “... *answered on the balance of probabilities as a question of fact (counterfactual not historical) by reference to such evidence as is adduced by the opposing parties, and paying appropriate regard to the burden of proof if evidence is lacking ...*”.
253. As I read it, this reasoning is entirely consistent with that of the Court of Appeal (and therefore also consistent with the approach taken in Davies v. Ford), even though the question being addressed in the Supreme Court was a different one. The upshot is the same, which is that the effect of the deeming provision in s.1032 is in fact very limited, and on its own tells one nothing about how the former directors of a dissolved company are to be regarded during the period of its dissolution.

### Analysis

254. This presents a difficulty as I see it for the Claimants’ argument in these proceedings.

255. In my opinion, all of the Claimants’ formulations set out above, both from their pleaded case and written Closing Submission, go further than the decision of the Supreme Court in Bilta allows one to. All of them invite the conclusion that the effect of the deeming provision alone is to give rise to a situation in which former directors are treated as never having left office. Respectfully, that seems to me the opposite of the conclusion arrived at by the Supreme Court in Bilta, which was that “*all which is to be deemed to be true about the restored company is that it continued in existence during the period of its dissolution, no more and no less*”. Anything beyond that has to be addressed as a matter of (counterfactual) fact – i.e., if it is relevant in determining any issue to consider what the company’s directorship position would have looked like in a counterfactual world in which the company had continued in existence, that has to be considered on the evidence as a matter of probabilities and bearing in mind the burden of proof.
256. That being so, I do not consider that the Claimants’ case is adequately developed. As the Defendants were at pains to point out, the pleaded case (see above at [244]) does not in fact advance any reasoned counterfactual. Instead it asserts only that Mr Mercuriadis “*... is to be treated in law as having remained a director of Copyrights over the entire period from its incorporation until 19 October 2022*”.
257. In his oral opening submissions, Mr Davies KC appeared to amplify the Claimants’ case. He suggested the following rationale (i) given that cessation of Mr Mercuriadis’ office as a director was one of the automatic consequences of dissolution, upon restoration such cessation would fall to be treated as reversed from the point of dissolution onwards, and (ii) thereafter, one could assume that in the resulting counterfactual world in which Mr Mercuriadis automatically remained a director, inaction would have led him to remain in post (i.e., one should proceed on the basis that in the counterfactual world he would not have taken the initiative to resign).
258. I do not find this analysis persuasive, and do not consider that it addresses the fundamental problems with the Claimants’ analysis on the s.1032 issue. I can see some force in limb (i), if the point being made is simply that, in a counterfactual world in which Copyrights was not dissolved, Mr Mercuriadis is likely (as a matter of counterfactual fact) still to have been a director as at 22 May 2018. But even if correct, that only gets one to the point of dissolution, not beyond. The Defendants objected to limb (ii) on the basis that it is not part of the pleaded case. I agree, but even looking at it more substantively, limb (ii) does not seem to me to be a safe assumption given the known facts. These include the fact that Mr Mercuriadis petitioned to wind-up HML and the fact that he was content to allow Copyrights to be dissolved, in both cases following the removal of banking facilities by Metro Bank in September 2017. These matters suggest that Mr Mercuriadis was taking a more active interest in managing his association with HML and Copyrights than the Claimants give him credit for, and might well have done the same in a counterfactual world in which Copyrights continued in existence after 22 May 2018, either by resigning his directorship or perhaps by petitioning for the winding-up of Copyrights as he had done with HML. Thus, even if the limb (ii) argument had been sufficiently pleaded, I would have said the Claimants had not discharged the burden of proving it.
259. The result is that in my view, the Claimants are not able to rely on s.1032 CA as a basis for extending beyond May 2018 Mr Mercuriadis’ status as a director of Copyrights, and

thus as a basis for extending the duties owed by him to that company under s.172 or s.175 CA 2006.

### VIII. The “*opportunity*” issue

#### Introduction: the central issue

260. I next turn to the question whether any of Mr Mercuriadis’ activities involved him in the exploitation of an “*opportunity*” or “*maturing business opportunity*” belonging to Copyrights. As I see it, this is a central issue. If the music publishing catalogues idea either was, or at some point developed into, an “*opportunity*” or “*maturing business opportunity*” in the relevant sense, which was then exploited by Mr Mercuriadis by means of the HSFL2 IPO, then the claims against him will succeed, and it will not matter that by then and during the whole of what the parties have referred to as Phase 2, Mr Mercuriadis was no longer a director of Copyrights. He will nonetheless have been subject to a continuing duty to exploit any relevant “*opportunity*” only for the benefit of his principal, and will be bound to account to his principal for any profits flowing to him from a breach of that duty.

#### Relevance of Copyrights’ dissolution and restoration

261. A preliminary point arises, but I think it can be dealt with briefly. This is whether Copyrights, given its dissolution, can take the benefit of s.170(2)(a). It will be remembered that in Davies v. Ford at [393] (see above at [249]), I expressed the view that the continuing duty under s.170(2)(a) was applicable as regards a company subject to dissolution, but that point was not one of the points endorsed by the Court of Appeal in the later Bilta decision (see above at [250]). The Defendants say that is significant. More substantively they argue that a company which is dissolved cannot on any view have any continuing *interests*, and consequently it is not meaningful to speak of there being a continuing duty to avoid any conflicts of interest (which is the effect of s.170(2)(a)), at least not without any appropriate direction being given at the point of restoration under the power in s.1032(3).
262. I do not agree. Here, the fact is that Copyrights *has* been restored to the register of companies and is thus deemed to have been in existence in periods after 22 May 2018. In my opinion, that is enough to engage s.170(2)(a) in respect of Mr Mercuriadis’ activities thereafter, at least in principle. That result does not at all depend on assuming that Mr Mercuriadis would (in that counterfactual world) have remained a director of Copyrights. The whole purpose of s.170(2)(a) is to extend the s.175 duty (albeit in attenuated form) even to persons who are no longer directors, and so one can safely have the debate on the assumption that he was not a director. Whether he was or was not, if the allegation is one about misuse of the company’s property, information or opportunity, the result will be the same.
263. As to the question of what the company’s interests would have been, in my opinion that should be addressed using the same principles described by the Supreme Court in the Bilta decision. That is to say, in determining what its interests would have been in a counterfactual world in which it had continued in existence, one must form an assessment based on the evidence and bearing in mind where relevant the burden of proof. To put it another way, the question of the company’s interests is a matter to be considered when *applying* the rule under s.170(2)(a) to the counterfactual created by

the company's restoration. One must ask, *what would its interests therefore have been, in the counterfactual?* It is not appropriate to say, *well the company was not in fact in existence and therefore had no interests*. To do so would be to rob the rule of any force without applying it on the correct basis. Still less is it appropriate to say that the rule should have no application at all.

264. In my view, if the music publishing catalogues idea in fact qualifies as an “*opportunity*” in the relevant sense, then Copyrights would have had an interest, in a counterfactual world in which its (former) fiduciary sought to exploit that “*opportunity*” for his own benefit, in holding him to the duty of single-minded loyalty he had willingly undertaken, and thus an interest in preventing him from doing so and (most likely via a liquidator) claiming such profit for itself.

### The law on corporate “*opportunities*”

#### *Some general points*

265. The main issue therefore is whether the music publishing catalogues idea does or does not qualify as an “*opportunity*” in the relevant sense. Resolving this issue will involve looking more precisely at the nature of the interest protected by the idea of an “*opportunity*”, as that phrase is used in s.175 and s.170(2)(a). It will also involve considering the nature of the “*opportunity*” at issue in this case.
266. As to the nature of the interest in play, Mr Manahan in his oral evidence put the Claimants' characterisation straightforwardly. In a statement which the Claimants in their Closing Submissions described as capturing the essence of the situation, he described the actions of Mr Mercuriadis as “*stealing*”.
267. This characterisation of the “*opportunity*” as a species of corporate property capable of being stolen also finds expression in the authorities.
268. Lord Leggatt traced the history of the relevant principles in his concurring judgment in the Recovery Partners case (see at [93]-[138] in particular). The following points are useful and relevant to note in the present context.
269. To start with (see per Lord Leggatt at [93]), there is a long-standing rule that a trustee or other fiduciary must not use property of the principal (or any information or opportunity which is to be treated as if it were property) for the fiduciary's own benefit or indeed for any purpose outside the scope of the fiduciary's authority, unless the principal has given its informed consent. Any profits generated from an unauthorised transaction which makes use of the principal's property are to be regarded in law as profits of the principal. Some authorities have described such profits as the fruits of the fiduciary's wrongdoing (see at [96]). The analogy of a fruit tree is an apt one: the fruit is naturally to be regarded as the property of the person who owns the tree.
270. There is no single or universal concept of what property means. In some contexts it can describe a right which is good against the whole world. But that need not be so, and it is also relevant to speak of “*property*” in relation to (for example) information or an opportunity in the hands of a principal, who has a right as against a fiduciary agent to limit the use of that information or opportunity by the agent (see at [104]-[106]). In such cases the fiduciary is obliged to use the information or opportunity only for the

benefit of their principal, and in that sense, the information or opportunity is a form of property.

271. This form of reasoning seems first to have developed in cases involving partnerships (see at [107]-[108]), but was later extended to cases involving company directors, once it came to be accepted that company directors owe duties in managing the affairs and property of the company equivalent to those of trustees or agents (see at [109]).
272. The more difficult issue relevant to the present case is what counts as a relevant opportunity of the principal. As to that, Lord Leggatt made the following comments at [137]:

*“There are important questions which this court may at some stage need to address about what counts as an opportunity of the principal which the fiduciary has a duty not to exploit for her own purposes. Undoubtedly the opportunity must be one which came to the knowledge of the fiduciary in the course of and by reason of her role. It would be consistent with Regal (Hastings) [1967] 2 AC 131 (see e.g. Lord Macmillan at p. 531F) and Boardman v. Phipps [1962] AC 46 (see e.g. Lord Hodson at p.109G) to require also that knowledge used to exploit the opportunity was not publicly available; and that the opportunity was procured through the principal’s efforts (as in Regal (Hastings)) or assets (as in Boardman v. Phipps: see paras 98-100 above).”*

*Canadian Aero*

273. Earlier cases provide practical guidance as to those matters which have been held to qualify as an opportunity (and therefore subject to a limitation on use by the fiduciary), and those which have not.
274. Canadian Aero Service Limited v. O’Malley (1973) 40 DLR (3d) 371, and Island Export Finance Ltd v. Umunna [1986] BCLC 460, are cases falling on either side of the line, and so are helpful reference points.
275. In Canadian Aero, Mr O’Malley and Mr Zarzycki had been directors of the claimant company (referred to as “Canaero”) until August 1966. In that capacity they had undertaken detailed work for Canaero in seeking to obtain a contract for the provision of topographical mapping and aerial photography services to the Government of Guyana. The project for such services was to be funded by means of a grant from Canada’s external aid programme. Among the work carried out by Mr Zarzycki was a proposal for the topographical mapping of Guyana to be used in supporting the funding proposal. The proposal included much technical detail. Funding was agreed in principle in early July 1966, but then on 19 August and 22 August respectively Mr O’Malley and Mr Zarzycki resigned their directorships of Canaero and thereafter bid for the Guyana project via a new company, Terra Surveys Limited, which in November was awarded the contract. A report by the Canadian Government, supporting the recommendation of Terra Surveys, noted particularly the detailed nature of its bid, which “covered the operation in much greater detail than might normally be expected”.

276. One of the questions for the Court was whether O'Malley and Zarzycki were in breach of fiduciary duty in bidding for, and winning, the Guyana project via Terra Surveys. The Supreme Court of Canada answered that question in the affirmative. In a famous passage at p. 382, Laskin J said:

*“An examination of the case law ... on the fiduciary duties of directors and senior officers shows the pervasiveness of a strict ethic in this area of the law. In my opinion, this ethic disqualifies a director or senior officer from usurping for himself or diverting to another person or company with whom or with which he is associated a maturing business opportunity which his company is actively pursuing; he is also precluded from so acting even after his resignation where the resignation may fairly be said to have been prompted or influenced by a wish to acquire for himself the opportunity sought by the company, or where it was his position with the company rather than a fresh initiative that led him to the opportunity which he later acquired.”*

277. It is apparent from the analysis at p.390 that Laskin J preferred an open-textured approach to the question of determining liability. He said, *“As in other cases in this branch of the law, the particular facts may determine the shape of the principle of decision without setting fixed limits to it”*. But at p.391 he identified a number of factors which, in any given case, might be relevant:

*“Among them are the factor of position or office held, the nature of the corporate opportunity, its ripeness, its specificity and the director's or managerial officer's relation to it, the amount of knowledge possessed, the circumstances in which it was obtained and whether it was special or, indeed, even private, the factor of time in the continuation of the fiduciary duty where the alleged breach occurs after termination of the relationship with the company, and the circumstances in which the relationship was terminated, that is whether by retirement or resignation or discharge.”*

278. The critical features of Canaero's claim were identified by Laskin J at p. 390:

*“What is before this Court is ... a case where [the company] had devoted itself to originating and bringing to fruition a particular business deal which was ultimately captured by former senior officers who had been in charge of the matter for the company”.*

279. Moreover those officers had (see at p. 390-391):

*“... entered the lists in the heat of the maturation of the project, known to them to be under active Government consideration when they resigned from Canaero and when they proposed to bid on behalf of Terra.”*

*Island Export*

280. Island Export Finance Ltd v. Ummuna and Anor [1986] BCLC 460 stands on the other side of the line. Mr Ummuna had been a director of Island Export Financing Ltd (“IEF”) and in that capacity, based on a lead given to him by IEF’s owner Mr Lewis, he secured two orders for the provision of postal caller boxes to the postal authorities in the Cameroons. Some 6,000 such postal caller boxes were delivered in 1976, manufactured by a company called Plunkett & Co. There was a potential requirement for further boxes, but no assurance of further orders and the expectation was that there would be competition from other suppliers.
281. Mr Ummuna resigned his position in 1977, and then via a company of his own, Benosi International Limited, secured two further contracts – one for postal caller boxes, and another for a similar product referred to as a travelling post box. IEF sued him for breach of fiduciary duty but the claim was dismissed by Henderson J.
282. The reasons included the following (as it seems to me, principal) points. First, at the time of Mr Ummuna’s resignation, there was no more than a hope of obtaining further orders and IEF was not actively pursuing any – that was in contrast to the “*maturing business opportunity*” in the Canadian Aero case. Second, although it was correct that Mr Ummuna, in securing the new contracts, was exploiting intelligence and expertise he had developed while a director of IEF, there was nothing objectionable about that given the nature of the intelligence and expertise in question.
283. As to the second of these, one matter raised was about the mode of manufacture of postal caller boxes, but as to that Henderson J said at p. 477b, “... *there is no great mystique about the manufacture of post boxes ... there was no particular expertise possessed by Plunketts which made them particularly fitted to that task*”. Another matter raised was that it was only through IEF and through Mr Lewis’ lead that Mr Ummuna had become aware of the market for postal caller boxes in the Cameroons. This appears to have arisen given the last of the factors mentioned by Laskin J in his judgment in Canaero at [276] above, i.e., “... *or where it was his position with the company rather than a fresh initiative that led him to the opportunity which he later acquired*.” This point too was rejected by Henderson J, who thought that Laskin J could not have been referring to knowledge or intelligence of *any* type acquired by the former director in office, because to cast the net so widely would operate in restraint of trade, which would be highly undesirable in policy terms. At p. 482b, Hutchinson J said:

*“Directors, no less than employees, acquire a general fund of knowledge and expertise in the course of their work, and it is plainly in the public interest that they should be free to exploit it in a new position.”*

284. At pp. 482i to 483a, Hutchinson J stated that knowledge of the existence of a market could form part of a director’s “*general fund of knowledge*”. He said:

*“If ... it is suggested ... that all that is necessary to make Mr Ummuna liable is that he should have become acquainted with the existence of a market in the Postal Department of the Cameroons while and because he was a director of the plaintiff*

*company, then I would reject any such submission on the basis that that part of the principle is unnecessarily widely stated having regard to the facts of Canaero, is not supported by authority, conflicts with the rules of public policy as to restraint of trade and does not represent English law.”*

*CMS Dolphin*

285. In CMS Dolphin Ltd v. Simonet [2001] 2 BCLC 704, Mr Simonet had been a director of the claimant advertising company, but resigned in April 1999. Lawrence Collins J (as he then was) made orders for an account of profits in relation to the ongoing business of three customers of CMS Dolphin, namely Argos, Reebok and DFB, who had transferred to, and been serviced via, Mr Simonet’s new company, Blue (GB) Ltd. It is apparent from the Judge’s analysis at [73]-[73] and [128] that the critical factor was that the work undertaken in respect of all three clients was in substance simply a continuation of that being undertaken by CMS Dolphin at the point of Mr Simonet’s departure. As regards Argos and DFB, CMS Dolphin had the benefit of contracts with a 12-month term. The Judge held that in substance, the ongoing work was simply transferred to the new company. CMS Dolphin had no contract with Reebok, only what the Judge described as a maturing business opportunity; but in terms of the substance, again *“there was a clear continuity also in the Reebok work”*. The Judge dealt with the scope of the relevant orders for account at [140]. Although the Judge accepted that the benefit of the Argos and DFB contracts to CMS Dolphin included *“the opportunities that were associated with”* those contracts, he was content to limit the orders for account, as the claimant requested, to profits accruing during the remainder of the contract periods (i.e., the remainder of the 1999 calendar year). The account in respect of the Reebok opportunity was similarly limited.
286. Given the principles already described above, it is not surprising that Lawrence Collins J was persuaded to order an account in relation to opportunities of CMS Dolphin which, in two cases out of the three, had already matured into ongoing contracts, and which in the third case was very well developed. But the case is of interest because of the view Lawrence Collins J expressed as to the basis of the fiduciary’s liability in such cases. Having noted that the entitlement of a director to resign from office is not a fiduciary power and can typically be exercised at any time without formality (see at [87]), and having then reviewed the relevant authorities, including Canadian Aero and Island Export Finance, Lawrence Collins J said at [96] (my emphasis added):

*“In my judgment the underlying basis of the liability of a director who exploits after his resignation a maturing business opportunity of the company is that the opportunity is to be treated as if it were property of the company in relation to which the director had fiduciary duties. By seeking to exploit the opportunity after resignation he is appropriating for himself that property. He is just as accountable as a trustee who retires without properly accounting for trust property. In the case of the director he becomes a constructive trustee of the fruits of his abuse of the company’s property, which he has acquired in circumstances where he knowingly had a conflict of interest and exploited it by resigning from the company.”*

*Recovery Partners*

287. I should mention briefly the facts of the Recovery Partners case, which I referenced at the start of this review of the authorities. There, three individuals who at the time owed fiduciary obligations to the claimant BVI entities, were involved in a project providing *ad hoc* asset recovery services to the family of a deceased Georgian billionaire and were negotiating the terms of a contract to do so. The individuals then resigned and provided recovery services themselves under a different contract, and in the course of doing so made use of confidential information about the family’s assets gleaned during the period of their earlier *ad hoc* work. They were held liable to the Claimants for appropriating for themselves “a developing business opportunity which was to be regarded as an opportunity of the claimants” (per Cockerill J at [2022] EWHC 690, para. [1]). In her judgment on liability ([2018] EWHC 2918 (Comm)), Cockerill J summarised as follows the guidance she had been able to glean from the cases involving a maturing business opportunity:

*“60. Such limited guidance as the authorities provide indicate to me that a business opportunity may be regarded as ‘maturing’ so long as there is contact between the principal and a third party with regard to future business and that contact has progressed to the stage where some outlines of future contractual relations are in play. There need not be a draft contract or any imminence of agreement. Such regimented requirements would be out of keeping with the very fact-sensitive nature of these cases as pointed out by Rix LJ in Foster Bryant Surveying Limited v. Bryant [2007] BusLR 1565, para. 76 ...*

...

*65. The opportunity however is subject to limits, both of which are relied upon in this case for the defendants. The first is that it must have come to the director or fiduciary by reason (and only by reason) of his position as such fiduciary ...*

*66. The second is that it must be an opportunity which the company/person to whom the duties are owed is ‘actively pursuing’ ...”.*

288. I have already set out above the criteria mentioned by Lord Leggatt for identifying a legally relevant opportunity of a principal, subject to restrictions on use by the fiduciary agent. He considered these were all present on the facts of Recovery Partners itself (see [2025] UKSC 10 at [138]): (1) the opportunity to negotiate a contract for the provision of recovery services came to the defendants in the course of and by reason of their roles; (2) they were able to use confidential information, acquired during their initial *ad hoc* work, to exploit that opportunity; and (3) the opportunity was not merely one in which the claimants had an interest: it was one that the claimants themselves were actively pursuing – indeed, it was one which the defendants had been pursuing on the claimants’ behalf until they appropriated it for themselves.

Was there an “opportunity” in this case?

289. Having examined the legal principles, one can now consider the nature of the opportunity alleged in this case.
290. I have already mentioned that for the Claimants, Mr Davies KC argued that the opportunity had achieved mature status by the time of the Copyrights Bond Prospectus, in March 2017 (see above at [213]). Taking that as the reference point, the PoC at para. 48 describe the resultant opportunity as having the following features:
- i) Copyrights’ intended business was the product of a particular commercial opportunity, namely the recognition upon establishment of HML in 2015 that *“music catalogues were an asset class that had considerable growth potential due to the prospect that royalty revenues would increase with the growth in the streaming of music and also that music catalogues could at that time be acquired at prices that did not reflect that potential”*.
  - ii) The process of developing that commercial opportunity involved the utilisation of extensive music industry experience, including in particular the music industry experience, expertise and contacts of Mr Mercuriadis and Mr Helm, Copyrights’ CFO.
  - iii) Start-up capital had been provided: including the £500,000 initially invested by SVCL and then the further £200,000 loaned by Mr Gergeo via Gergeo Invest in November 2016.
  - iv) A credible business plan had been formulated.
  - v) At least 15 music catalogues had been identified as potential acquisitions, and the first two which Copyrights intended to acquire had been valued, including the Wayne Hector catalogue.
  - vi) Agreements had been reached with the music consultants, including Nile Rodgers.
  - vii) A relationship had been established with Kobalt as royalty collection agent.
  - viii) A business strategy had been identified including in particular the idea of active management of rights via synchronisation.
  - ix) There was a trading name, associated website domains and a distinctive elephant logo.
  - x) Copyrights’ literature had developed and established a distinctive style and content.
  - xi) Copyrights itself had been established as the corporate vehicle to carry on the intended business.
  - xii) Copyrights had engaged extensively with professional advisers regarding the legal, financial and accounting requirements for launching its business.

- xiii) Copyrights had produced the Bond Prospectus.
291. The question is whether these matters, taken together, qualify as an “*opportunity*” in the relevant sense, thus attracting the ongoing protection afforded by s.170(2)(a) CA 2006. I do not consider that they do.
292. To start with, it seems to me clear that the majority of the matters identified do not describe an “*opportunity*” as such, but rather the mechanics via which the “*opportunity*” was proposed to be exploited at the time of the bond issue. That is certainly true of item (iii) (provision of start-up capital); item (iv) (business plan); item (viii) (business strategy); item (ix) (trading name/website/logo); item (x) (distinctive style and content of literature); item (xi) (establishment of Copyrights itself); item (xii) (engagement with professional advisers); and item (xiii) (production of the Bond Prospectus).
293. In my opinion, such matters are all examples of the practical means by which the music publishing catalogues opportunity, as it stood at the time, was intended to be developed and implemented. But they do not help in identifying the true nature or character of the relevant “*opportunity*”, for the purposes of characterising it in legal terms. That is supported by the authorities. In Canadian Aero, for example, the relevant opportunity (the Guyana project) was not defined by reference to the modalities Canaero would have deployed in servicing it had it not been diverted to Terra Surveys. Instead, the “*opportunity*” – the thing of value to Canaero – was the prospect of engaging with a third party in a manner designed to generate a profit. As I see it, at best the matters I have referred to – describing aspects of one practical means of making money out of the overarching opportunity – are no more than matters forming part of the “*general fund of knowledge and expertise*” accumulated by Mr Mercuriadis during his time as a director of HML/Copyrights, which he was then free to use elsewhere. Certainly, there was nothing special about the expertise he developed: there is no special mystique about the mechanics of launching a bond issue, any more than there was any special mystique in the mechanics of manufacturing postal caller boxes in the Island Export Finance case.
294. In my opinion, a similar logic applies as regards three further items in the Claimants’ list: item (ii) (utilisation of extensive music industry experience); item (vi) (the agreements with Nile Rodgers and the other consultants); and item (vii) (the relationship with Kobalt). It is no doubt true that exploitation of the music publishing catalogues opportunity via HSFL2 involved Mr Mercuriadis utilising the extensive experience he had developed as a music industry executive over many years, but he was not restricted in doing so by his former status as a director of HML/Copyrights: it was his knowledge and experience and he was free to make use of it. Likewise, his connections with Nile Rodgers, Lance Freed and The-Dream dated back many years and were thus part of his general fund of knowledge and expertise, not acquired during his tenure as a director. Finally, Kobalt had been in existence for about 15 years before HML was formed. They were a third-party service provider, and knowledge of their existence was no more proprietary or deserving of protection than was Mr Ummuna’s knowledge of Plunketts as a manufacturer of postal caller boxes in Island Export Finance (see [283] above).
295. Claimants’ item (v) (the fact that 15 music catalogues had been identified as potential acquisitions) hints at a more conventional form of “*opportunity*”, but the claim in these proceedings is not put on the basis of diversion of the benefits of those 15 music

catalogues. Instead it is put much more broadly as diversion of the general idea of investing in music publishing catalogues *per se*.

296. Thus, as I see it, item (i) is really at the heart of the Claimants' case. That is consistent with the way in which the Claimants developed their Closing Submissions. In their Written Closing, for example, they emphasised that although many of the authorities are concerned with an opportunity to do a particular piece of business by entering into a particular contract, the opportunity in the present case was "*more general or foundational in character, in that it related to the launch and establishment of an entirely new business ...*" (para. 474).
297. In my opinion, however, there are a number of problems with regarding the foundational idea behind HML/Copyrights as an "*opportunity*" in the relevant sense.
298. To begin with there is the fact that, on any view, and whoever came up with it first (see [177] above), it is an idea or concept that Mr Mercuriadis was aware of *before* he became a director of either HML or Copyrights. Indeed, it is common ground that HML and Copyrights were incorporated in order to exploit the idea. That is fatal. The language of s.170(2)(a) expressly limits the scope of the protection it affords to the exploitation of any "*property information or opportunity*" of which the defendant "*became aware at a time when he was a director*". The logic of this is explained by the first of the three indicia of a relevant "*opportunity*" identified by Lord Leggatt, at para. [137] of his judgment in Recovery Partners (see [272] above) – i.e., the protection is against the later exploitation by the fiduciary of an "*opportunity*" which came to the fiduciary's knowledge "*in the course of and by reason of her role*".
299. That logic is consistent with the key authorities involving liability of fiduciaries for exploitation of information or opportunities: in Keech v. Sandford (1726) Sel Cas Ch 61, the trustee was liable for acquiring a lease of profits of a market which he knew about because it was the subject of the trust; in Regal (Hastings) v. Gulliver [1967] 2 AC 143, the directors were liable because the opportunity to acquire shares in the Claimant's new subsidiary was developed during the course of their directorships; and in Boardman v. Phipps [1964] 1 WLR 993, Mr Boardman was liable because he used knowledge acquired while he was solicitor for a family trust to identify a specific and ultimately successful investment opportunity which he exploited on his own account. True it is that none of those cases involved exploitation of an opportunity by a former fiduciary, but what is important is understanding the basis of the liability, which was that in each case, the information or opportunity came to the knowledge of the fiduciary only by reason of their being a fiduciary. That principle does not allow one to say here that Mr Mercuriadis should be prevented from exploiting for his own benefit a general investment idea he thought of for himself, before either HML or Copyrights was incorporated.
300. As against this, Mr Davies KC for the Claimants argued that "*knowledge*", as that word is used in s.170(2)(a), is a relative concept, and where the opportunity in question was in the nature of a foundational idea (as here), knowledge in the relevant sense only crystallised at the point in time when the overall business proposition was fully formed – which in this case did not occur until the time of the Bond Issue Prospectus. Respectfully, I find this a rather artificial argument, essentially for the reasons already given above: to my mind it confuses what the Claimants themselves characterise as the real "*opportunity*" (i.e., the basic business idea of making money on a particular kind

of investment) with the means of exploiting it (meaning here, the mechanics of raising money and running the resultant business as described in the Bond Issue Prospectus). Mr Mercuriadis had knowledge of the basic business idea before he became a director of either HML or Copyrights, and I think it artificial to say that he acquired awareness in the relevant sense only once he came to have knowledge of certain modalities (and admittedly not the only ones) by means of which that business idea might be exploited.

301. Mr Davies KC had another objection, which was to say that if the law in fact operates as described, it would have potential to operate unfairly: in the case of start-up companies, for example, the founder's original idea would typically precede incorporation of the relevant company, and it could not be correct to say that a founding director could resign and divert the critical idea for his own benefit with impunity. Again, however, I am not persuaded by that argument. It assumes that the protection afforded by s.170(2)(a) is the only form of protection available in respect of a "*foundational idea*". That is not so. Other forms of protection might well be available – for example, by means of intellectual property rights owned by the company, or contractual rights enforceable against the director. Indeed, contractual protections existed here, as I have mentioned already at [18]-[19] above – for example, the covenant given by Mr Mercuriadis in relation to the "*Hipgnosis*" name, in clause 11.2(f) of the Shareholders' Agreement. But that is a different matter to protecting a corporate opportunity, and as I have explained, any claims for damages based on the provisions of the Shareholders' Agreement and Mr Mercuriadis' Service Agreement have sensibly been abandoned, given the inability of HML and Copyrights to show any losses (see above at [140]).
302. Section 170(2)(a), as the authorities suggest, and as its language makes clear, is directed very specifically at a different form of protection: protection for the company against the later exploitation by a former director of corporate property which he came to have knowledge of expressly in the course of and by means of being a fiduciary. In my opinion, that does not capture the form of opportunity alleged here, once its true nature is analysed.
303. There are other ways of rationalising the same overall outcome.
304. One is to ask whether the opportunity relied on by the Claimants is of such a character that it can fairly be regarded as their property (per Lawrence Collins J in CMS Dolphin); or (per Lord Leggatt in Recovery Partners), as subject to a right exercisable by HML and Copyrights as principals, to require their fiduciary Mr Mercuriadis to exploit the opportunity only for their benefit.
305. In my view, it is difficult to see that the opportunity does have such a character. At its heart, it was nothing more than a general idea or even feeling, that at a point in time in the mid-2010s, a certain asset class (music publishing catalogues) was undervalued, in the sense that their long-term value might be in excess of their current sale value. That is not so much an opportunity as an insight or a concept. Even if one accepts Mr Gergeo's evidence that he had the same or a similar idea at roughly the same time, that only underscores the conclusion that it was an idea available generally to music industry participants and was not anything specific to HML or Copyrights.
306. To accept the Claimants' case would be to say that Mr Mercuriadis was inhibited, by reason of his former status as a director, from exploiting that general idea or insight,

and inhibited specifically from doing so by making use of (i) his own general knowledge and experience of the music industry, (ii) his music industry contacts, and (iii) his general knowledge of fundraising and business management techniques built up during his time as a director. There is no case utilising the concept of the “*maturing business opportunity*” which has gone so far, and in my opinion the reasoning in the authorities, including in particular Island Export, point strongly against such a conclusion.

307. A final way of rationalising the outcome would be to measure the facts against the matters identified by Lord Leggatt in Recovery Partners, as a possible checklist of factors signifying an “*opportunity*” in the relevant sense. As I see it, none of the three factors is present here: (1) the opportunity in question is not one which came to the knowledge of the fiduciary in the course of and by reason of his role; (2) the knowledge used to exploit the opportunity was either (i) knowledge acquired by Mr Mercuriadis outside his role as a fiduciary and accumulated before he became a director of either HML or Copyrights, or (ii) knowledge acquired while a director but which was generally available and of no special character or mystique; and (3) the opportunity was not procured through the principal’s efforts or assets, but in substance was really in the nature of an idea or insight which occurred to Mr Mercuriadis before he became a fiduciary.

## IX. Accessory Liability

308. The Claimants seek to make both HSFL2 and HSML liable as accessories, on the basis that they dishonestly assisted in breaches of duty by Mr Mercuriadis. The elements of dishonest assistance were explained in Royal Brunei Airlines Sdn Bhd v. Tan [1995] AC 378. There must be (1) a breach of trust or fiduciary duty, (2) procurement or assistance in that breach by the defendant, and (3) dishonesty on the part of the defendant.
309. It follows from the conclusions already expressed above that these claims must fail, because I have already determined that Mr Mercuriadis was not in breach of duty in exploiting the music publishing catalogues idea via HSFL2 (limb (1) of the test).

### Dishonesty

310. My prior conclusions are also inconsistent with the idea that Mr Mercuriadis was dishonest (limb (3) of the test).
311. It is true that in this context, as in others, determining dishonesty ultimately involves making an objective assessment of the defendant’s behaviour, and the defendant’s subjective state of mind (addressed in the case of Mr Mercuriadis at Section V above) is not determinative: see Group Seven Limited v. Nadir [2020] Ch 129 at [58], Alta Trading UK Ltd v. Bosworth [2025] EWHC 91 (Comm) at [836], and see also the statement of Lord Nicholls in the Tan case at p. 389C, where he said that dishonesty in this context may simply be described as not acting as an honest person would in the circumstances.
312. All the same, on the facts, I do not consider that an ordinary, honest person would say that Mr Mercuriadis had behaved dishonestly in relation to the HSFL2 IPO. If it is correct that the music publishing catalogues idea was not an “*opportunity*” in the

relevant sense, then there was nothing wrong with Mr Mercuriadis seeking to exploit it after he had ceased to be a director of either Copyrights or HML, and particularly so if (as I have held) the dissolution and winding-up of those companies was inevitable after their “*de-banking*” by Metro Bank in September 2017, following the developing revelations as to Mr Ingmanson and Mr Gergeo.

313. One could stop there, but the cases on dishonest assistance were fully developed and argued, and so I should say something more about them in case I am wrong on my conclusions as to breach of duty and dishonesty. I will take HSFL2 and HSML in turn.

## HSFL2

### *The case in summary*

314. The pleaded case (PoC para. 124) is that HSFL2 assisted in the wrongful diversion and exploitation of Copyrights’ intended business because:

- i) “*The very purpose for which HSFL2 was established was to be the corporate vehicle to launch and carry on a music catalogues business that was the same or substantially the same as Copyrights’ intended business*” (PoC para. 124.1);
- ii) HSFL2 prepared and published the HSFL2 Prospectus;
- iii) HSFL2 carried out the IPO whereby it raised funds for the intended business;
- iv) HSFL2 launched the business and went about acquiring music catalogues; and
- v) HSFL2 entered into arrangements with HSML pursuant to which HSML came to be paid advisory and performance fees, which benefited Mr Mercuriadis.

### *A pleading point – the “Sliver Period”*

315. In argument, item (i) (i.e., the purpose for which HSFL2 was established) came to be emphasised by the Claimants as a (or perhaps the) critical point.
316. This prompted first of all a pleading objection. HSFL2 argued that the pleaded case against it does not, and was never intended to, incorporate any alleged assistance in wrongdoing by Mr Mercuriadis prior to its incorporation, which came only after the end of Phase 1 (on 8 June 2018). It took particular exception to any suggestion that it ever assisted in any breaches of duty said to have occurred during the so-called “*Sliver Period*” between March and May 2018 (see [88]-[90] above), when Mr Mercuriadis was still a director of Copyrights but was also involved in preparatory work for the HSFL2 IPO. HSFL2 pointed (in particular) to HML’s Response to a Part 18 Request for Information by HSFL2 and HSML dated 31 January 2024, in which HML said, “*... HSFL2’s assistance in the said breaches by Mr Mercuriadis of his duty to Copyrights under section 175 commenced with and upon HSFL2’s incorporation on 8 June 2018*” (my emphasis added).
317. Had it mattered, I would have agreed with this analysis. In response Mr Davies KC pointed to other aspects of the PoC, for example para. 101, which described the incorporation of HSFL2 as part of an ongoing process by which Mr Mercuriadis was diverting Copyrights’ business away from Copyrights into a new corporate structure.

So it does, but the terms of the RFI Response are clear, and so is para. 124 of the PoC (referenced above), which in describing how HSFL2 actually assisted in the alleged diversion, says nothing of substance about anything happening pre-incorporation but instead is focused on steps taken afterwards. Looked at in context, I do not read the reference to HSFL2's "*purpose*" in para. 124.1 as referencing acts undertaken pre-incorporation. Rather, I read it as a statement of the alleged reason for HSFL2's existence from the point of incorporation onwards, which then (in effect) conditioned all its later activities.

*Assistance*

318. In any case, I have some difficulty in seeing how matters occurring prior to incorporation can give rise to acts of dishonest assistance.
319. In arguing the contrary in relation to item (i), Mr Davies KC relied on the decision of Morgan J, said to represent the orthodoxy, in Aerostar Maintenance International Limited v. Wilson [2010] EWHC 2032 (Ch). There a Mr Wilson, who was originally a director of a company referred to as AMIL, had conspired with a Mr Ashfield and had diverted business away from AMIL to a new company, referred to as Avman. In discussing the claim against Avman for dishonest assistance, Morgan J said the following at [197]:

*"The third way that AMIL puts his case against Avman is to say that Avman dishonestly assisted Mr. Wilson in committing a breach of his fiduciary duties. In one sense, this submission is a little unreal. It was Mr. Wilson and Mr Ashfield who were responsible for the relevant conduct. They created Avman and negotiated on behalf of Avman for the contracts that Avman ultimately entered into. Nonetheless, treating Avman as a separate legal person from Mr. Wilson and Mr Ashfield, it must follow, that Avman did assist Mr. Wilson in his breach of fiduciary duty by allowing itself to be the vehicle he used to bring about his breach of fiduciary duty."*

320. In my opinion, however, this statement does not support the proposition that pre-incorporation, anything was done by or on behalf of Avman which operated as an act of assistance in any relevant sense. It seems to me clear that what Morgan J found to amount to assistance was not so much the act of incorporation of Avman, or anything happening before then, but instead the post-incorporation activity by means of which, while tainted with the knowledge of Mr Wilson's wrongdoing, Avman negotiated contracts for the business Mr Wilson should have been seeking to acquire for AMIL. I think that is clear from what Morgan J identified as the real focus of the acts giving rise to liability: "*They created Avman and negotiated on behalf of Avman for the contracts that Avman ultimately entered into*".
321. I am more sympathetic to the idea of items (ii) to (v) being seen as acts of assistance, because the concept is very wide. It has been held that all that is required is conduct which in fact assists the fiduciary to commit the act giving rise to the breach of duty: see Madoff Securities International Ltd v. Raven [2013] EWHC 3147 (Comm), per Popplewell J at [351]. The more fundamental problem though is in attributing the dishonesty of Mr Mercuriadis (even if proven) to HSFL2 as a corporate body

*Attribution*

322. I have dealt above with the factual basis for the Claimants' submission that Mr Mercuriadis was a shadow-director of HSFL2, and have rejected the submission that the non-executive directors of HSFL2 were accustomed to act in accordance with the instructions or directions of Mr Mercuriadis (see [203]-[209]). I therefore do not consider it possible to treat Mr Mercuriadis as a shadow director of HSFL2 within the meaning of the statutory language in s. 251(1) CA 2006 (i.e., a person "*in accordance with whose directions or instructions the directors of a company are accustomed to act*"). Mr Mercuriadis did not, in fact, give directions or instructions. Instead, under the regulatory structure reflected in detail in the June 2018 Board Minute, and set out in the Investment Advisory Agreement (see above at [95]-[99]), HSML gave advice, but decision making as to the business of HSFL2, including in particular decision making as to the acquisition and disposal of catalogues, was left to the Board, acting via its Portfolio Committee.
323. That need not be the end of the matter, however, because it is possible for the knowledge of someone who is not a director to be attributed to a company. In El-Ajou v. Dollar Land Holdings [1994] 2 All ER 685, for example, the knowledge of Mr Ferdman, a Swiss intermediary, was attributed to an English company, DLH, for the purpose of establishing a claim in knowing receipt, on the footing that he had signed on behalf of DLH the funding agreement whereby DLH obtained monies which were the product of certain fraudulent share sale schemes. In Meridian Global Funds Management Asia Limited v. The Securities Commission [1995] 2 AC 500, the knowledge of an employee of the Appellant company, Mr Khoo, was attributed to it for the purpose of triggering certain duties of disclosure imposed by section 20(3) and (4) of the New Zealand Securities Amendment Act 1998.
324. The distinguishing feature of both cases, however, is that knowledge was attributed to the company as regards a transaction or transactions in respect of which the relevant individual holding the knowledge was clothed with authority by the company, either prospectively or retrospectively.
325. In El-Ajou, the authority was retrospective. At p. 706e-f, Hoffmann LJ said as follows:
- "In my view, however, the most significant fact is that Mr Ferdman signed the agreement with Yulara on behalf of DLH. There was no board resolution authorising him to do so ... But so far as the constitution of DLH was concerned, he committed the company to the transaction as an autonomous act which the company adopted by performing the agreement. I would therefore hold ... that this was sufficient to justify Mr Ferdman being treated in relation to the Yulara transaction as the company's directing mind and will."*
326. In Meridian, the policy of section 20 of the New Zealand Securities Amendment Act 1998 was to compel the disclosure, in fast-moving markets, of the identity of persons who became substantial security holders in public issuers. The relevant knowledge was held by Mr Khoo, a senior employee of Meridian. At p. 511D, having described the policy underlying the section, Lord Hoffmann (as he was by this point) said the following (emphasis added):

*“In the case of a corporate security holder, what rule should be implied as to the person whose knowledge for this purpose is to count as the knowledge of the company? Surely the person who, with the authority of the company, acquired the relevant interest.”*

327. This approach requires an examination of the relationship between the person having the relevant knowledge on the one hand, and the company on the other. In El-Ajou at p. 705e-f, Hoffmann LJ said that the relevant question is essentially a constitutional one; and at p. 705j, having made certain comparisons with German law, he said:

*“But English law shares the view of German law that whether a person is an organ or not depends upon the extent of the powers which in law he has express or implied authority to exercise on behalf of the company.”*

328. It makes obvious good sense to say that, depending on the precise context, the knowledge of a person exercising a function with the authority of a company should be attributed to the company. In my view, that logic explains Morgan J’s decision in the Aerostar case, which Mr Davies KC also relied on in connection with the question of attribution. On the facts, it was entirely understandable that Morgan J treated the knowledge of Mr Wilson as attributable to Avman. It is clear from the Judgment (see at [73] and [205]) that Mr Wilson was the sole shareholder and director of Avman from its incorporation. It was therefore entirely appropriate for Morgan J to attribute his knowledge to Avman on ordinary company law principles: he was the sole organ of the company and its directing mind and will (to borrow the terminology deriving from the judgment of Lord Haldane in Lennards Carrying Co Ltd v. Asiatic Petroleum Co Ltd [1915] AC 705 at p. 713). There was no-one else clothed with authority on behalf of Avman whose knowledge could be relevant.
329. None of that assists on the facts of this case, because unlike Mr Wilson, Mr Mercuriadis did not become a director of HSFL2 or otherwise undertake any acts as an organ or instrumentality of HSFL2 in a manner which clothed him with authority (either general or particular, prospective or retrospective) in relation to its affairs.
330. In fact, as I see it, the whole structure of the HSFL2 IPO, mandated by the underlying regulatory framework, was expressly designed to *prevent* Mr Mercuriadis exercising any authority on HSFL2’s behalf, and instead to vest all relevant powers in the Board of HSFL2 from the beginning of its operational life. Mr Mercuriadis’ role, carried out via HSML, was to stand apart from the Board, and to provide arms’ length advice under a service contract by means of which HSML was paid fees for doing so. He was thus no more than a director of an entirely separate company rendering advisory services under a contract. That structure was important for regulatory reasons, and in my view there is nothing in the evidence to suggest that in practice it was modified or subverted. This left no room for Mr Mercuriadis himself to exercise any relevant power on HSFL2’s behalf, and thus no room for his knowledge to be attributed to it.

#### HSML

331. Had I considered Mr Mercuriadis to be in breach of duty and dishonest, I would have reached the opposite conclusion as regards dishonest assistance on the part of HSML,

essentially for the reasons given in the PoC at para. 133. HSML would then have rendered assistance by entering into the Investment Advisory Agreement with HSFL2, thus providing the means by which Advisory Fees and Performance Fees were to be paid by HSFL2 and producing benefits for Mr Mercuriadis flowing from his breaches of duty. The Court would have been justified in attributing Mr Mercuriadis' knowledge to HSML, because as a director of HSML and clothed with its authority, he executed the Investment Advisory Agreement on its behalf. His knowledge of matters relevant to that transaction would therefore be treated in law as HSML's knowledge.

## **X. Account of Profits**

332. It follows from the above that in my opinion, there is no basis for ordering an account of profits from any of the Defendants. Again, however, since the points were fully argued, I propose to make some comments on what relief I would have been prepared to grant, had liability been established. I will do so briefly, however.

### Mr Mercuriadis

333. I think the position as regards Mr Mercuriadis is straightforward.

334. I should say first of all that, had I considered Mr Mercuriadis to have acted in breach of duty, I would not have been minded to exercise the discretionary power to grant relief under s.1157(1) CA 2006, even assuming him to have been honest. Exercise of the power is subject to the threshold of the Court being satisfied that the director acted both honestly and reasonably. Had it mattered, and on the assumed premise that the music catalogues idea in fact *was* a maturing business opportunity, I would have said it was unreasonable for Mr Mercuriadis to fail to mention the existence of Copyrights and its intended business in his s.235 Statement (above at [86]). These would have been matters of serious interest to any liquidator of HML, and acting reasonably would have required them to be pointed out.

335. On the premise that there was a breach of duty comprising exploitation of a "*foundational*" idea, I would have required Mr Mercuriadis to account for all the forms of income received by him and summarised in para. [147] above, save for salary (i.e., the figure of £7,336,588 mentioned at [147(1)]). I would in other words have identified the following as falling within the scope of the account (subject to deduction of tax):

- i) Consultancy fees earned via HSML (£810,425).
- ii) Cash consideration earned on the sale to Blackstone of Mr Mercuriadis' interest in HSML (US\$23,803,200).
- iii) Sale proceeds received on the sale of Mr Mercuriadis' holding in HSFL2 (£95,970).
- iv) Dividends received in respect of his shareholdings in HSML and HSFL2 (£259,722).

336. In my view this result follows from application of the test derived from the Recovery Partners case. The question to ask (see per Lord Briggs at [36]) is, "*... did the profit owe its existence to a significant extent to the application by the fiduciary of property,*

*information or some other advantage which he enjoyed as a result of his fiduciary position, or from some activity undertaken while he remained a fiduciary which the conflict duty required him to avoid altogether*". It seems to me the scope of the liability is therefore conditioned by the nature of the breach. If (as alleged here) the breach involved the exploitation of a "*foundational*" idea, it seems to me to follow that all profits flowing to the errant fiduciary are caught, because all of them owe their existence to a significant extent to exploitation of the same basic concept the fiduciary has appropriated for his own use.

337. In argument, Mr Cullen KC said that some modification or reduction would be justified – perhaps recognising the more limited ambitions of Copyrights' business, which was only ever intended to be a fraction of the size of that eventually reached by HSFL2; or perhaps recognising some temporal limitation on the shelf-life of the basic idea; or recognising the fact that HSFL2 in the end did expand into the business of acquiring interests in music recordings (cf music publishing catalogues – see [177] above).
338. I disagree with the first and second of these points. The issue here is that if the "*opportunity*" misappropriated by Mr Mercuriadis was in fact in the nature of a "*foundational*" idea, there is no escaping the fact that the idea suffused almost everything that HSML and HSFL2 later did. The scale of the success achieved by HSFL2 is nothing to the point, and neither is its duration: if the idea truly was a "*foundational*" one then it had no obvious shelf-life. Mr Cullen would no doubt say that this logic gives rise to an unappealing result, and I would agree. But I prefer to say that illustrates the artificiality of treating the vague notion of investing in music publishing catalogues as a piece of corporate property, rather than to say that if one does, one should limit the scope of any account of profits arising from its abuse.
339. I can see the logic of Mr Cullen KC's third point, because strictly speaking the expansion into recording rights *was* into an area falling outside the foundational idea. Nonetheless, it was closely aligned to it, and I am not persuaded that the additional element was anything other than minimal, and so I would not have been minded to make any deduction from the account on that basis.
340. Exclusion of the sums paid by way of salary seems to me to flow from the logic expressed in Lifestyle Equities CV & anor v. Ahmed & anor [2024] UKSC 17, [2025] 1 AC at [173], per Lord Leggatt at [173]: salary represents remuneration for services, and therefore is not a profit in the relevant sense. This conclusion makes it unnecessary to calculate any equitable allowance.
341. The evidence at trial was that, up to the end of 2019 at least, the consultancy fees at [335(i)] above were not paid directly to Mr Mercuriadis but instead to a company owned and controlled by him. Mr Cullen argued that such payments should therefore fall outside the scope of any account, because the receipts were by the company not by Mr Mercuriadis. I disagree. The detail of the relevant arrangements was vague, but Mr Mercuriadis did accept that the company operated as a personal services company for him. It is therefore reasonable to infer that, through the company as intermediary, Mr Mercuriadis personally received benefits corresponding in value to the fees paid to the company. Had the point arisen, I would have said that the value of those benefits represented profits accruing to Mr Mercuriadis for which he personally should account.

342. Finally, I should point out that at the levels I have identified, I would not have been concerned about the possibility of any recoveries flowing to SVCL or Mr Gergeo, since even on the best case, any amounts receivable by them would have been within the scope of the judgments entered against them (EUR 36.5m), and secured by means of the freezing order and proprietary injunction granted by Foxton J dated February 2020 (see above at [127]). There would thus have been no question of Mr Gergeo profiting from his wrongdoing, despite the seed capital invested in SVCL and the other funding made available having their origin in the Falcon Funds fraud. Any recoveries would in practice have been payable to the victims of the fraud.

## HSFL2

343. Two issues of principle arise in connection with HSFL2. The first concerns the different methodologies applied by the parties' experts in assessing the profits made by HSFL2. The second concerns the scope of any account against HSFL2 and the matter of discretion, assuming it to be liable as a dishonest assistant. The principles of causation here are different to those applicable to fiduciaries, such as Mr Mercuriadis.

### *The experts: Mr Hobby and Mr Pilgrem*

344. I should say at the outset that both experts were extremely diligent and professional in their work and did their best to assist the Court. The issue (not unusual) was that although they were instructed to do the same thing, namely assess the profits accruing to HSFL2 from the alleged diversion of the music publishing catalogues opportunity, they went about it in very different ways.
345. The approach of the Claimants' expert, Mr Hobby, involved the following steps: (1) calculating the cumulative profits/losses of HSFL2 for all periods up to 29 July 2024 (in fact there was a loss during that period), but then (2) adding onto that a figure representing the rise in value of the music catalogues acquired by HSFL2 over its life until that point, assessed by (a) identifying a figure for the current value of the catalogues based on accounting principles, but then (b) deducting from that a figure representing the prices for which they were acquired (based on their book value). As I have noted, although this was not originally Mr Hobby's approach, by the time of the closing submissions, the Claimants' primary position was that the figure at (2)(a) should be taken as the mid-point between the corrected Massarsky valuations relied on in HSFL2's interim accounts for the period to September 2023 (US\$2,622,000,000), and the later valuations produced by Shot Tower in July 2024 (US\$2,014,724,000). (Both Massarsky and Shot Tower were seeking to assess a present value for the future income streams from the catalogues, discounted to provide a present value.) This approach of Mr Hobby's gave rise to a final figure of US\$365,444,464.
346. Although HSFL2's expert Mr Pilgrem was aiming at the same basic target (the value of the catalogues), he approached his task differently. Thus, although at para. 2.5 of his First Report, he explained that "... *the relevant profits or losses of [HSFL2] should be measured by measuring its principal assets (the Catalogues of Songs)*", his preference was to use as his measure "*their market value*". In order to do so, rather than deduct the book value of the catalogues from an assessment of the current value based on a valuation exercise, Mr Pilgrem thought that the better approach was to look at what he described as HSFL2's "*gain in equity*" – which involved (1) taking the value of HSFL2's equity at the July 2024 valuation date and adding to that the amount of

dividends paid and shares repurchased by HSFL2 (in order to give an overall figure for value generated), but then (2) deducting from that the amount of capital contributed to HSFL2. As Mr Kitchener KC put it in his submissions, this approach had the benefit of showing everything going in and everything coming out, the difference between the two being the profit. Finally, but importantly, Mr Pilgrem at stage (1) of his analysis considered that when it came to identifying the market value of HSFL2's equity as at July 2024, the most reliable evidence was provided by the Lyra Bidco acquisition. This methodology resulted in a much lower (but still very high) profits figure of some US\$120,735,000.

347. Although appreciative of the efforts made by Mr Hobby, my opinion is that Mr Pilgrem's approach best suits the exercise required in this case. Neither side was able to assist me with any authority on the point, but it seems to me that the concept of *profits*, in the sense of there being an *account of profits*, is addressed to tangible benefits received by the defendant. The task here (if I am wrong on the question of liability) would be to identify the tangible benefits accruing to HSFL2 by July 2024. If that is the purpose, the weakness in Mr Hobby's approach, in my opinion, is that it is too theoretical. Its main component is an assessment of value based on the work of valuers. But valuers, even diligent ones, can be wrong (the variance between the Massarsky and Shot Tower valuations shows the potential for serious uncertainty). More importantly, to say that in theory an asset has a long-term value of X (which essentially was the approach of both Massarsky and Shot Tower) is of limited help in identifying tangible benefit at a particular point in time if there is evidence that the same asset can only be sold in the market for a present value of Y.
348. In short, on the basic point of difference between the experts, I am persuaded that Mr Pilgrem's approach provides a more realistic and practical method for identifying the profits we are concerned with. In his oral evidence, Mr Pilgrem suggested that in measuring profits the Court was faced with an "*economic question, rather than a pure accountancy question*" (Day 12, p.134), and thus that it should prefer observable market data rather than measurements applied by accountants. I agree.
349. Mr Davies KC had other objections to Mr Pilgrem's approach, which really came down to saying that by measuring the gain in equity, one was necessarily taking into account factors affecting the value of HSFL2's business which had little to do with, as it were, the inherent value of the music catalogues - for example, concerns about poor governance, which were in play as regards HSFL2 in 2023 and early 2024, would drive down the price paid by buyers of equity; and so would HSFL2's uncomfortable debt position and other disadvantageous contractual commitments it had entered into, which in and of themselves had nothing to do with the music catalogues.
350. In my opinion the same point applies, however. The task for the experts was to identify the profits actually made by the HSFL2 business from exploitation of the music publishing catalogues opportunity. Running that business involved having a management team, raising debt, and entering into contractual engagements. It is perfectly proper to take account of such matters in identifying the profits HSFL2 in fact earned. To do otherwise would be to require an account of the profits the business could have earned had it been structured and managed in a different way. But that is not the form of relief we are concerned with, which is focused on identifying the real-world benefits earned by the dishonest assistant, which he should account for to the claimant.

351. Finally, I should say that neither am I persuaded that the price achieved on the sale to Lyra Bidco was somehow distorted, by the conditions under which the sale took place. Although it is true that the sale followed the vote against the Continuation Resolution in October 2023 (see above at [118]), there is nothing to suggest that the sale process as such was not an orderly one, in the sense that the business was somehow not offered to the market in a fair way designed to flush out maximum buyer interest. There was another bidder (Concord Chorus: see above at [120]), and so there was competition. In agreement again with Mr Pilgrem, I see no good reason for doubting the value of the successful Lyra Bidco offer as a critical data point in assessing the overall profits made by the business.

*Scope of account and discretion*

352. I have set out above the test of causation applicable to Mr Mercuriadis as a fiduciary, per Recovery Partners: “ ... *did the profit owe its existence to a significant extent to the application by the fiduciary of property, information or some other advantage which he enjoyed as a result of his fiduciary position ...* ”.
353. HSFL2 was never a fiduciary, however. Its position is different. Its liability rests not on the existence of a fiduciary relationship with a principal, but on the basis (again making the assumption here that I am wrong in my earlier conclusions) that it was a dishonest assistant to the breaches of fiduciary duty committed by someone else, i.e. Mr Mercuriadis.
354. The Court of Appeal has decided in Novoship (UK) Ltd v. Mikhalyuk & ors [2014] EWCA Civ. 908, [2015] QB 499, that different rules apply in the case of non-fiduciaries who are sued as dishonest assistants. The logic is that such persons, unlike fiduciaries, are not subject to a pre-existing duty of undivided loyalty to their principal. A fiduciary is subject to such a duty – that is the nature of the fiduciary relationship. His obligation is to make a profit from any relevant opportunity not for himself but only for his principal. If he breaches his duty and keeps the profit for himself, it makes sense to subject him to an expansive test of causation designed to strip him of the whole of the profit he was under a solemn duty to make only for someone else (see Novoship at [104]). The scope of the remedy reflects the scope of the obligation, and is really just a way of holding the fiduciary to the standard of behaviour he has already committed to.
355. That logic does not apply to a dishonest assistant, who is subject to no prior obligation of trust and confidence placed in him by a principal. The dishonest assistant is not subject to a pre-existing duty whose scope can be determined and enforced (Novoship at [105]). In such cases, the Court of Appeal held in Novoship at [107]:
- “... we consider that ... there is no reason why the common law rules of causation, remoteness and measure of damages should not be applied by analogy”.*
356. Moreover, such common law rules do not usually “*apply a simple ‘but for’ test of causation. The common law distinguished between a breach which is the effective cause of a loss and one which is merely the occasion for the loss*” (Novoship at [108]).

357. The result in the Novoship case was that the claim for an account against the Sixth Defendant, Mr Nikitin, failed. He was not a fiduciary, but had dishonestly assisted in breaches of fiduciary duty by someone who was – Mr Mikhalyuk – by being involved in a scheme under which Mr Mikhalyuk was paid bribes. The benefit to Mr Nikitin was that he secured access to a number of the Claimant’s vessels at a market rate, which he was then able to charter to other users, as it turned out at a considerable profit, due to unexpected changes in market conditions. At first instance the Judge had required Mr Nikitin to account for the profits arising from the charters, but the Court of Appeal reversed that finding, in light of the legal test it identified: although it was true that, “*but for*” the charters, the profits would not have been made, all the same their real or effective cause was the unexpected change in the market. The acts of dishonest assistance (and indeed Mr Mikhalyuk’s breaches of duty) did no more than provide Mr Nikitin with the occasion for him to make a profit. They did not cause it in the necessary legal sense (see Novoship at [114]).
358. Novoship also makes clear another principle, separate from the question of causation, which is that where a claim for an account of profits is made against someone who is not a fiduciary, then as Lord Nicholls said in the Blake case [2001] 1 AC 268, the court has a discretion to grant or withhold the remedy (Novoship at [119]). One ground on which the court may withhold the remedy is that an account of profits would be disproportionate in relation to the particular form and extent of the wrongdoing. In Novoship, quite apart from the question of causation, the Court of Appeal considered that the remedy of an account of profits against Mr Nikitin would be disproportionate, because the profits Mr Nikitin made were a form of profit the Claimant shipowners had deliberately determined to forego: their approach was to avoid the risk of fluctuating rates for freight, and instead obtain a secure long-term income by chartering their vessels on time charters at market rates (see at [117]). That they had achieved, and so an account which resulted in them obtaining from the dishonest assistant profits they never wanted to earn would have been disproportionate and unfair.
359. Applying these principles in the present case (on the assumed basis of HSFL2 being liable as dishonest assistant) in my view gives rise to the following conclusions:
- i) As to causation, I do not detect the necessary causal link between the relevant acts of dishonest assistance and the claimed profits, which as I have already said are best defined by reference to the value attributed to HSFL2’s equity at the valuation date in July 2024. Even assuming one can characterise the music publishing catalogues opportunity as a piece of corporate property, it was only ever a general concept or idea. Possession of the idea by HSFL2 provided no more than the occasion for it to make a profit. Earning the profit was dependent on many other factors, including particularly (1) the decisions made by investors to invest their capital in HSFL2, providing a fund for the directors to deploy, (2) the investment decisions made by those directors, albeit with the benefit of advice from HSML, and then (3) changes in market conditions which resulted in increases in the value of the catalogues acquired, which of course were what the investors had hoped for, but which were never certain and which might not have materialised (or might not have materialised to the same extent) had market conditions been different. Given the many factors affecting performance of HSFL2 in the period between June 2018 when it was launched, and July 2024 when it effectively closed, I find it very difficult to see the basic idea

underpinning it – even if one accepts it was a “*foundational*” idea – was the effective cause of all the profits arising. Certainly, the claim passes a simple “*but for*” test; but as the Court of Appeal has held, that is not the correct test to apply to those who are not fiduciaries.

- ii) Even if that is wrong, I would say that an account of the scope claimed – or indeed any account – would be disproportionate. The profits claimed are not profits that Copyrights itself could ever have earned. That is because of the taint arising from the association with Mr Ingmanson and Mr Gergeo: the expert evidence is clear on this point, and it is why the Claimants abandoned their claim for equitable compensation, based on an alternative IPO involving Copyrights itself. It is true that, where the claim is against a fiduciary, the fact that the principal himself is unable to take advantage of an opportunity does not relieve the fiduciary of liability: that has been clear since Keech v. Sandford in 1726. But the stringency of the rule in that context arises from the nature of the obligation of single-minded loyalty owed by the fiduciary. As I understand Novoship, that logic does not apply here, in the case of a non-fiduciary, who is not subject to any such prior obligation defining the scope of the available remedy. The resultant freedom permits the Court a wide discretion to refuse relief if granting it would be disproportionate on the present facts. I think an award of profits would be disproportionate here: relief in the form of an order for an account would result in unjust enrichment of the Claimants, because it would give them the benefit of very high profits they could never have earned for themselves, at the expense of a third party which was able to make those profits only because its investors, who themselves knew nothing of any wrongdoing, were willing to put their own capital at risk.
360. The principal objections made to this approach by Mr Davies KC rested on the submission that Novoship was not a case involving diversion of a valuable corporate opportunity, having the character of company property. It was instead a case of a breach of duty by a fiduciary arising from acceptance of a bribe. The present case could be distinguished, therefore, and to refuse to order an account here would cut across the central tenet that fiduciary duties are there to protect the principal – here Copyrights – and it would hollow out the content of that protection if only the fiduciary were liable to account but one of the corporate vehicles used to exploit the opportunity was held to be immune.
361. I am not persuaded by these points. The principle expressed in Novoship was not addressed solely to cases involving bribery or similar defaults. It was addressed to the position of all persons who are non-fiduciaries who commit an equitable wrong, for example by acting as a dishonest assistant. I think that is clear, because the rule of causation set out in Novoship at [107], quoted above at [355], was expressed to apply generally, wherever, “... *a claim based on equitable wrongdoing is made against one who is not a fiduciary*”. The fact is that, on any view, HSFL2 was not a fiduciary vis-à-vis Copyrights. It was a third-party, the scope of whose liability falls to be assessed by different principles, which are not grounded in the existence of any prior obligation of undivided loyalty to someone else, by which it selflessly agreed to forego the possibility of earning any profit for itself, and to do so only for its principal. So the logic of Mr Davies’ argument does not follow: it does not do violence to the scope of the protection afforded to Copyrights against Mr Mercuriadis to say that the scope of

the protection afforded against HSFL2 is not the same. That is merely to recognise, fairly, that they stand in different positions, and that any liability to account (if one arises) springs from a different source.

### HSML

362. Had the matter arisen, I would have been more sympathetic to the idea of ordering an account from HSML. It too was a third-party, liable (on this hypothesis) as a knowing assistant in Mr Mercuriadis' breach of fiduciary duty, but (1) its profits were the product of being the vehicle via which Mr Mercuriadis provided advice to HSFL2, and so his breaches of duty, and HSML's acts of dishonest assistance, did not merely provide an opportunity to make a profit attributable to other, extraneous causes, but were much closer to themselves being the effective cause of any profits made; and (2) although any such profits would again not have been profits that HML itself could have made via participation in a similar structure (given the taint arising from the association with Mr Ingmanson and Mr Gergeo), nonetheless I would have regarded any profits made as sufficiently closely related to Mr Mercuriadis' breaches of duty to make it proportionate to order an account.
363. The point is doubly academic, however, because not only have I held that Mr Mercuriadis was not in breach of duty, but also HSML failed to make any profits in the period to July 2024, which for other purposes the Claimants have been content to adopt as the relevant valuation date. I find it somewhat artificial, taking the Claimants' case at face value, and assuming liability, to draw a line some three years earlier in October 2021. That was not the Claimants' case, and moreover it seems to me contrary to the logic of their case, which treats the music publishing catalogues idea as a "*foundational*" one, whose causal effect and influence is very wide. Following that logic through does not easily, in the case of HSML, enable a line to be drawn in a clear and principled way before July 2024. If no line is drawn, then the consequence is that the Claimants must live with whatever outcome that produces on the facts over that timescale; and if in fact HSML did not make any profits (as agreed by the experts), then no account is due.

### **XI. The Artist Management Claim**

364. The PoC at para. 82.3 contained a specific allegation that, in addition to diversion of the music publishing catalogues opportunity, Mr Mercuriadis had also diverted from HML (to HSL) an arrangement under which HML managed a music artist known as the Americanos. This was not pursued in closing, however.
365. Instead, the Claimants' Closing Note on Quantum identified a potential claim that Mr Mercuriadis had received some US\$8,617 in respect of another artist, Raja Kumari, around two months after HML's liquidation, which monies should have been paid to HML. The evidence on this point was limited and equivocal, however. In cross-examination, the Claimants put to Mr Mercuriadis an email dated 11 April 2018, bearing the subject line, "*Svetha Rao – Hipgnosis Music Limited*", chasing "*outstanding publishing commissions of \$8617*". Mr Mercuriadis accepted that he had had no authority to write on behalf of HML at that stage, but denied that any payment had ever been received. I accept that on the face of it, this email is concerning, but all the same do not consider that it provides a basis for an order for payment by Mr Mercuriadis of the sum mentioned. The fact is that there is no direct evidence that it ever was received.

I am simply invited to rely on the inference that it must have been because Mr Mercuriadis chased for it. The problem is that this was not a pleaded issue. There has been no disclosure specifically addressed to it and so it has not been fairly tested. In such circumstances, despite the concern raised by the form of the email, I do not think it would be fair to make any order relying on it. I therefore reject the Claimants' submission.

## **XII. Conclusion and Disposal**

366. The overall result is that the claims against all Defendants are dismissed. I should be grateful if the parties could please seek to agree an appropriate form of order reflecting that outcome and, to the extent they can, dealing with any consequential matters.