SUPREME COURT OF QUEENSLAND

CITATION:	*ADKA Investments Pty Ltd v Gleeson* [2026] QSC 152
PARTIES:	**ADKA INVESTMENTS PTY LTD ACN 126 384 898 (in liquidation)** (first plaintiff) **DAVID LEWIS CLOUT & SCOTT MATTHEW CLOUT AS JOINT AND SEVERAL LIQUIDATORS OF ADKA INVESTMENTS PTY LTD ACN 126 384 898 (IN LIQUIDATION)** (second plaintiff) **v** **ADAM BERNARD GLEESON** (first defendant) **KATHRYN MARIE O'GRADY** (second defendant) **LAXTON FIELDS PTY LTD ACN 611 854 089 AS TRUSTEE FOR THE LF PROPERTIES DISCRETIONARY TRUST** (third defendant)
FILE NO:	BS13747 of 2023
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court
DELIVERED ON:	26 June 2026
DELIVERED AT:	Brisbane
HEARING DATES:	23, 25-27, 30 March 2026, 18 June 2026
JUDGE:	Hindman J
ORDERS:	**1. Pursuant to s. 1317H of the *Corporations Act 2001* (Cth), the defendants are to jointly and severally compensate the first plaintiff for their contraventions of s. 181(1) of the *Corporations Act 2001* (Cth) in the amount of $1,003,862.40 plus pre-judgment interest up to and including 26 June 2026 in the amount of $156,986.27.** **2. Pursuant to s. 1317H of the *Corporations Act 2001* (Cth), the first defendant and the third defendant are to jointly and severally compensate the first plaintiff for their further contraventions of s. 181(1) of the *Corporations Act 2001* (Cth) in the amount of $2,600**

plus pre-judgment interest up to and including 26 June 2026 in the amount of $354.17.

3. **It is declared that the third defendant holds 5.678% of the real property at 110 Laxton Road, Palmview in the State of Queensland (more properly described as Lot 62, Crown Plan CG6396, Local Government: Sunshine Coast, title reference 18001015) on constructive trust for the first plaintiff.**

4. **The defendants jointly and severally pay 90% of the plaintiffs' costs of the proceeding on the standard basis.**

CATCHWORDS: EQUITY – TRUSTS AND TRUSTEES – EXPRESS TRUSTS CONSTITUTED INTER VIVOS – QUISTCLOSE TRUST – where company (ADKA) in liquidation – where ADKA and third defendant part of same group of companies – where many intragroup bank transfers flowed through ADKA's bank account – where liquidators of ADKA make claims in respect of net transfers from ADKA to third defendant – where ADKA was trustee of a trust and also acted in its own right and used its bank account in both those capacities – where no accounting for ADKA was performed – where former directors say ADKA's account was used as a "conduit" or "clearing" account for all intragroup transfers but provide no further explanation of purposes of transfers to third defendant – whether former directors' assertion should be accepted – whether ADKA held the money transferred to the third defendant on *Quistclose* trust – whether ADKA held the money transferred to the third defendant for another (express) trust

CORPORATIONS – MANAGEMENT AND ADMINISTRATION – OFFICERS OF COPRORATION – DIRECTOR – WHO IS A DIRECTOR – where first and second defendants are spouses – where second defendant is a director of first plaintiff (ADKA) – where first defendant is a director of other companies in same group of companies – where first defendant responsible for most of ADKA's operations – where nearly all correspondence in evidence came from first defendant – whether first defendant was a de facto director of ADKA

CORPORATIONS – MANAGEMENT AND ADMINISTRATION – DUTIES AND LIABILITIES OF OFFICERS OF CORPORATION – FIDUCIARY AND RELATED STATUTORY DUTIES – GENERALLY – where first and second defendants, as director and de facto director, caused first plaintiff (ADKA) to transfer money to third defendant – where ADKA received no benefit for those transfers – where third defendant dissipated much of those funds for first and second defendants' benefit – whether first and second defendants breached their directors' duties to ADKA

CORPORATIONS – WINDING UP – CONDUCT AND INCIDENTS OF WINDING UP – EFFECT OF WINDING UP ON OTHER TRANSACTIONS – PREFERENCES AND VOIDABLE TRANSACTIONS – UNREASONABLE DIRECTOR-RELATED TRANSACTIONS – where first plaintiff (ADKA) transferred money to third defendant – where ADKA wound up by court order – where first and second defendants are spouses – where second defendant a former director of ADKA and third defendant – where third defendant received transfers from ADKA as trustee for a discretionary trust – where discretionary trust has first and second defendants as appointors and second defendant as sole beneficiary – whether transfers to third defendant were received on behalf of, or for the benefit of, the first and second defendants pursuant to *Corporations Act 2001* (Cth) s. 588FDA

EQUITY – TRUSTS AND TRUSTEES – FOLLOWING TRUST PROPERTY – GENERALLY – where money transferred from first plaintiff (ADKA) to third defendant in breach of directors' duties – where third defendant knowingly received those monies – where third defendant spent some of those funds to buy a property and some to repay its mortgage – whether ADKA's funds can be traced into that property – whether backwards tracing is permissible – whether constructive trust should be imposed

Corporations Act 2001 (Cth) s. 9, s. 9AC(1), s. 79(c), s. 181(1), s. 588FDA, s. 588FE(6A), s. 588FF, s. 1317E, s. 1317H, s. 1317J

Anderson v Canaccord Genuity Financial Ltd (2023) 113 NSWLR 151; [2023] NSWCA 294, cited
Ausintel Investments Australia Pty ltd v Lam (1990) 19 NSWLR 637, applied
Australian Conference Association Ltd v Mainline Constructions Pty Ltd (in liq) (1978) 141 CLR 335; [1978] HCA 45, applied
Australian Securities and Investments Commission v Hellicar (2012) 247 CLR 345; [2012] HCA 17, applied
Baden v Société Générale pour Favoriser le Développement du Commerce et de l'Industrie en France SA (1993) 1 WLR 509, applied
Banque Commerciale SA, En Liquidation v Akhil Holdings Ltd (1990) 169 CLR 279; [1990] HCA 11, applied
Barclays Bank Ltd v Quistclose Investments Ltd [1970] AC 567, applied
Barnes v Addy (1874) LR 9 Ch App 244, applied

Bathurst City Council v PWC Properties Pty Ltd (1998) 195 CLR 566; [1998] HCA 59, cited
Bishopsgate Investment Management Ltd v Homan [1995] Ch 211, considered
Blatch v Archer (1774) 98 ER 969, explained
Boardman v Phipps [1967] 2 AC 46, cited
Boros v Pages Property Investments Pty Ltd (2021) 395 ALR 756; [2021] NSWCA 288, cited
Boscawen v Bajwa [1995] 1 WLR 328, cited
BounceLED Pty Ltd v Clear Skies Corp Pty Ltd (in liq) [2023] NSWSC 121, approved
Brandi v Mingot (1976) 12 ALR 551, cited
Break Fast Investments v Rigby Cooke [2021] VSC 398, cited
Briginshaw v Briginshaw (1938) 60 CLR 336; [1938] HCA 34, explained
CEG Direct Securities Pty Ltd v Cooper (2025) 309 FCR 66; [2025] FCAFC 47, considered
Chan v Zacharia (1984) 154 CLR 178; [1984] HCA 36, applied
Changela v Dracoma Pty Ltd [2025] NSWCA 186, considered
Compass Resources Ltd v Sherman (2010) 42 WAR 1; [2010] WASC 41, cited
Coolbrew Pty Ltd v Westpac Banking Corp [2015] NSWCA 135, applied
Corporate Affairs Commission v Drysdale (1978) 141 CLR 236; [1978] HCA 52, cited
Deputy Commissioner of Taxation v Austin (1998) 28 ASCR 565, cited
Elite Realty Development Pty Ltd v Sadek [2023] NSWCA 165, cited
Emanuel Management Pty Ltd (in liq) v Foster's Brewing Group Ltd (2003) 178 FLR 1; [2003] QSC 205, cited
Equiticorp Finance Ltd (In liq) v Bank of New Zealand (1993) 32 NSWLR 50, cited
Fabre v Arenales (1992) 27 NSWLR 437, cited
Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2007) 230 CLR 89; [2007] HCA 22, applied
Federal Republic of Brazil v Durant International Corporation [2016] AC 297, not applied
Foskett v McKeown [2001] 1 AC 102, applied
Gartside v IRC [1968] AC 553, cited
George v Webb [2011] NSWSC 1608, approved
Georges v Seaborn International Pty Ltd (Trustee), in the matter of Sonray Capital Markets Pty Ltd (in liq) (2012) 206 FCR 408; [2012] FCAFC 140, cited
Giumelli v Giumelli (1999) 196 CLR 101; [1999] HCA 10, cited
Gliderol v Hall (2001) 80 SASR 541; [2001] SASC 355, approved

GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore (2023) 280 CLR 442; [2023] HCA 32, considered
GP Building Holdings Pty Ltd v Voitin (2022) 69 VR 299; [2022] VSCA 210, cited
Grimaldi v Chameleon Mining NL (No 2) (2012) 200 FCR 296; [2012] FCAFC 6, applied
Hayes (liquidator), in the matter of Container Freight Services Pty Ltd (in liq) v Sinadinos [2024] FCA 885, applied
Hindle v John Cotton Ltd (1919) 56 Sc LR 625, cited
Hoh v Ying Mui Pty Ltd [2019] VSCA 203, applied
Hospital Products Ltd v United States Surgical Corp (1984) 156 CLR 41; [1984] HCA 64, applied
Howard v Federal Commissioner of Taxation (2014) 253 CLR 83; [2014] HCA 21, cited
Jessup v Queensland Housing Commission [2002] 2 Qd R 270; [2001] QCA 312, cited
John Alexander's Clubs Pty Limited v White City Tennis Club Limited (2010) 241 CLR 1; [2010] HCA 19, cited
Jones v Dunkel (1959) 101 CLR 298; [1959] HCA 8, applied
Krakowski v Eurolynx Properties Ltd (1995) 183 CLR 563; [1995] HCA 68, applied
Kuhl v Zurich Financial Services (2011) 243 CLR 361; [2011] HCA 11, cited
Leighton Contractors Pty Ltd v O'Carrigan [2016] QSC 223, disapproved
Manthey Redmond (Aust) Pty Ltd (in liq) v Manthey (2017) 121 ACSR 389; [2017] QSC 145, cited
McManus RE Pty Ltd v Ward [2009] NSWSC 440, cited
Moffatt v Crawford [1924] St R Qd 241, followed
Naaman v Jaken Properties Australia Pty Ltd (2025) 281 CLR 635; [2025] HCA 1, cited
Nikitins (as joint and several liquidators of EncoreFX (Australia) Pty Ltd (in liq) (ACN 607 244 879)) v EncoreFX (Australia) Pty Ltd (in liq) (ACN 607 244 879) (No 2) (2021) 149 ACSR 533; [2021] FCA 27, approved
Peter Cox Investments Pty Ltd (In liq) v International Air Transport Association (1999) 161 ALR 105; [1999] FCA 27, cited
Phipps v Boardman [1965] Ch 992, cited
Pilmer v Duke Group Ltd (2001) 207 CLR 165; [2001] HCA 31, applied
Quince v Varga [2009] 1 Qd R 359; [2008] QCA 376, cited
R v Young (2021) 8 QR 68; [2021] QCA 131, cited
Re Australian Elizabethan Theatre Trust; Lord v Commonwealth Bank of Australia (1991) 30 FCR 491, applied
Re Bellpac Pty Ltd (in liq) [2013] FCAFC 48, cited
Re Fada (Australia) Ltd [1927] SASR 590, cited
Re Global Finance Group Pty Ltd (in liq) (2002) 26 WAR 385; [2002] WASC 63, cited

Re Great Wall Resources Pty Ltd (in liq) [2013] NSWSC 354, cited
Re Hallett's Estate (1880) 13 Ch D 696, cited
Re Kayford Ltd (in liq) [1975] 1 WLR 279, cited
Reid Murray Holdings Ltd (in liq) v David Murray Holdings Pty Ltd (1972) 5 SASR 386, cited
Robb Evans of Robb Evans and Associates v European Bank Ltd (2004) 61 NSWLR 75; [2004] NSWCA 82, cited
Russell Gould Pty Ltd v Ramangkura (2014) 87 NSWLR 552; [2014] NSWCA 310, cited
Russell v Wilson (1923) 33 CLR 538; [1923] HCA 60, cited
Salvo v New Tel Ltd [2005] NSWCA 281, cited
Settlement Agents Supervisory Board v Property Settlement Services Pty Ltd [2009] WASCA 143, applied
Smithton Ltd v Naggar [2014] EWCA Civ 939, cited
Stephenson v Dental Corporation Pty Ltd [2025] QCA 212, applied
Sunnya Pty Ltd v He (2025) 427 ALR 583; [2025] NSWCA 79, applied
Taylor v Plumer (1815) 3 M&S 562, cited
Templeton v Leviathan Pty Ltd (1921) 30 CLR 34; [1921] HCA 55, applied
Toksoz v Westpac Banking Corporation (2012) 289 ALR 577; [2012] NSWCA 199, applied
Tze Tu v Lowe (2014) 89 NSWLR 317; [2014] NSWCA 462, cited
UDP Holdings Pty Ltd v Esposito Holdings Pty Ltd (in liq) [2021] VSC 528, explained
Vasudevan v Becon Constructions (Aust) Pty Ltd (2014) 41 VR 445; [2014] VSCA 14, considered
Walker v Corboy (1990) 19 NSWLR 382, applied
Walker v Wimborne (1976) 137 CLR 1; [1976] HCA 7, cited
Weissensteiner v The Queen (1993) 178 CLR 217; [1993] HCA 65, cited
Williams v Bearing Traders Pty Ltd (2008) 69 ACSR 334; [2008] NSWSC 1358, cited
Williams v Peters [2010] 1 Qd R 475; [2009] QCA 180, considered
Yang v Wong (2026) 315 FCR 420; [2026] FCAFC 39, applied
Zhong v Wang [2006] NZCA 242, cited
Ziade Investments Pty Ltd v Welcome Homes Real Estate Pty Ltd (2006) 57 ACSR 693; [2006] NSWSC 457, cited

COUNSEL: S W Trewavas for the plaintiffs
The first defendant appeared on his own behalf and for the third defendant (23, 25-27, 30 March 2026)
The second defendant appeared on her own behalf (23, 25-27, 30 March 2026)
R Perry KC for the defendants (18 June 2026 only)

SOLICITORS: AJ & Co Lawyers for the plaintiffs
The first defendant appeared on his own behalf and for the third defendant (23, 25-27, 30 March 2026)
The second defendant appeared on her own behalf (23, 25-27, 30 March 2026)
Lynch Andrews for the defendants (18 June 2026 only)

I. Introduction

[1] This proceeding is about money that flowed between a bank account controlled by the first plaintiff (**ADKA**) and a bank account controlled by the third defendant (**Laxton Fields**). ADKA is being liquidated by the second plaintiff (**Liquidators**). The first defendant (**Mr Gleeson**) and second defendant (**Ms O'Grady**) are a married couple who, through a group of companies (**MTT Group**) which included ADKA, run a business that makes underground roof support systems for mines. The third defendant (**Laxton Fields**) is a company in the MTT Group.

[2] The Liquidators claim that Ms O'Grady and Mr Gleeson caused ADKA to loan or otherwise advance money to Laxton Fields, and that the net outflows (subtracting receipts *from* Laxton Fields) from ADKA to Laxton Fields constitute an unpaid debt, money had and received, breaches of directors' duties, or voidable unreasonable director-related transactions. The Liquidators allege that some of the money can be traced into a property that Laxton Fields purchased and made mortgage payments in respect of and therefore that a constructive trust should be imposed over a proportion of that property.

[3] The defendants defend the claims on the basis that ADKA never loaned or otherwise advanced money to Laxton Fields because it was never beneficially entitled to the money it transferred from its bank account to Laxton Fields. In summary, the defendants submit this is because ADKA never traded, the account controlled by ADKA was used as a "conduit" account only, and the only purpose of funds flowing through that account was to make accounting for the group simpler. In this way, the defendants submit that ADKA held the relevant money on trust as in the case of *Barclays Bank Ltd v Quistclose Investments Ltd*.[1] At trial, another question arose as to whether ADKA held any of the money in its bank account on trust for the ADKA Investments Discretionary Trust (**ADKA Trust**).

[4] Mr Gleeson also defends the breach of director's duties claim on the basis that he was not a de facto or shadow director of ADKA at any relevant time.

[5] For the reasons that follow, I find that the Liquidators succeed in most of their claims. Nearly all of the relevant money was beneficially ADKA's money, not held on a *Quistclose* trust. ADKA did hold some of the relevant money on trust for the ADKA Trust and was therefore not beneficially entitled to that money, meaning relevant parts of the Liquidators' claims in that respect fail. I find Mr Gleeson was a de facto director of ADKA at all the relevant times, and both he and Ms O'Grady breached their duties to ADKA as its directors. Even if I am wrong about that, I find that the relevant transfers to Laxton Fields are voidable as they are unreasonable director-related transactions. In addition, Laxton Fields is liable as a third party, both under the *Corporations Act 2001* (Cth) (***Corporations Act***) and as a knowing recipient. Finally, Laxton Fields should be ordered to hold a proportion of the title to the property Laxton Fields purchased using ADKA's money on constructive trust for ADKA and the Liquidators, equal to the proportion that traceable ADKA money bears to the acquisition cost of the property.

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1 [1970] AC 567.

II. Background

A. The MTT business

[6] The defendants' business is called Mine Timber Technology and is run through the MTT Group, with each company in the group having either Ms O'Grady or Mr Gleeson as its sole director and secretary. The MTT Group is comprised of the following relevant entities:

(a) Laxton Fields, which:

(i) has always had as its sole director and secretary Ms O'Grady (until the trial to facilitate Mr Gleeson appearing on its behalf);

(ii) is wholly owned by Ms O'Grady,

(b) ADKA, which:[2]

(i) until 2014 and after 1 January 2023 had as its sole director and secretary Mr Gleeson;

(ii) between 2014 and 1 January 2023 had as its sole director and secretary Ms O'Grady, who replaced Mr Gleeson due to his bankruptcy;

(iii) is half-owned by each Ms O'Grady and Mr Gleeson,

(c) Mine Timber Technology (Int) Pty Ltd ACN 621 202 284 (**MTT International**), which:

(i) is the entity in which all external shareholding is concentrated;

(ii) has always had as its sole director and secretary Ms O'Grady;

(iii) wholly owns:

(A) MTT Hardwoods Pty Ltd ACN 622 723 960 (later renamed to SE Sourcing Pty Ltd) (**MTT Hardwoods**), which, since 1 May 2021, has had as its sole director and secretary Mr Gleeson:[3]

(B) Mine Timber Technology (Aust) Pty Ltd ACN 622 723 933 (**MTT Australia**), which has always had as its sole director and secretary Ms O'Grady;

(C) MTT Logistics Pty Ltd ACN 625 507 655 (**MTT Logistics**), which until 9 September 2024 had as its sole director and secretary Ms O'Grady (and thereafter Mr Gleeson):

(D) Ausyan Pty Ltd ACN 121 081 267 (**Ausyan**), which appears to have had Mr Gleeson as its sole director and secretary.[4]

[7] The business primarily operates from Ms O'Grady and Mr Gleeson's home at 110 Laxton Road in Palmview (**Laxton Rd Property**), where they have lived since

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2 Exhibit 3.

3 Only a current ASIC search is in evidence but presumably Ms O'Grady was the sole director and secretary before this date. The company was registered on 8 November 2017.

4 Indicated by his sole signature on a Deed of Retirement and Appointment of Trustee, which relates to the ADKA Trust. No company search is in evidence.

around 2010. Initially, Ms O'Grady and Mr Gleeson rented the Laxton Rd Property. On 4 September 2020, Laxton Fields bought the Laxton Rd Property in its capacity as trustee of the LF Properties Discretionary Trust (**LF Trust**). Laxton Fields continues to own the Laxton Rd Property.

[8] The LF Trust is a discretionary trust that was settled on 29 July 2019 and has Ms O'Grady as its sole object (beneficiary) and principal. Therefore, despite it being held by a discretionary trust, Ms O'Grady effectively has the benefit of the Laxton Rd Property.

[9] At the centre of this proceeding lies ADKA. Ms O'Grady and Mr Gleeson give evidence that ADKA was created in 2007 alongside the ADKA Trust and the opening of an ANZ bank account ending in "6598" (**ADKA Account**). The ADKA Account bears the name "ADKA INVESTMENTS PTY LTD ATF THE ADKA INVESTMENTS DISCRETIONARY TRUS [sic]". There is no trust deed for the ADKA Trust in evidence, although a Deed of Retirement and Appointment of Trustee dated 3 January 2023 (after ADKA had been served with the statutory demand that resulted in its winding up) refers to such a deed. That deed dated 3 January 2023 purports that Ms O'Grady and Mr Gleeson are the beneficiaries and appointors of the ADKA Trust. I proceed on the basis that is true.

[10] ADKA was said by the defendants to have been created for the purpose of buying a sawmill; however, that did not transpire. What happened to ADKA, the ADKA Trust, and the ADKA Account after that is disputed. But what is clear is that money flowed through the ADKA Account between 2017 and 2023, the period the subject of the Liquidators' claim, and more money was transferred from the ADKA Account *to* Laxton Fields than was received *from* Laxton Fields.

[11] On 20 December 2022, Dr Catherine Gaulton, who holds debentures issued by ADKA, served ADKA with a statutory demand for repayment of the debt, which was several years overdue at that point. ADKA did not pay, which ultimately led to its winding up on 21 April 2023, at which point the Federal Court appointed the Liquidators.

[12] Mr Gleeson gives evidence that ADKA and Laxton Fields are not part of the MTT Group because they operate outside that structure. That seems to be because those entities are not owned by MTT International. However, I do not use the term "group" in any technical sense. ADKA and Laxton Fields are inextricably part of the business called Mine Timber Technology. As will be discussed in more detail below, ADKA issued debt[5] to be used for the advancement of the MTT business and held shares in MTT International as trustee for the ADKA Trust. Laxton Fields owns the property from which the MTT business is primarily run. Therefore, I consider them to be part of the MTT Group.

B. The witnesses

[13] The Liquidators called three witnesses: Mr Scott Clout, Dr Catherine Gaulton and Mr Maxwell McRae. Mr Clout is one of the Liquidators, and he gave both factual

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5 In the form of debentures.

and expert opinion evidence. Dr Gaulton and Mr McRae are a married couple who separately[6] invested in the MTT Group by buying shares and debentures.

[14] The defendants only called Ms O'Grady and Mr Gleeson. It was initially contemplated that they also call a Ms Melissa Austin, who is purportedly an accountant for the MTT Group, but that did not occur (a point to which I will return below).

[15] As a side note, I mention that the defendants cross-examined Dr Gaulton and Mr McRae on the inclusion in their affidavits of emails from a Mr Myles Lear. The emails from Mr Lear were highly critical of Ms O'Grady and Mr Gleeson and their business practices. I have not had regard to that evidence. It is entirely hearsay and not independently substantiated, nor was Mr Lear made available for cross-examination.

C. The pleadings and the way the case was run

[16] The defendants' pleading is clear in raising the defence that Mr Gleeson was not a de facto or shadow director.[7] However, the Amended Defence is confusing in how it responds to the allegation that ADKA loaned or otherwise advanced its money to Laxton Fields. The Amended Statement of Claim alleges:

> 11. Between 7 December 2017 and 27 January 2023, [ADKA] loaned or otherwise advanced [ADKA's] money to [Laxton Fields] from time to time, totalling the sum of $1,269,590.00 (**Loan Amount**).
>
> **Particulars**
>
> The amount and date of each loan or advance of money, collectively defined as the Loan Amount, is particularised in Annexure A.

[17] The Amended Defence responds:

> 11. The Defendants deny the allegations contained in paragraph 11 of the Statement of Claim because such allegations are untrue because:-
>
> (a) between 7 December 2017 and 27 January 2023 [ADKA] did not loan or otherwise advance [ADKA's] money to [Laxton Fields] from time to time, totalling the sum of $1,269,590.00;
>
> (b) says that at no stage has [ADKA] loaned or otherwise advanced funds to [Laxton Fields];
>
> (c) says further that notwithstanding the response to the Defendants' request for further and better particulars of the Statement of Claim dated 8 March 2024, the Plaintiffs have failed to properly particularise the allegations contained in paragraph 11 of the Statement of Claim and

6 In their own rights and through companies acting as trustees of various of the couple's trusts.

7 [3(c)], Amended Defence.

despite reasonable inquiry the Defendants remain uncertain as to the truth or falsity of such allegations since they are matters peculiarly within the knowledge of the Plaintiffs;

(d) says further that the particulars referred to in "Annexure A" to the Statement of Claim, purporting to relate to the amount and date of each loan or advance of money by [ADKA] to [Laxton Fields] were made from the following account:-

> ADKA Investments Pty Ltd ATF the ADKA Investments Discretionary Trust;

(e) says that, in the premises, any funds purportedly advanced to [Laxton Fields] were not [ADKA's] funds and therefore at no stage did [ADKA] loan or otherwise advance any of [ADKA's] money to [Laxton Fields]:

(f) says that at all material times relevant to these proceedings, [ADKA] was not the Trustee of the ADKA Investments Discretionary Trust including at the time of the making of the Order referred to in paragraph 1(b) of the Statement of Claim: and

(g) says further that [ADKA] does not have any right, claim or entitlement to the assets of the ADKA Investment Discretionary Trust.

[18] The most natural reading of paragraph 11(e) of the Amended Defence, by virtue of the immediately preceding sub-paragraph referring to the name of the ADKA Account and the use of the words "in the premises", is that the funds were not ADKA's because it held them as trustee for the ADKA Trust. However, subparagraph (f) cast some doubt upon that notion by alleging that ADKA was not the trustee of the ADKA Trust at all relevant times (at least including on 21 April 2023, being the date mentioned in paragraph 1(b) of the Statement of Claim). In their reply, the Liquidators then, confusingly, deny the entirety of that paragraph.

[19] To further muddy the waters, the defendants' written opening submissions – which were prepared and filed at a time they were not self-represented[8] – do not address the ADKA Trust and are entirely directed at establishing that the relevant money was held on a *Quistclose* trust. The defendants became self-represented the week before the trial, and, at the trial, tendered what they purport to be the financial records and tax returns for the ADKA Trust.[9] Despite this, their written closing submissions still seek to advance the *Quistclose* trust case and do not argue that ADKA held the relevant money as trustee of the ADKA Trust. (However, I note that the defendants still describe the ADKA Account as the "trust account" in those submissions.) The Liquidators do not complain about the defendants putting their case in that way that is inconsistent with the Amended Defence.

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8 Acknowledging that Laxton Fields, as a company, was not strictly self-represented but rather represented (with leave) by its now-director, Mr Gleeson.

9 Exhibit 18. I will say more about these records below.

[20] For their part, the Liquidators' closing submissions assert that "[t]he entire basis of the defence is whether the payments came from ADKA's funds or from ADKA as trustee of the ADKA Investments Trust". As above, that is not the way the defendants ran their defence. The documentary evidence reveals that ADKA was indeed the trustee of the ADKA Trust at relevant times, and that ADKA held some of the money in the ADKA Account on trust for the ADKA Trust. As will be seen below, some of that money makes up part of the Liquidators' claim. How then should I proceed to determine the claims and defences?

[21] In *Banque Commerciale SA, En Liquidation v Akhil Holdings Ltd*, Mason CJ and Gaudron J held:[10]

> The function of pleadings is to state with sufficient clarity the case that must be met. In this way, pleadings serve to ensure the basic requirement of procedural fairness that a party should have the opportunity of meeting the case against him or her and, incidentally, to define the issues for decision. The rule that, in general, relief is confined to that available on the pleadings secures a party's right to this basic requirement of procedural fairness. Accordingly, the circumstances in which a case may be decided on a basis different from that disclosed by the pleadings are limited to those in which the parties have deliberately chosen some different basis for the determination of their respective rights and liabilities.

[22] Brennan J reasoned similarly:[11]

> In *Thorp v. Holdsworth*, Jessel M.R. stated the object of pleadings:
>
> > "The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules of Order XIX. was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."
>
> When the pleadings bring the parties to the issue, the court's function is to determine that issue and to grant relief founded on the pleadings unless the parties are allowed to alter the issues at the trial without amendment of the pleadings (as to which, see the observations in *London Passenger Transport Board v Moscrop*). The rule is clearly laid down in the judgment of this Court in *Dare v. Pulham*:
>
> > "Apart from cases where the parties choose to disregard the pleadings and to fight the case on issues chosen at the trial, the relief which may be granted to a party must be founded on the pleadings …"

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10 (1990) 169 CLR 279 at 286-287 (citations omitted).

11 (1990) 169 CLR 279 at 287-288 (citations omitted), quoting *Thorp v Holdsworth* (1876) 3 Ch D 637 at 639. See also at 292-293 (Dawson J).

[23] In *Yang v Wong*, the Full Court emphasised that:[12]

> [T]he scope of the statement of claim do[es] not necessarily conclude the issue, because a case may be decided on a basis different from that disclosed by the pleadings in circumstances where the parties have deliberately chosen some different basis for the determination of their respective rights and liabilities.

[24] In the present case, the parties did not adhere strictly to their pleadings at the trial, did not bring any relevant applications, formal or otherwise, requiring the other party to amend their pleadings, and, with one exception, did not make any objections or otherwise take issue when the case veered away from the pleadings.[13] Some examples are canvassed above. There are several others.

[25] By way of one example, with respect to the de facto or shadow director issue, the Amended Statement of Claim states:

> 3. The first defendant:
>
> (a) was from 5 July 2007 to 5 August 2014 and 1 January 2023 to 21 April 2023, a registered director of the Company;
>
> (b) was at all material times the controlling mind of the Company and was in fact a de-facto or shadow director of the Company;
>
> (c) is a 50% shareholder of the Company; and
>
> (d) at all material times, was the spouse of the second defendant.

[26] That is not a sufficient pleading by the Liquidators of material facts to make out the allegation that Mr Gleeson was a de facto or shadow director. But no party took issue with the Liquidators proceeding at trial to establish Mr Gleeson's de facto directorship.

[27] By way of a further example, in respect of the unreasonable director-related transactions claim, the Amended Statement of Claim states:

> 34. Further or in the alternative, the payment of the Loan Amount payments were unreasonable director-related transactions within the meaning of section 588FDA of the Act because:
>
> (a) the payments were made by [ADKA];
>
> (b) the payments were made to and/or for the benefit of [Laxton Fields], at the direction of [Mr Gleeson] and/or [Ms O'Grady], who were at the time of each Loan Amount payment, directors of [ADKA];

12 (2026) 315 FCR 420 at 432 [43], citing *Banque Commerciale SA, En Liquidation v Akhil Holdings Ltd* (1990) 169 CLR 279 at 286-287, 288.

13 Except in respect of the tracing issue and consequent proprietary claim.

[28] The Liquidators plead that the payments were made to or for the benefit of the third defendant, Laxton Fields. However, as will be discussed under the unreasonable director-related transaction section below, the relevant provision of the *Corporations Act* requires the payment to have been made to a director or their close associate, or to some person on behalf of, or for the benefit of, a director or their close associate.[14] A close associate of a director is defined as a relative, spouse, or relative of their spouse. Laxton Fields is neither a director nor a close associate of the director. But Ms O'Grady and Mr Gleeson clearly are directors or close associates of a director. The pleading does not – but clearly attempts to – articulate that the payments were made to Laxton Fields for the benefit of Mr Gleeson and, further or alternatively, Ms O'Grady. The Liquidators ran their case in that way too. Again, no party took issue with the insufficiency of the pleadings and allowed the Liquidators to run their case that way.

[29] By way of further example, for their part, as set out above, the defendants did not raise the *Quistclose* trust issue in their pleadings at all but did dedicate much of their written submissions and evidence to that issue.

[30] Therefore, I will address both whether any of the relevant money in the ADKA Account the subject of the claim was held (1) on a *Quistclose* trust or (2) on trust for the ADKA Trust. Except in respect of the tracing issue and consequent proprietary claims, I will not hold either party strictly to their pleadings and instead consider the issues based on the way the case was run and the evidence the parties adduced.

D. Pleaded causes of action without claimed relief

[31] Whilst I will proceed on the pleadings in that way, and although the same considerations apply, I cannot proceed as loosely in respect of the relief set out in the Amended Claim. Fairness to the defendants in knowing the case they must meet means I should hold the Liquidators more strictly to their claimed relief. Several issues are apparent.

[32] First, in paragraph 5 of the Amended Claim, the Liquidators seek a declaration that Ms O'Grady and Mr Gleeson hold their interests in the Laxton Rd Property on constructive trust and that their interests are subject to an equitable charge. The insurmountable issue with that is that the Laxton Rd Property is entirely held by Laxton Fields as trustee for the LF Trust. On the evidence, Ms O'Grady and Mr Gleeson do not have any interest, legal or equitable, in the Laxton Rd Property. No relevant submissions were made in respect of this issue. That part of the Liquidators' claim must fail.

[33] Second, in paragraph 10 of the Amended Claim, the Liquidators seek:

> A declaration that [ADKA] is entitled to be indemnified from the assets which [Laxton Fields] holds as trustee of the ADKA Investments Discretionary Trust.

[34] However, Laxton Fields is not and has never been the trustee of the ADKA Investments Discretionary Trust. No other pleadings are directed to that issue and nothing relevant to that was raised in the evidence or submissions. Perhaps the

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[14] s. 588FDA.

intention was that it be declared that Laxton Fields is entitled to be indemnified out of the assets of the LF Trust. However, that is not necessary because the third defendant is already Laxton Fields as trustee of the LF Trust, not Laxton Fields in its own right. If that were indeed the intention, no declaration would be necessary. The relief either must fail or is unnecessary.

[35] Third, the Liquidators initially sought, in the Amended Claim, an order under the *Property Law Act 1974* (Qld) or in the Court's inherent jurisdiction that trustees be appointed for the sale of the Laxton Rd Property. However, the Liquidators abandoned that at trial because they had not sought the consent of a proposed trustee. Therefore, I will not consider that relief.

[36] Fourth, in the Amended Statement of Claim, the Liquidators plead that the net amounts transferred to Laxton Fields are loans repayable on demand which have not been repaid. However, they do not seek damages or other relief in respect of that cause of action. Therefore, I will not consider whether the transfers are loans.

[37] Fifth, the same applies in respect of the Liquidators' pleading of money had and received (arising from a total failure of consideration). They do not seek damages or other relief in respect of that cause of action. Therefore, I will not consider the money had and received pleading either.

[38] Sixth, the Liquidators abandoned their pleaded uncommercial transactions claim in closing submissions.

III. Onus and weighting considerations

[39] Like the pleadings, the state of the evidence leaves much to be desired. Whilst I recognise that cases are often decided on incomplete evidence, in particular in the adversarial system, there was nevertheless a severe lack of relevant evidence in respect of some issues. That is despite the fact that one or both of the parties would have been able to shed light on the issue. In some situations, one party was in a much better position than the other to, and in fact *would* have been able to, adduce evidence on an issue. Therefore, what will play into some of my reasons below is *Blatch v Archer*[15] and *Jones v Dunkel*[16] types of considerations. Those consideration will also interact with the onus and standard of proof on each issue. Given the common application of the principles to many of the issues, I will set out the law here and draw on it where relevant in my below reasons.

[40] The principle in *Blatch v Archer* is that "all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted".[17] Australian cases have consistently approved and

[15] (1774) 98 ER 969.
[16] (1959) 101 CLR 298.
[17] (1774) 98 ER 969 at 970.

applied that principle.[18] In *CEG Direct Securities Pty Ltd v Cooper*, Cheeseman and McEvoy JJ expounded on it as follows:[19]

> The *Blatch v Archer* principle bears upon the appropriateness of deciding whether a fact has been proved when only limited evidence is available. Where material evidence is peculiarly within a party's knowledge, it may be sufficient for the opposing party to adduce slight evidence of a matter in issue.
>
> The adequacy of the evidence before the Court was directly relevant to whether the Court could be satisfied that the liquidator has discharged his onus of proof. The observations of Hodgson JA … are apposite:
>
> > [14] … in deciding facts according to the civil standard of proof, the court is dealing with two questions: not just what are the probabilities on the limited material which the court has, but also whether that limited material is an appropriate basis on which to reach a reasonable decision. …
> >
> > [15] In considering the second question, it is important to have regard to the ability of parties, particularly parties bearing the onus of proof, to lead evidence on a particular matter, and the extent to which they have in fact done so.

[41] The rule which arises from *Jones v Dunkel* and the subsequent interpreting authority was explained by the High Court as follows:[20]

> [T]he unexplained failure by a party to call a witness may in appropriate circumstances support an inference that the uncalled evidence would not have assisted the party's case. That is particularly so where it is the party which is the uncalled witness. The failure to call a witness may also permit the court to draw, with greater confidence, any inference unfavourable to the party that failed to call the witness, if that uncalled witness appears to be in a position to cast light on whether the inference should be drawn. These principles have been extended from instances where a witness has not been called at all to instances where a witness has been called but not questioned on particular topics. Where counsel for a party has refrained from asking a witness whom that party has called particular questions on an issue, the court will be less likely to draw inferences favourable to that party from other evidence in relation to that issue.

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18 See, eg, *Australian Securities and Investments Commission v Hellicar* (2012) 247 CLR 345 at 405 [144], 412 [166], 441 [250]; *CEG Direct Securities Pty Ltd v Cooper* (2025) 309 FCR 66 at 101-102 [150]-[152]; *Hampton Court Ltd v Crooks* (1957) 97 CLR 367 at 371-372; *Gerard Cassegrain & Co Pty Ltd v Cassegrain* (2013) 87 NSWLR 284 at 291 [26]; *Director of Public Prosecutions v Brauer* [1991] 2 Qd R 261 at 268; *BCI Finances Pty Ltd (in liq) v Binetter (No 4)* (2016) 348 ALR 227 at 249 [123]; *Apollo Shower Screens Pty Ltd v Building and Construction Industry Long Service Payments Corp* (1985) 1 NSWLR 561 at 565.

19 (2025) 309 FCR 66 at 101-102 [151]-[152], quoting *Ho v Powell* (2001) 51 NSWLR 572 at 575 [14]-[15].

20 *Kuhl v Zurich Financial Services* (2011) 243 CLR 361 at 384-385 [63]-[64] (citations omitted).

> The rule in *Jones v Dunkel* permits an inference, not that evidence not called by a party would have been adverse to the party, but that it would not have assisted the party.

[42] Not only can an inference be drawn that the uncalled party or the answers to the unasked questions would not have assisted the relevant party, but also, as the Court held in *Jones v Dunkel* itself:[21]

> [A]ny inference favourable to the plaintiff for which there was ground in the evidence might be more confidently drawn when a person presumably able to put the true complexion on the facts relied on as the ground for the inference has not been called as a witness by the defendant and the evidence provides no sufficient explanation of his absence.

[43] It must be kept in mind that *Briginshaw* principles are still applicable, namely that the seriousness of the allegation and the gravity of its consequences affect the cogency of the evidence required to actually persuade me on the balance of probabilities.[22] As the High Court has recently emphasised, "[t]he evidence must 'give rise to a reasonable and definite inference' to enable a factual finding to be made; mere conjecture based on 'conflicting inferences of equal degrees of probability' is insufficient".[23] The same is true where there are merely several guesses as to the true position – the Court must be actually persuaded of one of those guesses; the fact that one guess is more likely than the others is insufficient to satisfy the Court to the requisite standard of proof.[24] The consequence is that issues may be decided by reference to the onus of proof, even where the inference contended for by the party who bears the onus is more likely than the other inferences.

[44] As stated in some of the above extracts, the way that interacts with *Blatch v Archer* and *Jones v Dunkel* considerations is that the Court may more readily reach a state of actual persuasion to the *Briginshaw* standard. However, as the High Court noted in *Australian Securities and Investments Commission v Hellicar*, "both the circumstances in which that may be done and the way in which the *absence* of evidence may be taken to account are confined by known and accepted principles".[25]

[45] The inference may be drawn in favour of a party only if: "(a) a party is 'required to explain or contradict' something; (b) the witness's evidence would elucidate a particular matter; and (c) their absence is unexplained".[26]

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21 (1959) 101 CLR 298 at 308, quoted in *Australian Securities and Investments Commission v Hellicar* (2012) 247 CLR 345 at 413 [167].

22 See *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361, cited in *GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore* (2023) 280 CLR 442 at 472 [60].

23 *GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore* (2023) 280 CLR 442 at 472 [60], quoting *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1 at 5.

24 *Jones v Dunkel* (1959) 101 CLR 298 at 305.

25 (2012) 247 CLR 345 at 412 [165].

26 *Stephenson v Dental Corporation Pty Ltd* [2025] QCA 212 at [84], citing *Schellenberg v Tunnel Holdings Pty Ltd* (2000) 200 CLR 121 at [51], *Ghazal v Government Insurance Office of New South Wales* (1992) 29 NSWLR 336 at 342, and *Payne v Parker* (1976) 1 NSWLR 191 at 201. See also *Manly Council v Byrne* [2004] NSWCA 123 at [53]-[55].

[46] Further, as Doyle JA recently explained:[27]

> The inference will not arise if the failure to call the witness "is satisfactorily explained or readily understood." Understandably, the courts are not prescriptive about the kind of explanation that will suffice. The *Jones v Dunkel* inference will not arise where it would be natural for a party not to call a witness. This is sometimes considered in terms of the witness being (or not being) in the party's camp and former employees are not generally considered to be in a party's "camp". Beyond that, the unlikelihood of their being able to recall details after a significant passage of time, the marginal relevance of their recollection if they have one and the extent of controversy are all factors which bear upon whether not calling them is readily understood.

[47] The inference also will not be drawn against that opponent where the uncalled witness would likely be hostile to them, they do not know what the witness would say, or the witness is equally accessible to both parties.[28] In *Brandi v Mingot*, the High Court emphasised that the rationale for the inference is that the party is "presumed to know the content of the absent witness's evidence, otherwise he would not be a witness whom 'that party might reasonably be expected to call'".[29]

[48] In addition, if the defaulting party does not bear the onus of proof, the inference is only available where the other party adduces evidence which one would expect the defaulting party to explain or contradict.[30] That is particularly relevant where the facts are peculiarly, and perhaps even exclusively, within the knowledge of the defaulting party.[31] The other party must still adduce evidence sufficient to discharge its onus of proof, but the weight of that evidence may be enhanced in line with these principles.

IV. Was the money in the ADKA Account beneficially ADKA's own money?

[49] The central issue in this claim is what part of the money that was transferred from the ADKA Account to Laxton Fields, if any, was: (1) impressed with a *Quistclose* trust; (2) otherwise held on trust; or (3) beneficially ADKA's money. For any part of the money that ADKA held on a *Quistclose* or other trust, the Liquidators' claim fails because it requires the money to have been ADKA's own money.

[50] The onus of proof lies with the party that asserts the existence of a *Quistclose* trust,[32] which is the defendants in this case.

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27 *Stephenson v Dental Corporation Pty Ltd* [2025] QCA 212 at [85] (citations omitted) (Hall AJA and Crow J agreeing).

28 JRS Forbes, *Evidence Law in Queensland* (Thomson Reuters, 13th ed, 2021) at 104.

29 (1976) 12 ALR 551 at 560.

30 JRS Forbes, *Evidence Law in Queensland* (Thomson Reuters, 13th ed, 2021) at 103.

31 See generally the principle in criminal cases: *Weissensteiner v The Queen* (1993) 178 CLR 217.

32 *Coolbrew Pty Ltd v Westpac Banking Corp* [2015] NSWCA 135 at [27]; *BounceLED Pty Ltd v Clear Skies Corp Pty Ltd (in liq)* [2023] NSWSC 121 at [56]; *Nikitins (as joint and several liquidators of EncoreFX (Australia) Pty Ltd (in liq) (ACN 607 244 879)) v EncoreFX (Australia) Pty Ltd (in liq) (ACN 607 244 879) (No 2)* (2021) 149 ACSR 533 at 553 [103]; *Gliderol v Hall* (2001) 80 SASR 541 at [19]-[20]; *George v Webb* [2011] NSWSC 1608 at [214].

[51] If the defendants do not discharge their onus to prove the funds were held on a *Quistclose* trust, the funds must have been ADKA's beneficially (subject to being held for the ADKA Trust). That is not to say, however, that the Liquidators do not bear the onus of proof in respect of the funds being ADKA's funds beneficially. They do. Rather, I consider that the Liquidators have discharged that onus by adducing evidence (1) that the funds were in the ADKA Account (possession giving rise to a presumption of ownership)[33] and (2) that ADKA used funds in that account for its own purposes (eg, receiving funds for the issuing of debentures in its own capacity). In addition, subject to the *Quistclose* trust and ADKA Trust considerations, there is no evidence of any other agreements, bailments, or trusts that could dispel ADKA's beneficial entitlement.

[52] The individual defendants must know the purpose and character of each transfer to Laxton Fields, given they were the ones in control of the ADKA Account at all relevant times and the ones who effected the relevant transfers. Apart from the *Quistclose* trust and ADKA Trust cases, the defendants have not adduced any evidence about the purpose or character of the transfers. Not even for a selection of the transfers that might have been used to draw an inference as to the balance.

[53] Even if the defendants did not remember the purpose or character of the transfers, they did not call the accountant mentioned above, Ms Austin of Brilliance for Business. That is despite the fact that she had been included as a witness on the original trial plan for the former trial dates in 2025 and the defendants filed a request for subpoena the week before the trial. Mr Gleeson intimated in oral submissions that she had not been served with the subpoena. Why that was so remains unexplained. Her absence is significant because, as the MTT Group's day-to-day accountant throughout the relevant period (and its accountant for *all* purposes since around December 2021),[34] she likely would be able to shed light on many of the MTT Group's accounting practices, as well as the purpose and character of the intragroup transfers.

[54] I note that on 18 June 2026 I heard and determined an application by the defendants to reopen their case. The primary purpose of the re-opening sought was to adduce what is now exhibits 51 and 52 into evidence (which I allowed). An alternative sought was to call Ms Austin to obtain evidence as to the providence of exhibit 52 (which would then allow it to be tendered). The alternative was not necessary to consider as I permitted the re-opening of the trial for the limited purpose of the two exhibits being tendered. Importantly for this part of the decision though, there was no suggestion for the defendants that the trial should be re-opened for the purpose of Ms Austin giving evidence in respect of the MTT Group's accounting practices or the purpose and character of the intragroup transfers.

[55] Ms Austin is plainly in the defendants' camp and they ought know what her evidence would be. The Liquidators cannot be criticised for failing to call her because they do not know what she would say. Therefore, I infer that her evidence would not have helped the defendants.

[56] I also draw upon the principles discussed above that allow me to be satisfied to the requisite standard upon only slight evidence from the plaintiffs where the defendants

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33 *Re Bellpac Pty Ltd (in liq)* [2013] FCAFC 48 at [30]; *Russell v Wilson* (1923) 33 CLR 538 at 546-547.

34 Mr Gleeson said as much in the "progress update" (Exhibit 7) discussed further below.

are in the far superior position to adduce contradictory evidence. That slight evidence is the bank statements that show the relevant money in the ADKA Account.

[57] For the reasons that follow, I find that (1) no part of the relevant money was held on *Quistclose* trust; (2) some part of the relevant money was held on trust for the ADKA Trust; and (3) the remainder of the relevant money was beneficially owned by ADKA.

A. Quistclose trusts – the Law

[58] Gibbs ACJ explained the *Quistclose* trust as follows:[35]

> [The case *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567] is authority for the proposition that where money is advanced by A to B, with the mutual intention that it should not become part of the assets of B, but should be used exclusively for a specific purpose, there will be implied (at least in the absence of an indication of a contrary intention) a stipulation that if the purpose fails the money will be repaid, and the arrangement will give rise to a relationship of a fiduciary character, or trust.

[59] That is not to say a *Quistclose* trust is a non-express trust for non-charitable purposes.[36] The requirements of an express private trust – the three certainties of intention, subject-matter, and objects – continue to apply to *Quistclose* trusts.[37]

[60] It is the mutual intention of the parties that separates the relationship of debt from that of trust.[38] Where there is no such intention, no *Quistclose* trust arises.[39] A specific intention to use money only for a particular purpose, of itself, is insufficient. Otherwise, many simple loans would be converted into *Quistclose* trusts.

[61] Intention is objectively ascertained from the circumstances and the essence of the bargain, including the parties' conduct, statements, and relationship.[40] The parties' unexpressed subjective intentions are irrelevant. A major factor (or even "the most powerful[] indicium")[41] is whether the transferred property is (or is to be) kept

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35 *Australian Conference Association Ltd v Mainline Constructions Pty Ltd (in liq)* (1978) 141 CLR 335 at 353 (Jacobs and Murphy JJ agreeing). See also *Rambaldi (Trustee) v Commissioner of Taxation, in the matter of Alex (Bankrupt)* [2017] FCAFC 217 at [27]; *Quince v Varga* [2009] 1 Qd R 359; [2008] QCA 376 at [34]-[35].

36 See *Legal Services Board v Gillespie-Jones* (2013) 249 CLR 493 at 523-526 [112]-[119].

37 *Re Australian Elizabethan Theatre Trust; Lord v Commonwealth Bank of Australia* (1991) 30 FCR 491 at 502; *Quince v Varga* [2009] 1 Qd R 359 at 376-378 [39]-[40]; *George v Webb* [2011] NSWSC 1608 at [202].

38 See, eg, *Re Australian Elizabethan Theatre Trust; Lord v Commonwealth Bank of Australia* (1991) 30 FCR 491 at 502-503; *Australian Conference Association Ltd v Mainline Constructions Pty Ltd (in liq)* (1978) 141 CLR 335 at 353; *General Communications Ltd v Development Finance Corporation of New Zealand Ltd* [1990] 3 NSLR 406 at 433.

39 *Ausintel Investments Australia Pty ltd v Lam* (1990) 19 NSWLR 637 at 641, 646-647.

40 *Re Australian Elizabethan Theatre Trust; Lord v Commonwealth Bank of Australia* (1991) 30 FCR 491 at 502-503; *Jessup v Queensland Housing Commission* [2002] 2 Qd R 270; [2001] QCA 312 at [6]; *Salvo v New Tel Ltd* [2005] NSWCA 281 at [33]-[34]; *Compass Resources Ltd v Sherman* (2010) 42 WAR 1 at [69].

41 *Walker v Corboy* (1990) 19 NSWLR 382 at 397-398.

separate or mixed with the recipient's other property;[42] but this is not determinative.[43] Accounting treatment can be relevant.[44] Money provided for the general purpose of investment is too vague to give rise to a *Quistclose* trust.[45]

B. Was there a Quistclose trust?

[62] Applying those principles, I find that the defendants have not discharged their onus of proving the relevant money transferred from the ADKA Account to Laxton Fields was held by ADKA on a *Quistclose* trust.

[63] The defendants only offer two general categories of evidence in support of the existence of a *Quistclose* trust:

(a) first, Ms O'Grady and Mr Gleeson's evidence that they intended, in line with advice from an accountant, to use the ADKA Account purely as a "conduit" account for intercompany and intragroup transactions to make accounting easier;

(b) second, the ADKA Account bank statements, which the defendants say nearly always show a deposit and a subsequent matching withdrawal/s a short time later.

[64] Ms O'Grady and Mr Gleeson's evidence is that, after the failed transaction to purchase the sawmill, ADKA and the ADKA Account "sat idle and [were] not utilised by [them]" until about November 2017. They say that ADKA "did not and has never traded" and "conducted no activity".

[65] The defendants maintained throughout cross-examination and in their submissions that the ADKA Account was solely used as a "conduit" account, that ADKA never traded, and that money in the ADKA Account was never beneficially ADKA's. Rather, the money that transited through the ADKA Account was said to have always been held on a *Quistclose* trust. They say that the ADKA Account was used for payments from MTT Hardwoods and MTT Australia, which are said to be the operational entities, for "goods, services and drawings" to Ausyan and Laxton Fields. The defendants submit this is supported by the ADKA Account bank statements nearly always showing a deposit and a subsequent matching withdrawal/s a short time later.

[66] None of that is borne out in the documentary evidence; indeed, the documentary evidence contradicts that in many respects.

[67] Ms O'Grady and Mr Gleeson also give evidence that in November 2017 their day-to-day accountant, Ms Austin, advised Mr Gleeson to use the ADKA Account "as a conduit account for the receipt and disbursement of funds that had been paid to the MTT business for a specific purpose" because "it would be the simplest way of

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42 *McManus RE Pty Ltd v Ward* [2009] NSWSC 440 at [25]; *Peter Cox Investments Pty Ltd (In liq) v International Air Transport Association* (1999) 161 ALR 105 at 118 [49] (FCA); *Gliderol v Hall* (2001) 80 SASR 541 at 549; *Compass Resources Ltd v Sherman* (2010) 42 WAR 1 at [70], [89]-[100].

43 See generally *Re Australian Elizabethan Theatre Trust* (1991) 30 FCR 491 at 498; *Re Kayford Ltd (in liq)* [1975] 1 WLR 279 at 282; *Re Fada (Australia) Ltd* [1927] SASR 590.

44 See *Ausintel Investments Australia Pty Ltd v Lam* (1990) 19 NSWLR 637 at 646-647.

45 *Zhong v Wang* [2006] NZCA 242 at [88].

accounting for funds paid to entities within the MTT structure". That is pure hearsay evidence and in Ms O'Grady's case it is double hearsay.

[68] Whilst the hearsay evidence about the intended use of the ADKA Account was not objected to, that hearsay status significantly reduces its probative weight. The evidence could only go as far as showing Ms O'Grady and Mr Gleeson's subjective intentions, which are irrelevant because the enquiry is directed at objective intentions. Insofar as Mr Gleeson says he told Ms O'Grady about that advice, that is a prior consistent statement which again is given very minimal weight.

[69] Further, why that would be the simplest way of accounting is not explained. That is especially relevant because both parties submit, and I accept, that ADKA never prepared financial records in any form. The ADKA Account bank statements comprise the entirety of the company's books and records. ADKA undertook no accounting whatsoever, which undercuts the asserted purpose of simplifying group accounting. That this failure to keep financial records is an offence under s. 286 of the *Corporations Act* is not directly relevant to whether the money in the ADKA Account was held on trust (noting that the obligation to keep records extends to transactions undertaken as trustee), but it does impact Ms O'Grady and Mr Gleeson's credit.

[70] The failure to call Ms Austin again weighs against the defendants. This failure by the defendants, who bear the onus on this issue, to call Ms Austin when she is clearly more available to them and where they clearly ought know what her evidence would be, allows me to apply the principles discussed above. The Liquidators cannot be expected to call Ms Austin "blind",[46] not knowing what she would say. I therefore infer that her evidence would not have assisted the defendants' *Quistclose* trust case.

[71] Likewise, it is unfortunate that neither party adduced financial statements or accounting records for the relevant period, even from another entity like Laxton Fields.[47] This is despite the fact that some of the documents in evidence mention the existence of such records. For example, an email dated 11 December 2021 states that many financial statements are attached to it.[48] However, the document that the defendants adduced included only an MTT "progress update" dated December 2021, authored by Mr Gleeson. That progress update likewise states that many financial records are attached to it, but those other attachments were not adduced. What likely would be most helpful is one of the most basic accounting records – a general ledger. However, either one does not exist or one exists and was not adduced. Such records probably would have shed light on many of these issues, the records were within the ability of the defendants to adduce, and therefore I likewise infer that they would not have assisted the defendants' assertion of a *Quistclose* trust.

[72] As Ms O'Grady is the director of Laxton Fields, it certainly was within her power to adduce evidence of its financials. As the defendants bear the onus, this plays against them here.

46 See *Fabre v Arenales* (1992) 27 NSWLR 437 at 449-450.
47 Albeit a 2024 balance sheet and profit and loss statement for Laxton Fields were adduced.
48 Exhibit 7.

[73] Furthermore, the other contemporaneous documentary evidence is inconsistent with the supposed advice having occurred or at least with Ms O'Grady and Mr Gleeson having followed it:

(a) The earliest bank statements of the ADKA Account which are before the Court begin on 13 July 2017 and show dozens of incoming and outgoing transactions in the period until November 2017, meaning at least the purported November 2017 date of the advice is inaccurate.[49]

(b) The ADKA Account had an associated visa debit card, which was used to pay for what I infer to be personal expenses such as the "Worlds Greatest Sh Windsor", something from Amazon, something at the Sunshine Coast Airport, taxis, a rail fare, car hires, twice something at Marks & Spencer, and something at "Coffee and Chocolate Brisbane". That is inconsistent with the ADKA Account solely being used as a conduit. Either Ms O'Grady and/or Mr Gleeson were fraudulently misappropriating ADKA's money or *Quistclose* trust money to pay for personal expenses, or the expenses were related to ADKA, meaning it at least conducts activity and perhaps traded in its own right, or there is some other explanation not evident on the face of the evidence.

(c) The bank statements show that there were in fact many deposits by entities or persons other than MTT Hardwoods and Ausyan (most relevantly Laxton Fields), as well as many transfers to other entities in the group. This contradicts Ms O'Grady's evidence about the flow of funds being from the "operational" entities within the MTT Group.

(d) ADKA issued debentures in its own right (not even as trustee for the ADKA trust), and the consequent funds flowed into the ADKA Account. That indicates both that the ADKA Account was not being used as a conduit only and that ADKA did indeed trade in its own right.

(e) The Amended Defence pleads that ADKA was not the trustee of the ADKA Trust at all relevant times.[50] However, there were tendered ADKA Trust accounts and tax returns.[51] Ms Austin only prepared those accounts and tax returns in 2025, at the behest of the new trustee of the ADKA Trust, Ausyan (of which Mr Gleeson is the sole director). Seemingly, all Ms Austin had to prepare those accounts was the bank statements and Ausyan's assurances. Ms Austin's compilation report accompanying each year's records states they are entirely based on information provided by Ausyan and she has not reviewed the accuracy of that information. The financial statements are limited to income statements, cash flow statements, and balance sheets and do not include anything resembling a general ledger.

(f) The ADKA Trust accounts and tax returns show millions of dollars of intragroup loans going back to 2017, including loans from ADKA.[52] The fact that ADKA apparently loaned money to the ADKA Trust again indicates that ADKA traded in its own right.

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49 Albeit Laxton Field's statements, which begin on 6 January 2017, record the first transaction with ADKA as happening on 1 November 2017.

50 At [11(f)], [20(d)].

51 Exhibit 18.

52 Exhibit 18.

(g) Laxton Fields' balance sheet as at 30 June 2024 (the only Laxton Fields balance sheet in evidence) shows a $125,000 loan owing to "ADKA atf ADKA Investments Discretionry [sic] Trust". If the ADKA Account were really solely used as a conduit, Laxton Fields should not owe it any money; the balance sheet should instead show a loan to the entity that transferred the relevant money (by routing it through the ADKA Account). Further, the ADKA Trust balance sheet records as an asset a $268,190 loan to Laxton Fields.[53] The inconsistency between the two figures undermines the reliability of both documents.

(h) Whilst the bank statements show dozens of transfers per month from and to entities within the MTT Group, those transfers less commonly show an exactly matching incoming and outgoing amounts (which would be more consistent with a mere conduit) and instead usually show a large deposit (most commonly from MTT Hardwoods) followed by smaller distributions within the group. This could mean that ADKA is doing some work, namely determining the proper distribution of funds within the MTT Group.

(i) On 18 April 2024, Ms O'Grady caused MTT Australia to lodge a formal proof of debt in ADKA's liquidation for $429,892. The form purports that debt to be for "[t]rading transactions" incurred on 21 April 2023, the date of the liquidation. On the same day, Mr Gleeson likewise caused MTT Hardwoods to lodge a formal proof of debt for $706,346.37 in trading transactions purportedly incurred on 21 April 2023. Both forms attempt to lodge those proofs of debts in ADKA, not ADKA as trustee, albeit they both attach tables of the transactions said to constitute those debts which are titled "ADKA Investments Discretionary Trust". None of that is consistent with ADKA never trading and being used only as a conduit; if that were the case, related entities would not be claiming ADKA owed them debts.

Mr Gleeson gives evidence, and the defendants generally submit, that it is relevant that the Liquidators did not accept those proofs of debts. The submission goes no further than that, but I infer the intended conclusion to be that the proofs of debt should not be given weight as the Liquidators do not consider the underlying debts actually to exist. However, I give them weight for another reason which is valid regardless of their accuracy: they show that Ms O'Grady and Mr Gleeson (and the relevant companies) considered a large portion of the money that passed through ADKA not to be held on *Quistclose* trust but rather to be loans to ADKA.

(j) Those proofs of debts also have an "X" mark in a box next to the statement "I am **not** a related creditor of the Company" (emphasis in original). Related creditor is defined within the form as a "Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust". Those checkmarks are therefore false. MTT Hardwoods and MTT Australia are related companies given Ms O'Grady and Mr Gleeson together own ADKA, are both past directors of ADKA, are each directors of MTT Hardwoods and MTT Australia, and an entity seemingly controlled by one or both of them (Tilusa Holdings Pty Ltd) owns 70% of those companies' parent – MTT International.

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[53] Exhibit 18.

Right under that statement is another where a box can be marked if the person *is* a related creditor and a blank space is available to describe the particular relationship. That box was not marked with an "X" and that blank space was not populated.

This reduces Ms O'Grady and Mr Gleeson's credit and tends against me accepting their evidence.

(k) The bank statements for Laxton Fields show receipts from entities in the MTT Group other than ADKA. That is inconsistent with all intragroup transfers passing through ADKA.

(l) Mr Clout, in his expert opinion, says that there is no such thing as a "conduit account" in accounting, and I am unable to find meaningful reference to any such thing in the cases.

[74] In light of those glaring inconsistencies, I reject Ms O'Grady and Mr Gleeson's evidence that the ADKA Account was used only as a conduit account to make accounting simpler and that ADKA never traded.

[75] It is appropriate to address here a complaint the defendants make about the presentation of the evidence by Mr Clout for the Liquidators and consequent dangers of misleading impressions. The complaint seems to arise from circumstances in which the Liquidators initially (some years ago) served redacted versions of the ADKA Account bank statements which obfuscate transactions that would tend to support the defendants' conduit account case (matching transactions not involving Laxton Fields). Much was made of this at trial, both in cross-examination of Mr Clout and in written and oral submissions.

[76] However, the defendants complained to the Liquidators about this at the time those redacted statements were provided. The Liquidators capitulated and provided the unredacted versions well before trial. The complete and unredacted statements were in evidence.

[77] I consider the defendants' ongoing complaint to be baseless and will not draw any inferences from the Liquidators' earlier provision of redacted bank statements. In any event, I have only had regard to the unredacted statements in coming to my decision.

[78] The defendants also ask me to draw inferences adverse to Mr Clout because he "conceded" in cross-examination that he did not analyse the financial statements and tax returns of the ADKA Trust when the defendants provided them to Mr Clout about a week before trial. The defendants submit this shows Mr Clout's bias. However, despite Mr Clout providing expert opinion evidence in some respects, I have not found any of it to be particularly helpful (except in respect of him not recognising the existence of a conduit account in the world of accounting). Similarly, I do not consider Mr Austin's ADKA Trust accounts (exhibit 18) to be particularly helpful or reliable for the reasons discussed above. I rely on my own analysis of the ADKA Account, not Mr Clout's and not Ms Austin's.

[79] Where does that leave the analysis? The only objective evidence that remains that could support the defendants' assertion of a *Quistclose* trust is the ADKA Account

bank statements. However, that is insufficient to discharge the burden of proof for the above reasons and three further points.

[80] First, the defendants' *Quistclose* trust case must fail because it assumes that the various entities in the MTT Group owned the money that they sent through ADKA purportedly on a *Quistclose* trust, but the defendants do not adduce any evidence to prove up that assumption. Just as the Liquidators must prove that ADKA owned the relevant funds beneficially, so too must the defendants when they say the money was instead beneficially that of various other entities. Whilst the Liquidators have adduced the ADKA Account bank statements, and I consider that sufficient for a prima facie case of beneficial ownership, the defendants have not adduced the various other entities' bank statements.

[81] Second, I have rejected the defendants' contention that all monies were sent through the ADKA Account merely as a conduit. Therefore, evidence as to the purpose of each transaction said to be made on *Quistclose* trust is necessary. In fact, evidence as to the purpose for even a selection of the relevant transactions said to be made on *Quistclose* trust might have been sufficient to allow an inference to be drawn as to all of the transactions. But there is no evidence of purpose in relation to any of the transactions.

[82] Third, the most powerful factor is that there was extensive intermixing within the ADKA Account of ADKA's own funds (eg, from the debentures it issued or from funds held for the ADKA Trust, which is discussed below) and the funds purportedly held on *Quistclose* trust.[54]

[83] As a consequence of the extensive intermixing, it is not possible to identify the source of particular money that was transferred to Laxton Fields, and the defendants do not attempt to do so. How can I make a *Quistclose* trust finding, which requires strong evidence of the parties' intentions, when the defendants do not even identify the source of particular money said to be held on *Quistclose* trust? The most they say (and I infer this given their submissions do not say it explicitly) is that the source was some entity within the MTT Group and, because they controlled that entity, they must have had the requisite intention regardless of which particular entity is the source. However, even if I were to accept that, the potential sources of the money are not only entities within the MTT Group. There is also extensive intermixing with money transferred from external entities, such as payments for debenture principals and (as will be discussed below) payments for shares in MTT International held by ADKA as trustee of the ADKA Trust.

[84] For those reasons, I reject that any of the money was held on a *Quistclose* trust.

[85] One final matter to address is that the defendants seem to submit in their written closing submissions that a formal *Quistclose* trust finding is not necessary to negate ADKA's beneficial ownership.[55] The fact that the ADKA Account was used as a conduit or clearing account, shown by "significant incoming and outgoing flows,

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[54] See *McManus RE Pty Ltd v Ward* [2009] NSWSC 440 at [25]; *Peter Cox Investments Pty Ltd (In liq) v International Air Transport Association* (1999) 161 ALR 105 at 118 [49]; *Gliderol v Hall* (2001) 80 SASR 541 at 549; *Compass Resources Ltd v Sherman* 2010) 42 WAR 1 at [67], [89]-[100]; *Re Australian Elizabethan Theatre Trust* (1991) 30 FCR 491 at 498; *Re Kayford Ltd (in liq)* [1975] 1 WLR 279 at 282; *Re Fada (Australia) Ltd* [1927] SASR 590.

[55] [13]-[18], defendants' closing submissions.

sometimes close in amount and timing", is said to be sufficient.[56] They say a company "may hold funds as trustee, agent, or conduit". However, the defendants cite no authority for those propositions and there is no basis in law for them.

[86] Money in a person's bank account is in that person's possession, which strongly indicates at least legal ownership.[57] Equity may not ultimately regard that person as the *beneficial* owner of the money, but that must be shown by some form of intervention, such as by that person holding the money on trust for someone else. There may also be other intervening features such as bailment. However, describing a person's transitory possession of money as a "conduit" is not a legal basis on which to assert the person does not beneficially or legally own that money. A plaintiff cannot be expected to negative every possible basis on which it may be said that the plaintiff is not legally or beneficially entitled to something in their possession when none of those bases have been articulated by the defendant beyond mere bare assertions. Therefore, I reject the defendants' submission in this respect.

C. Did ADKA hold any of the money for the ADKA Trust?

[87] As discussed above, the evidence shows that ADKA was the trustee of the ADKA Trust for nearly the entire claim period. The documents also show that ADKA held some of the money in the ADKA Account on trust for the ADKA Trust. For the below reasons, the money sent to Laxton Fields which is sourced from external parties paying ADKA for shares in MTT International is properly characterised as being held for the ADKA Trust. The Liquidators' claim in respect of transfers sourced in such funds fails.

[88] A historical company search of MTT International dated 12 December 2022 records in the "Share/Interest Holding" section, under the sub-heading "Ceased/Former", that ADKA formerly held 70 of the 100 shares in MTT International. The search also records that ADKA did not hold those shares beneficially, implying it held them on trust. As will be seen, that is likely to be the ADKA Trust.

[89] In about 2018, Dr Gaulton and Mr McRae bought shares in MTT International. This is indicated by their oral evidence, emails in evidence, deposits into the ADKA Account, a file note created by the Liquidators contemporaneously to a telephone conversation with Mr Gleeson on 24 April 2023, share certificates, and one share transfer certificate. The file note also records that the shares were not issued but rather already existed and were transferred. It does not explicitly state that the shares were transferred from ADKA, but that is presumably the case given the Liquidators were only liquidating ADKA. Dr Gaulton and Mr McRae transferred $200,000 to ADKA on 19 March 2018, and a further $50,000 each on 13 July 2018. That amounts to six shares at $50,000 each, which is consistent with the emails concerning the share purchases and is still how many shares they hold.

[90] Further, Mr Clout's affidavit exhibits a document titled "Transfer of Shares". That document records that ADKA "atf ADKA Investment[s] Discretionary Trust" transferred one share in MTT International to Mr McRae (in his capacity as trustee for the McRae Superannuation Fund). The execution blocks are dated 23 and 29 April 2018 for each of Ms O'Grady (for ADKA) and Mr McRae. The share certificate

[56] [15], defendants' closing submissions.

[57] *Re Bellpac Pty Ltd (in liq)* [2013] FCAFC 48 at [30]; *Russell v Wilson* (1923) 33 CLR 538 at 546-547.

for that share is likewise dated 23 April 2018. There is only this single share transfer record in evidence. Despite that, the jump is not far to the inference that all money that ADKA received for shares was received in its capacity as trustee. However, I do not need to positively make that inference to conclude, as I do, that the Liquidators have not discharged their burden in respect of any of the claimed money that is sourced in funds from Dr Gaulton and Mr McRae's share purchases.

[91] The bank statements show several other deposits into the ADKA Account from current shareholders for $50,000 or multiples of that amount. That is consistent with the evidence that 30 of the shares in MTT International are owned by external parties (six of those being held by Dr Gaulton and Mr McRae). I conclude likewise that the Liquidators have not discharged their burden in respect of any of the claimed transfers that are sourced in funds (1) from a shareholder in MTT International; (2) which are a multiple of $50,000; and (3) which do not bear some description which indicates the transfer was not one in respect of shares.[58] The only transactions which fit that description are:

(a) $50,000 from Colin Illingworth on 29 January 2018;

(b) $100,000 from Colin Illingworth on 13 February 2018;

(c) $200,000 from Dr Gaulton and Mr McRae on 19 March 2018;

(d) $50,000 from Colin Illingworth on 23 March 2018;

(e) $50,000 from Colin Illingworth on 17 April 2018;

(f) $50,000 from Gaulton Super Fund and $50,000 from McRae Super Fund on 13 July 2018;

(g) $100,000 from Jane Ellen Blue on 23 July 2018.

[92] I find that all other money in the ADKA Account was ADKA's own money.

[93] The question then is how to treat the transfers to Laxton Fields which are sourced in a mixture of trust money (share purchase funds held for the ADKA Trust) and ADKA's own money; no transfers to Laxton Fields are sourced purely from trust money.

[94] Because the Liquidators bear the burden of proof and failed to make any submissions on this issue, I find that all transfers to Laxton Fields which are sourced in that mixed fund are not transfers of ADKA's money beneficially held. That amounts to $137,950. The individual transfers to Laxton Fields on which the Liquidators' claim fails are set out in Annexure A. Those figures are then struck through in Annexure B (the relevance of which I will address below).

[95] Annexure A was arrived at by:

[58] For example, several transfers from Mr Collin Illingworth, a current shareholder, are multiples of $50,000 but their descriptions state they were for debentures.

(a) noting the balance in the ADKA Account on the day before each of the incoming transfers set out at paragraph [91][59] (this can be referred to as the starting balance);

(b) noting when the balance in the ADKA Account then drops back below the starting balance;

(c) looking to see what transfers were made out of the ADKA Account in the intervening period;

(d) assuming that such transfers were made from a mixed fund and therefore wholly not recoverable by the Liquidators.

[96] By way of example, in respect of the Illingworth transfer on 29 January 2018 of $50,000:

(a) the balance of the ADKA account on 28 January 2018 was $507.26;

(b) the balance of the ADKA account dropped back below $507.26 on 6 February 2018;

(c) in the intervening period, three transfers were made from the ADKA Account to Laxton Fields – $250 on 30 January 2018, $500 on 1 February 2018 and $35,000 on 2 February 2018; having been made from a mixed fund, those amounts are not recoverable by the Liquidators.

[97] I make one exception to the above approach. That is with respect to the transfer of $200,000 from Dr Gaulton and Mr McRae on 19 March 2018. Using the above method, the opening balance of the account would be taken to be $26.81. The balance does not drop below that figure until 26 September 2026 ($10.13). That would eliminate about $300,000 of the Liquidators' claim. However, in that approximately six-month period, the account balance drops very low at several times. Recognising that my approach is already a broad-brush approach that likely overestimates the transfers that are not ADKA's own money, following my method in respect of this transaction would lead to an unjust result. Therefore, I instead stop any deductions from the Liquidators' claim from 20 April 2018, when the account balance reaches $635.98. That results in a more reasonable deduction of $31,700.

[98] The quantum of the claim is then calculated by summing the transfers to Laxton Fields (less the $137,500 struck out above) and deducting from that the transfers *from* Laxton Fields. This results in $1,125,040. That calculation is set out in Annexure B.[60]

[99] The Liquidators then make a submission that, in respect of the $137,500 of trust funds, "ADKA has an equitable charge over the trust assets transferred in breach of trust to satisfy its right of indemnity from the trust assets for the liabilities it incurred while acting as trustee".[61] However, nowhere in the pleadings nor in the evidence is

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59 That means if share money and other moneys were received on the same day, the apparent order of receipt in the bank statement is ignored and I take the balance from the day before.

60 I note some transfers to Laxton Fields appear in the bank statements but do not appear in the Liquidators' statement of claim and therefore do not properly form part of it. On the other hand, some transfers *from* Laxton Fields were omitted from the statement of claim. I *have* included those in the calculation.

61 Page 2 [8], opening submissions.

there anything relevant to that submission. There is no evidence that the "trust assets" (ie, the $137,500) still exist such that an equitable charge could be imposed over them. Why the transfers were made in breach of trust also is not explained, and it would be very difficult to prove without at least the trust deed of the ADKA Trust being in evidence. In fact, there were no documents relating to the ADKA Trust in evidence other than the Deed of Retirement and Appointment of Trustee dated 3 January 2023 and the newly created tax returns and financial statements mentioned above.[62] Therefore, I do not accept that submission.

V. Was Mr Gleeson a de facto or shadow director of ADKA?

[100] The next issue is whether Mr Gleeson was a de facto or shadow director at any time between 7 December 2017 and 1 January 2023. The consequence would be that Mr Gleeson owed the same duties as an appointed director. Mr Gleeson was appointed a director of ADKA on 1 January 2023, so in the remainder of the claim period until 27 January 2023 he owed those duties in any event.

[101] Directors of corporations are not just those that are appointed to that position. Under the *Corporations Act*, directors are also those persons who act in the position of director (de facto directors) and those in accordance with whose instructions or wishes the appointed directors act (shadow directors).[63] As the Full Court recognised in *Grimaldi v Chameleon Mining NL (No 2)* (***Grimaldi***), the same may be true at general law.[64] But, like in that case, in this case it is not necessary for me to determine the extent to which the general law operates in this area because the statutory relief against Mr Gleeson is sufficient to dispose of the case. (I note, however, that I consider the arguments compelling for de facto directors in equity owing, as a matter of course, the same fiduciary duties as appointed directors.)

A. Was Mr Gleeson a de facto director?

[102] Whether a person is a de facto director is determined objectively.[65] De facto directors can include a person who purports to resign as director, as Mr Gleeson did, but continues to act as director.[66]

[103] Halley J recently distilled the applicable factors regarding de facto directors from *Grimaldi*,[67] with which distillation I agree, as follows:[68]

> (a) to be a de facto director, a person must be shown to have assumed or performed functions which only a de jure director

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[62] Exhibit 18.

[63] Section 9AC(1)(b), *Corporations Act 2001* (Cth). The definition of 'director' was formerly contained in s. 9 until repeal by the *Treasury Laws Amendment (2023 Laws Improvement Package No. 1) Act 2023* (Cth), which was assented to after the end of the claim period. The definitions are not materially different.

[64] (2012) 200 FCR 296 at 321 [62], citing *Corporate Affairs Commission v Drysdale* (1978) 141 CLR 236 and *Emanuel Management Pty Ltd (in liq) v Foster's Brewing Group Ltd* (2003) 178 FLR 1 at 69 [248]-[249].

[65] See, eg, *Smithton Ltd v Naggar* [2014] EWCA Civ 939 at [39]; *BCI Finances Pty Ltd (in liq) v Binetter (No 4)* (2016) 117 ACSR 18 at [241].

[66] *Williams v Bearing Traders Pty Ltd* (2008) 69 ACSR 334.

[67] *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296 at [62]-[76], affirmed in *R v Young* (2021) 8 QR 68 at [90].

[68] *Hayes (liquidator), in the matter of Container Freight Services Pty Ltd (in liq) v Sinadinos* [2024] FCA 885 at [18], referring also to *In the matter of ACN 092 745 330* [2017] NSWSC 241 at [110]-[113].

or board can properly perform, or which are the sole responsibility of a director or board;

(b) any comparison of what an alleged de facto director does, however, with the things that are done by duly appointed directors, must take into account the fact that what is to be done in the field of management of business and affairs by an individual director will vary from company to company, according to the particular company's circumstances;

(c) the existence of active directors or a properly constituted and apparently functioning board does not preclude a finding that an alleged de facto director was a director;

(d) whether the company has held the alleged de facto director out as a director will be a relevant, but not decisive, consideration;

(e) the focus of the consideration is on the way the alleged de facto director operates within the particular corporate governance context, the degree of autonomy exercised, and the appearance (and reality) of authoritative operation as a primary level decision maker for the company;

(f) it may be useful to direct attention to the following considerations:

(i) whether the person has assumed responsibility to act as a director;

(ii) the nature of the corporate governance structure and the position the person occupies within it;

(iii) what the person actually did, as distinct from any job title;

(iv) the cumulative effect of the activities relied on, with the whole of the circumstances being looked at "in the round";

(v) whether the company regarded the person as a director and held them out as such;

(vi) whether third parties considered that the person was a director; and

(vii) whether the person was consulted about or participated in directorial decisions.

[104] Mr Gleeson submits that he was not a de facto director of ADKA. Keeping in mind that the Liquidators bear the onus of proof, the only evidence Mr Gleeson adduces is his and Ms O'Grady's blanket statement that everything he did in relation to, or on behalf of, any of the entities of which Ms O'Grady was the sole director was done with her knowledge and at her direction. I do not accept that evidence for the following reasons.

[105] First, there are very few contemporaneous documents in support of that assertion, and the most favourable contemporaneous document is one in which Mr Gleeson states

that his "brutally tough Managing Director", Ms O'Grady, requests that Mr Gleeson prepare an annual shareholders' update. Mr Gleeson was the one who then authored that update. Ms O'Grady's name does not appear (expressly or by implication) even once in that 13-page document. By contrast, there are many contemporaneous documents supporting the inference that Mr Gleeson was a de facto director, which I will discuss below.

[106] Second, Ms O'Grady and Mr Gleeson's affidavits are in extraordinarily many relevant respects direct copies of each other, meaning they cannot be the witness' own words. The most ironic example is in Mr Gleeson's affidavit:

> Any discussions or involvement that **I** had in relation to, or on behalf of entities the conduct of entities [sic] that my wife was the director of was done with **her** knowledge and direction.

[107] Ms O'Grady's affidavit instead reads:

> Any discussions or involvement that **I** [sic – should say Mr Gleeson] had in relation to, or on behalf of entities the conduct of [sic] entities that I was the director of was done with **my** knowledge and direction.

[108] It appears that the word "I" was copied from Mr Gleeson's affidavit and not changed to "Mr Gleeson" in Ms O'Grady's affidavit.

[109] Third, I draw on the many inconsistencies in Ms O'Grady and Mr Gleeson's evidence I highlighted above in the *Quistclose* trust section.

[110] For those reasons, I reject Ms O'Grady and Mr Gleeson's blanket statement.

[111] Coming now to the application of the relevant factors and the Liquidators' case, I discussed the corporate structure of the MTT Group above. Most relevantly, Ms O'Grady and Mr Gleeson ran the business together, with one or both being a director of each entity within the MTT Group. In addition, ADKA was an entity in the MTT Group, Mr Gleeson was previously a director of ADKA, and Ms O'Grady and Mr Gleeson were the only management-level staff in the group (employing only low-skilled labour).

[112] By Mr Gleeson's email signatures, he held himself out as "operations manager" of MTT Hardwoods. However, he used that signature block even when discussing the ADKA debentures, including their repayment. At no point in the emails did Mr Gleeson distinguish on behalf of which entity he was acting or corresponding. I therefore conclude that Mr Gleeson held himself out as operations manager of ADKA as well. (I note in this respect that the defendants object to the making of a finding that Mr Gleeson was the operations manager/de facto director of the entire MTT Group, saying that the plaintiffs should be held to their pleadings, which did not plead that Mr Gleeson held a senior position in the *whole* MTT Group. I do not make that finding and in any event it is unnecessary for my conclusion on ADKA's directorship.)

[113] Further, Mr Gleeson also described himself as "CEO/CFO" of all the entities in an email dated 19 December 2022. Mr Gleeson sent that email in response to a letter of demand dated 13 December 2022 concerning the repayment of the debentures to Dr Gaulton and Mr McRae. The lawyers for Dr Gaulton and Mr McRae sent that letter

of demand to Ms O'Grady only, presumably having done a company search and seeing that she was the sole director of ADKA at the time. However, Ms O'Grady immediately forwarded the letter and email to Mr Gleeson. In Mr Gleeson's response, he stated:

> I have been forwarded your email and letter sent through to Kathryn O'Grady/ADKA Investments.
>
> Please be advised **I am CEO/CFO** for the entities and related business operations. **I have also been the person meeting and communicating** with Catherine [Gaulton] and Max [McRae] in these matters. As such I will take up the communications and **for all future communications can you please direct them to me unless advised otherwise**.
>
> …
>
> I have provided Catherine and Max with written updates with the latest one being as recently as early this month indicating we are hopeful of re-commencing monthly debenture payments shortly, but this will not be at the detriment of what is in the best interest of the business and its shareholders .... Which they are one of.
>
> …
>
> Please do not hesitate to call/be in touch to discuss further otherwise I will commit to come back to you in further regard to it by the end of January with the aim of putting forward a supportable resolution.

[114] Apart from the opening sentence, this email does not mention Ms O'Grady. Mr Gleeson does not, in his evidence, explain why he described himself as CEO/CFO of ADKA, nor Ms O'Grady's involvement, if any, in the preparation of that email. The only thing he proffers is the blanket statement that everything he did was done at Ms O'Grady's direction.

[115] In cross-examination, Mr Gleeson accepted:

(a) he was in fact the CEO and CFO of ADKA, although no specific timeframe was mentioned;

(b) his duties included "generally handling a – all admin and documental matters", which he said meant "any communications with debenture holders, processing, you know – um – transactions through the account";

(c) he was responsible for the high-level management of the company.

[116] Returning to the MTT "progress update" dated December 2021 discussed above, the cover page identifies Mr Gleeson as its sole author.[69] Mr Gleeson also sent the covering email, which was dated 11 December 2021. The email was sent to Mr McRae and Dr Gaulton. Along with the progress update, it also supposedly attached all the MTT Group's financial statements, but as mentioned these were not adduced in evidence.

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69 Exhibit 7.

[117] Ms O'Grady is not mentioned in the covering email, nor the progress update, and nor is she even copied to it. Mr Gleeson did not adduce any specific evidence regarding Ms O'Grady's involvement in the preparation of this email and progress update. That is something that would be purely within the knowledge of the defendants. The email also post-dates the defendants' email server crash, which deleted all earlier emails. So, if there were any supporting emails, the defendants would have been able to produce them.

[118] That is also not the only progress update in which similar themes are apparent. Mr Gleeson is the one who sends the update and signs off on it. Ms O'Grady is either not mentioned or only by reference to her asking him to provide an update. Often, Ms O'Grady is not even copied to the relevant update email.

[119] Indeed, there are only two substantive emails in evidence that Ms O'Grady sent. Mr Gleeson sent every other email in evidence from the MTT Group, of which there are dozens. Ms O'Grady's name is only prominent in the execution blocks of the various documents.

[120] It is also very unclear what were Ms O'Grady's roles, tasks and responsibilities in the MTT Group. Neither Mr Gleeson nor Ms O'Grady gave evidence beyond a blanket statement that she oversaw the general direction of the MTT Group. In contrast to Mr Gleeson's title ostensibly being "Operations Manager", shown by the affidavits and email signatures, nowhere in the evidence is it stated what is Ms O'Grady's title beyond "director" or "secretary" or "managing director".

[121] When Dr Gaulton and Mr McRae were considering reducing their debenture holdings with ADKA, they corresponded solely with Mr Gleeson. In fact, despite Dr Gaulton and Mr McRae wanting to have the debenture principal returned since around 15 April 2019,[70] Ms O'Grady (in one of the few emails in evidence authored by her) emailed Dr Gaulton on 23 June 2021 stating that she "had no idea there was so much anxiety regarding the Debenture funds being returned within the time frame you have provided".

[122] That Ms O'Grady had "no idea" is telling in the circumstances where the debenture terms expired, at the latest, in November 2019 – 1.5 years earlier.[71] Mr Gleeson had been corresponding about Dr Gaulton and Mr McRae's concerns since at least 18 April 2019 about the return of the funds. On 24 March 2021, Mr McRae gave Mr Gleeson "formal notice" for the return of the $500,000 debentures by March 2022. Mr Gleeson responded saying they would pursue options to meet that timeline. On 19 April 2021, Mr McRae emailed Mr Gleeson again, stating "You can surely understand our position and concern as the investment we have with you ($800,000) is totally unsecured and causing us altogether too much stress". Mr Gleeson responded on 21 April 2021, saying "I will be doing whatever possible to meet your timeline".

[123] Ms O'Grady's email on 23 June 2021, after expressing her ignorance of the debenture issues, then provides a brief reassurance that they were working to get the funds

70 "[W]e would both like [sic] terminate the debenture arrangement as soon as possible to comply with out tax obligations."

71 The debenture terms originally expired six months from May 2018, with an option to negotiate a 12-month extension.

returned. Otherwise, the majority of the email concerns social matters. That stands in stark contrast to Mr Gleeson's many emails in which he extensively discusses business-related topics such as financial and accounting matters, growth projections, strategic directions and operational matters.

[124] Several other matters can be stated briefly. Mr Gleeson negotiating with creditors to repay a company debt and being the one to deal with the company's accountants (Ms Austin and Brilliance for Business) is similar to the situation in *Deputy Commissioner of Taxation v Austin*,[72] in which, like ADKA, the relevant company also had limited functions. In that case, the relevant person was found to have been a de facto director. Additionally, after ADKA entered liquidation, Mr Gleeson was the person to fill out the Liquidators' form which asked questions about the previous four years (including before January 2023 when he says he was not a de facto director).

[125] Whilst I have concluded otherwise, Mr Gleeson's own evidence is that all ADKA did was funnel money through the ADKA Account, and he was the one to action the transfers through his mobile banking app. Given Mr Gleeson thought that ADKA did nothing else, he must have regarded himself as director given he thinks he was the only one who caused the company to act in any way. Mr Gleeson was also a signatory to the ADKA Account for the entire claim period.

[126] Finally, the fact that the affidavits are in extremely large parts identical (with pronouns replaced) itself indicates that Ms O'Grady and Mr Gleeson were likely acting as one and making decisions together, with neither directing the other. I do not afford much weight to that though.

[127] In conclusion, Mr Gleeson was the one to negotiate the issuing and repayment of debentures. Mr Gleeson asked outsiders to direct all communications to him rather than Ms O'Grady when served with a statutory demand. Mr Gleeson operated the ADKA Account. Mr Gleeson sent all but two of the emails related to ADKA. And finally, Mr Gleeson was the only one to express views and plans about the strategic direction of ADKA. Everything points to Mr Gleeson having performed top level management functions and having been a de facto director. Therefore, I find that he was a de facto director throughout the entirety of the claim period until he was appointed as director.

B. Was Mr Gleeson a shadow director?

[128] Given my finding that Mr Gleeson was a de facto director, it is not necessary for me to consider whether he was a shadow director. However, given my above findings that the evidence does not show Ms O'Grady having any real role in the MTT Group beyond signing documents, I also conclude that Mr Gleeson was a shadow director of ADKA.

VI. Were the transfers to Laxton Fields breaches of the directors' duties?

[129] The next issue is whether the transfers to Laxton Fields were breaches of Ms O'Grady and Mr Gleeson's duties to ADKA as its directors. It is sufficient to set out the law only briefly as this is a clear case of breach.

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72 (1998) 28 ASCR 565.

[130] It is trite that directors owe duties to their company, including fiduciary duties,[73] statutory duties under ss. 180-182 of the *Corporations Act*, and common law duties. The Liquidators press:

(a) the statutory and fiduciary duties to act in good faith in the best interests of the company;[74]

(b) the statutory duty to act for proper purposes;[75]

(c) the statutory duty not to improperly use the director position to gain an advantage for themselves or someone else or to cause detriment to the corporation;[76]

(d) the statutory,[77] legal (tortious),[78] and equitable[79] duties to act with care and diligence.

[131] The High Court recently described the fiduciary relationship as "a relationship of 'absolute and disinterested loyalty' within the scope of which one party, the fiduciary, is recognised in equity as having a responsibility to act in the interests of the other party (or in their shared interests) to the exclusion of the fiduciary's own interests".[80]

[132] Although the Liquidators press all those duties, the case can be decided on just the statutory and fiduciary good faith duties. Given I did not decide whether Mr Gleeson was a de facto director apart from statute, and therefore whether he owed fiduciary duties to ADKA, only the statutory good faith duty applies to him, not the fiduciary equivalent.

[133] To the extent there are any differences in the statutory and fiduciary good faith duties,[81] that does not arise for determination in this case because Ms O'Grady clearly breached those duties on any assessment. As I have already mentioned, Ms O'Grady says that everything Mr Gleeson did (ie, each transfer he made to Laxton Fields) was with her knowledge and at her direction. Whilst I have rejected that everything was done at her direction, I accept that Ms O'Grady was aware of and consented to the transfers to Laxton Fields in general, even if she may not have been aware of and consented to each individual transfer. Therefore, if each transfer is a breach of duty, that breach is attributed to both Ms O'Grady and Mr Gleeson, regardless of which one of them actually processed the particular transfer.

[134] I also note the defendants did not raise a defence of informed consent, so I will not consider it.

[135] Ms O'Grady and Mr Gleeson owed their duties separately to each of the companies within the MTT Group, including ADKA. That issue arises commonly in groups of

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73 *Hospital Products Ltd v United States Surgical Corp* (1984) 156 CLR 41 at 96-97.

74 *Corporations Act 2001* (Cth) s. 181(1)(a); *Hospital Products Ltd v United States Surgical Corp* (1984) 156 CLR 41 at 102.

75 Section 181(1)(b), *Corporations Act 2001* (Cth).

76 Section 182, *Corporations Act 2001* (Cth).

77 Section 180, *Corporations Act 2001* (Cth).

78 *Daniels (formerly practising as Deloitte Haskins & Sells) v Anderson* (1995) 37 NSWLR 438 at 505.

79 *Permanent Building Society (in liq) v Wheeler* (1994) 11 WAR 187 at 236-238, 247-248.

80 *Naaman v Jaken Properties Australia Pty Ltd* (2025) 281 CLR 635 at [31].

81 See the discussion in LexisNexis, *Austin & Black's Annotations to the Corporations Act* (online at 29 April 2026) at [2D.181].

companies, especially smaller family-owned groups such as the MTT Group. As Clarke and Cripps JJA have remarked:[82]

> A particular difficulty arises when the directors of the particular company enter into the transaction on behalf of that company because they consider that the transaction is of benefit to the group as a whole and do not give separate consideration to the benefit of their company.

[136] Each company has its own interests because each company is a separate legal entity that can have its own shareholders and creditors. That is particularly so in this case because, whilst ADKA is in the MTT Group, it is not a wholly owned subsidiary of the parent – MTT International. Rather, it is half-owned by each Ms O'Grady and Mr Gleeson. In addition, ADKA issued debentures in its own name and therefore its directors should have had regard to the interests of ADKA's creditors at least when, as was the case for much of the claim period, ADKA was in financial difficulties.[83] This means Ms O'Grady and Mr Gleeson were obliged to have acted in good faith in the best interests of ADKA when making decisions for it or on its behalf, not merely the MTT Group as a whole.

[137] Whilst being in a fiduciary relationship "of itself signifies little, until the scope of [the] fiduciary obligations is assessed",[84] the scope of Ms O'Grady and Mr Gleeson's duties doubtlessly encompasses dealings with the ADKA Account as that was ADKA's principal asset.[85]

[138] Until recently it had been considered unsettled whether a subjective or objective test should be used and whether, in group situations, the director must in fact have subjectively considered the particular company's interests (and its interests alone)[86] or merely that "an intelligent and honest man in the position of a director of the company concerned, could, in the whole of the existing circumstances, have reasonably believed that the transactions were for the benefit of the company".[87] A director can fail the subjective test when no reasonable person in their position could have subjectively thought a particular action was in good faith in the company's best interests.

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82 *Equiticorp Finance Ltd (In liq) v Bank of New Zealand* (1993) 32 NSWLR 50 at 147, quoted in *Boros v Pages Property Investments Pty Ltd* (2021) 395 ALR 756 at 773-774 [69].

83 See LexisNexis, *Ford, Austin and Ramsay's Principles of Corporations Law* (online at 28 April 2026) at [8.140], citing *Walker v Wimborne* (1976) 137 CLR 1 at 6-7; *Nicholson v Permakraft (NZ) Ltd* [1985] 1 NZLR 242; *Equiticorp Industries Group Ltd (in Statutory Management) v The Crown (Judgment No 47)* [1998] 2 NZLR 481.

84 *Anderson v Canaccord Genuity Financial Ltd* (2023) 113 NSWLR 151 at 185 [126]-[127]. See also *Birtchnell v Equity Trustees Executors and Agencies Co Ltd* (1929) 42 CLR 384 at 408 (Dixon J), quoted with approval in *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296 at 346 [179]; *Naaman v Jaken Properties Australia Pty Limited* (2025) 281 CLR 635; [2025] HCA 1 at [81].

85 The facts of the case determine scope: *Howard v Federal Commissioner of Taxation* (2014) 253 CLR 83 at 100 [34], 108-109 [60]-[61], 119 [110].

86 See, eg, *Walker v Wimborne* (1976) 137 CLR 1 at 7.

87 *Charterbridge Corporation Ltd v Lloyds Bank Ltd* [1970] Ch 62 at 74-5; [1969] 2 All ER 1185 at 1194, applied in *Mernda Developments Pty Ltd (in liq) v Alamanda Property Investments No 2 Pty Ltd (in liq)* (2011) 86 ACSR 277; [2011] VSCA 392 at [37]. Considered in *Equiticorp Finance Ltd (In liq) v Bank of New Zealand* (1993) 32 NSWLR 50 at 147 and *Boros v Pages Property Investments Pty Ltd* (2021) 395 ALR 756; [2021] NSWCA 288 at 773-774 [69]. See the discussion in LexisNexis, *Ford, Austin and Ramsay's Principles of Corporations Law* (online at 28 April 2026) at [8.070], [8.140].

[139] Recent authority in an interstate intermediate court of appeal concluded that the subjective/objective test is a false dichotomy.[88] To avoid contravening s. 181(1) of the *Corporations Act*, a director must have honestly pursued the company's best interests, which imports a subjective element, but evidence as to that subjective state of mind is usually inferred from the objective surrounding circumstances which might contradict a director's statement about their subjective intentions.[89] I consider myself bound to follow that decision given it involves the interpretation of a Federal statute and is not clearly wrong.

[140] Ms O'Grady and Mr Gleeson's evidence is that they subjectively thought that every transfer to Laxton Fields was merely a conduit payment. They give no evidence as to why ADKA acting as a conduit was in ADKA's best interests, nor that they considered its best interests. Relevantly, the evidence gives the impression that Ms O'Grady and Mr Gleeson did not distinguish between any of the entities in the MTT Group, treating them all as one. The most compelling evidence of this is the extremely frequent circulation of money within the MTT Group. Seemingly, whenever a particular entity needed to pay for something and did not have sufficient funds, Ms O'Grady and Mr Gleeson would cause another entity to transfer that money to make up the shortfall. They "embarked on a course to support the group unconcerned about the detrimental effect of the action on the particular company or were prepared to sacrifice that company for the good of the other companies in the group".[90]

[141] This resulted in net payments from ADKA to Laxton Fields in excess of $1.2 million for no consideration. That could not have been in ADKA's best interests, and Ms O'Grady and Mr Gleeson could not have subjectively thought that it was. The defendants are the only ones who might be able to point to any benefit to ADKA and whether they subjectively turned their minds to ADKA's interests in incurring such a substantial deficit. They have not adduced any favourable evidence on that point. As such, *Jones v Dunkel*- and *Blatch v Archer*-type considerations allow me to draw the inference that any such evidence would not have helped the defendants. I can also reach the state of actual persuasion of the Liquidators' case on more slight evidence than I would otherwise.

[142] Furthermore, despite the external equity and debt investments in the MTT Group, the evidence indicates that Ms O'Grady and Mr Gleeson also often did not even distinguish between the group and *themselves*. For example, the Laxton Rd Property was purchased using MTT Group funds, including funds from ADKA. However, the property is held on trust for the LF Trust, which has Ms O'Grady as its sole potential beneficiary. Therefore, despite the MTT Group paying for at least some (if not most) of the purchase price, it does not retain any beneficial interest in the property. Further, neither Ms O'Grady nor Mr Gleeson appear to have paid any rent for their use of the property. This means that any of the money transferred to Laxton Fields that was used to pay for anything in relation to the property – including mortgage repayments, improvements, and maintenance – is entirely to the benefit of the LF Trust and

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88 *Sunnya Pty Ltd v He* (2025) 427 ALR 583 at [29].

89 *Sunnya Pty Ltd v He* (2025) 427 ALR 583 at [24].

90 *Hindle v John Cotton Ltd* (1919) 56 Sc LR 625 at 630-631, quoted in *Equiticorp Finance Ltd (In liq) v Bank of New Zealand* (1993) 32 NSWLR 50 at 147 and *Boros v Pages Property Investments Pty Ltd* (2021) 395 ALR 756; [2021] NSWCA 288 at 774 [70].

consequently Ms O'Grady. ADKA obtained no benefit for its contribution to those expenses.

[143] Another example is that Laxton Fields' profit and loss statement for 2024 shows that Laxton Fields spent $1,000s on non-business-related expenses, such as "Horse Care", "entertainment" and "travel". The bank statements for Laxton Fields for years within the claim period show similar types of transactions. Ms O'Grady could not explain why Laxton Fields was incurring those costs. Why ADKA would transfer money to Laxton Fields to be used for those types of expenses (and what their benefit to ADKA was), which Ms O'Grady and Mr Gleeson must have known beforehand given they were the only people in charge of both companies' finances, also was not explained.

[144] For those reasons, I find that neither Ms O'Grady nor Mr Gleeson subjectively considered ADKA's interests in actioning the transfers to Laxton Fields, much less honestly pursued ADKA's best interests.

[145] In addition, no intelligent and honest person in Ms O'Grady and Mr Gleeson's position could have reasonably believed the transfers to have been for the benefit of ADKA. The transfers were entirely uncommercial and not in ADKA's interests. If they were loans, they were unsecured interest-free loans which were never repaid and for which, at the time they were made, the risk of Laxton Fields defaulting was too high.

[146] Before Laxton Fields purchased the Laxton Rd Property, any transfers to it were transfers to a company which held no assets and did not operate yet still incurred expenses. Those expenses included transfers to an entity described in the bank statements as "North Coast Equi", which I infer to be horse-related ("Equi" is likely a shortened form of "equine"). There were dozens of debit card purchases at "Tanawha Hay Shed", "Sandale Saddlery Glenview", "Pacific Paradise Vet" and other seemingly horse-related businesses. There were $1,000s of cash withdrawals at ATMs. There were transfers to Ms O'Grady's personal account and what appear to be $1,000s of debit card purchases for fruit. There were regular transfers to Travis Schultz for renting the Laxton Rd Property. It appears Laxton Fields paid the entirety of the rent and Ms O'Grady and Mr Gleeson lived there entirely for free.

[147] If the transfers were loans, loaning money to Laxton Fields in circumstances where Laxton Fields is spending very substantial amounts of money on non-business-related expenses, which Ms O'Grady and Mr Gleeson must have been aware of, cannot have been considered by any intelligent and honest person as providing a benefit to ADKA. There would have been no reasonable prospect of the money being repaid, much less with any interest.

[148] After the Laxton Rd Property was purchased, the above non-business-related expenses continued, and transfers from ADKA often went towards mortgage repayments instead of Travis Schultz. Laxton Fields' equity in the property may have increased, but the property continued to be held for the LF Trust, and therefore effectively for Ms O'Grady personally. In addition, Ms O'Grady and Mr Gleeson continued not to pay any rent for their use of the property.

[149] If the transfers were instead gifts or dissipations without consideration, there would not be any benefit to ADKA by definition and therefore the transfers would not have been in ADKA best interests.

[150] There is no discernible benefit to ADKA of loaning or sending money to Laxton Fields, which is not unexpected as cases have identified a similar difficulty in discerning benefits of loans between sibling companies like ADKA and Laxton Fields.[91]

[151] Although it is not necessary for ADKA to have obtained a direct benefit, it likewise did not obtain a sufficient indirect benefit from making those transfers. It is true that ADKA did make many interest payments for debentures it had issued in its own name and the money for those interest payments was paid to ADKA by other entities within the MTT Group. However, there was no evidence of a contract or any other even slightly certain arrangement. That is shown by the interest payments ceasing when it was no longer convenient for the group. The transfers to ADKA to make the debenture interest payments seem to have been entirely voluntary.

[152] The only possible argument would have been that ADKA transferred the monies to Laxton Fields and in exchange both Laxton Fields and the remainder of the MTT Group agreed to pay ADKA the interest payments that it would then pass on to the debenture-holders. However, there are several issues with this. First, the defendants did not raise or address this argument. Second, that argument could only apply to transfers made before the interest payments ceased in around 2021. Third, the payments to ADKA for the interest payments were only in the amount of the interest payments. Therefore, the only possible benefit to ADKA would have been the continued ability to meet its obligations to its creditors. ADKA did not receive any personal benefit for the risk it took on by sending money to Laxton Fields.

[153] Further, the evidence shows that Ms O'Grady and Mr Gleeson did not cause ADKA to prepare financial statements. Therefore, they did not know whether ADKA could continue to meet its obligations to creditors. Making transfers to Laxton Fields in those circumstances could not have been an honest pursuit in good faith of ADKA's best interests.

[154] Ms O'Grady and Mr Gleeson also breached their duties by being in a position of conflict in actioning each of the transfers. The conflict rule is as follows:[92]

> [T]he fiduciary is under an obligation, without informed consent, not to promote the personal interests of the fiduciary by making or pursuing a gain in circumstances in which there is a conflict or a real or substantial possibility of a conflict between [the] personal interests of the fiduciary and those to whom the duty is owed [or] between competing duties' owed to the principal and a third party.

[155] There are three types of conflicts, although they often overlap with each other and with the related no profit duty:[93]

> (a) [F]irst, a conflict between the personal interest of the fiduciary and the personal interest of the principal (a conflict of interest and interest);

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91 See, eg, *Reid Murray Holdings Ltd (in liq) v David Murray Holdings Pty Ltd* (1972) 5 SASR 386 at 402.

92 *Pilmer v Duke Group Ltd* (2001) 207 CLR 165 at 199 [78].

93 *Break Fast Investments v Rigby Cooke* [2021] VSC 398 at [105]. See also *Phipps v Boardman* [1965] Ch 992 at 1030.

(b) secondly, a conflict between the personal interest of the fiduciary and the fiduciary's duty to the principal (a conflict of interest and duty); and

(c) thirdly, a conflict between the fiduciary's duty to one principal and the fiduciary's duty to another principal (a conflict of duty and duty).

[156] Only a conflict of interest and duty needs to be considered here. A conflict exists if the relevant "interest is in opposition to, or in tension with, the [fiduciary] duty".[94] This is the case where there is a "significant possibility",[95] "a real or substantial possibility",[96] or "a real and sensible possibility that the interest might sway or influence an agent away from the proper exercise of its duties (which includes powers) to the principal".[97] This is an objective test taking into account all relevant facts and circumstances.[98]

[157] As set out at [146]-[148], the transfers were made in circumstances where ultimately Ms O'Grady and Mr Gleeson each personally benefitted in a substantial way. That created a conflict between their personal interests in continuing to receive those benefits and their duties to act in the best interests of ADKA.

[158] The *Blatch v Archer*-type consideration also factors into my reasons here, albeit less powerfully than for the *Quistclose* trust issue. The defendants submit that the Liquidators must prove breaches of directors' duties in respect of "which payments, in which amounts, and why those payments were outside the proper administration of the account". I do not consider that the Liquidators must be that precise and characterise each individual transaction. As discussed above, the character and purpose of each transaction can only be exclusively within the defendants' knowledge where ADKA kept no financial records which could otherwise assist in interrogating each transaction. The power of the Liquidators was limited to taking a more broad-brush approach.

[159] For those reasons, bearing in mind the seriousness of the allegation of a breach of fiduciary duties and the gravity of the consequences that will follow, I am satisfied on the balance of probabilities that Ms O'Grady and Mr Gleeson breached their duties to ADKA in making each of the transfers to Laxton Fields.

[160] For completeness, I note that the safeguard in s. 187 of the *Corporations Act* – which deems acts by directors of a subsidiary wholly owned by a corporate parent to be in good faith in the subsidiary's best interests if the acts are in good faith in the *parent's* best interests – is inapplicable in this case. That is because ADKA is half-owned by

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94 *Settlement Agents Supervisory Board v Property Settlement Services Pty Ltd* [2009] WASCA 143 at [74]. See also *Oliver Hume South East Queensland Pty Ltd v Investa Residential Group Pty Ltd* (2017) 259 FCR 43.

95 *Chan v Zacharia* (1984) 154 CLR 178 at 199.

96 *Hospital Products Ltd v United States Surgical Corp* (1984) 156 CLR 41 at 103. See also *Australian Careers Institute Pty Ltd v Australian Institute of Fitness Pty Ltd* (2016) 340 ALR 580 at [3], [132].

97 *Settlement Agents Supervisory Board v Property Settlement Services Pty Ltd* [2009] WASCA 143 at [74]. See also *The Bell Group Ltd (in liq) v Westpac Banking Corporation (No 9)* (2008) 39 WAR 1 at [4506], [4508].

98 See, eg, *Settlement Agents Supervisory Board v Property Settlement Services Pty Ltd* [2009] WASCA 143 at [75]; *Boardman v Phipps* [1967] 2 AC 46 at 124; *Australian Careers Institute Pty Ltd v Australian Institute of Fitness Pty Ltd* (2016) 340 ALR 580 at [132].

each Ms O'Grady and Mr Gleeson, not MTT International or some other corporate parent.

[161] One minor final issue remains. It concerns Ms O'Grady's purported breaches of fiduciary duty for transfers to Laxton Fields after she ceased being a director, namely from 2 January 2023 onwards. That amounts to only $2,600, but it warrants brief consideration. For Ms O'Grady to be principally liable (as distinct from third party *Barnes v Addy*-type liability), she must have been a de facto director for those transfers such that she owed directors' duties. However, the Liquidators do not plead that, have never addressed that issue, and do not lead evidence directed squarely to that issue. Nor do they assert she is liable as a third party.

[162] Whilst it may be pedantic, the result is that this $2,600 figure must be carved out from the final orders as against Ms O'Grady. This does not affect Mr Gleeson's primary liability for breach of directors' duties or Laxton Fields' *Barnes v Addy*-type liability (which is considered below).

VII. Did Laxton Fields knowingly receive the money?

[163] The next issue is whether Laxton Fields knowingly received each of the transfers such that (1) it becomes liable in its own right; and (2) property can be traced into its hands and proprietary remedies can be imposed. For the below reasons, Laxton Fields is liable as a knowing recipient of each transfer.

[164] Liability for knowing receipt arises when a third party "receive[s] and becomes chargeable with some part of the trust property" following a breach of fiduciary duty.[99] The third party recipient becomes chargeable with the misapplied property if they received it with knowledge that the property was transferred pursuant to a breach of fiduciary duty at the time that it was received.[100]

[165] The third party's knowledge is measured according to the categories on the *Baden* scale.[101] Categories (i)-(iv) are sufficient to ground knowing receipt liability; recognising knowing receipt is fault-based,[102] category (v) is not.[103] However, detailed analysis of the categories is not necessary because Laxton Fields is taken to have actual knowledge.

[166] Actual knowledge (*Baden* category (i)) includes direct evidence of a person's (or company's) state of mind.[104] Where a corporation receives trust property, knowing receipt liability may arise where the requisite knowledge is possessed by one or more

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99 *Barnes v Addy* (1874) LR 9 Ch App 244 at 251-252; *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 at 164 [176]. See also *Naaman v Jaken Properties Australia Pty Limited* (2025) 281 CLR 635; [2025] HCA 1 at [84].

100 See, eg, *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 at 163 [176]; *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296 at 312 [20], 358-360 [249]-[254].

101 *Baden v Société Générale pour Favoriser le Développement du Commerce et de l'Industrie en France SA* (1993) 1 WLR 509, approved in *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 and *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296.

102 *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296 at 360-361 [258], 362-363 [267], cited with approval in *GP Building Holdings Pty Ltd v Voitin* (2022) 69 VR 299 at 306-307 [20]-[21].

103 *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 at 163-164 [177]-[178].

104 *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 at [176].

persons whose knowledge is to be imputed to the corporation.[105] Knowledge can be attributed to a company where the person is so "closely and relevantly" connected with the company that the state of mind of that person can be treated as being the state of mind of the company.[106] In *Anderson v Canaccord Genuity Financial Ltd*, the New South Wales Court of Appeal unanimously acknowledged that "a 'one-man company' is an easy case for attribution, whatever be the test".[107]

[167] Here, Mr Gleeson testifies that he did everything with the knowledge and at the direction of Ms O'Grady. Whilst I did not accept that this meant Mr Gleeson was not a de facto or shadow director of ADKA, the evidence does show that Ms O'Grady and Mr Gleeson were inextricably involved in the entire business of the MTT Group. Whether Mr Gleeson was a de facto or shadow director of Laxton Fields is not in issue, but the evidence indicates it is likely that he would be.

[168] I am satisfied that Ms O'Grady actually knew of the transfers from ADKA to Laxton Fields and their circumstances, either because Mr Gleeson informed her or, taking into account her admission in this respect, she found out of her own accord (eg, by accessing and viewing the accounts of ADKA and Laxton Fields). In either case, Ms O'Grady, as the sole director of Laxton Fields, knew of the breaches surrounding the transfers and her knowledge is imputed to Laxton Fields. Therefore, Laxton Fields is liable as a knowing recipient.

[169] Even if I am wrong about that and Ms O'Grady did not actually know of the breaches of duties to ADKA, I would have found that Ms O'Grady had knowledge amounting to any of the other *Baden* categories, most relevantly category (ii), being wilfully shutting one's eyes to the obvious.

[170] For those reasons, Laxton Fields is also liable under s. 79(c) of the *Corporations Act* for being involved in Ms O'Grady and Mr Gleeson's breaches of their directors' duties. That is because Laxton Fields "has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention".[108]

VIII. Were the transfers unreasonable director-related transactions?

[171] Even if I am wrong in my conclusion on breach of directors' duties, I nevertheless determine that transfers amounting to $817,640[109] (adjusted for the shorter limitation period of four years) were unreasonable director-related transactions under s. 588FDA of the *Corporations Act*. Consequently, those transfers are voidable transactions under s. 588FE of the *Corporations Act*.

[172] Under s. 588FE(6A) of the *Corporations Act*, a transaction is voidable if it is an unreasonable director-related transaction of the company and was entered into during the four years ending on the relation-back day. The relation-back day is 13 February 2023, being the date the winding up petition was filed.[110]

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105 *Hoh v Ying Mui Pty Ltd* [2019] VSCA 203 at [326].
106 *Krakowski v Eurolynx Properties Ltd* (1995) 183 CLR 563.
107 (2023) 113 NSWLR 151 at [246].
108 Section 79(c), *Corporations Act 2001* (Cth).
109 This amount is not set off by the transfers *from* Laxton Fields because no basis was provided for doing so and I cannot see any such basis either.
110 Pursuant to ss. 91 item 14 and 513A(e), *Corporations Act 2001* (Cth).

[173] Section 588FDA of the *Corporations Act* relevantly provides:

> **588FDA Unreasonable director-related transaction**
>
> (1) A transaction of a company is an unreasonable director-related transaction of the company if, and only if:
>
> (a) the transaction is:
>
> (i) a payment made by the company; or
>
> …
>
> (b) the payment, disposition or issue is, or is to be, made to:
>
> (i) a director of the company; or
>
> (ii) a close associate of a director of the company; or
>
> (iii) a person on behalf of, or for the benefit of, a person mentioned in sub-paragraph (i) or (ii); and
>
> (c) it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to:
>
> (i) the benefits (if any) to the company of entering into the transaction; and
>
> (ii) the detriment to the company of entering into the transaction; and
>
> (iii) the respective benefits to other parties to the transaction of entering into it; and
>
> (iv) any other relevant matter.

[174] Section 588FDA(1)(b) has since been amended,[111] but the amendment is immaterial to the present matter.

[175] The transfers to Laxton Fields are payments made by ADKA for the purposes of sub-s. (1)(a)(i).

[176] For the purposes of sub-s. (1)(b), "close associate" of a director was defined as meaning a relative of the director or a relative of a spouse of the director.[112] "Benefit" was defined as including any benefit, whether by way of payment of cash or otherwise. "Person" in s. 588FDA(1)(b)(iii) includes a company or corporation.[113]

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111 See *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023* (Cth).

112 Section 9, *Corporations Act 2001* (Cth).

113 Section 2C, *Acts Interpretation Act 1901* (Cth).

[177] Whilst the provision used to be interpreted as requiring a direct benefit,[114] recent intermediate appellate decisions clarify that an indirect benefit will suffice.[115]

[178] Really the only contentious part of this issue is whether a payment of money to the trustee of a discretionary trust, which has the relevant person (here, Ms O'Grady) as its sole beneficiary (object) and where the trustee company is controlled by that same person, is a payment "made to … a person on behalf of, or for the benefit of," the relevant person. The answer is yes.

[179] In *Vasudevan v Becon Constructions (Aust) Pty Ltd*, Nettle JA, with whom Beach JA and McMillan AJA agreed, said:[116]

> Although the objects of a discretionary trust may not have an interest as such in the assets of the trust, it is commonplace to refer to assets of that kind as being held on behalf of the objects of the trust, and there is no reason in the context of this legislation to suppose that Parliament would do otherwise.

[180] Cheeseman and McEvoy JJ in *CEG Direct Securities Pty Ltd v Cooper as liquidator of Runton Investment and Development Pty Ltd (in liq)* reasoned similarly:[117]

> The word "benefit" is defined in s 9 of the Act. The definition is broad — in short, it extends to "any benefit". The example given in the definition of the benefit as being "by way of payment of cash" is used in an illustrative way and does not limit the defined meaning being "any benefit". The final part of the definition — "or otherwise" — makes it plain that the incorporated illustration of "payment by cash" is given on an inclusive, and not an exclusive, basis. The statutory definition is silent on whether the benefit need be direct or whether an indirect benefit will be captured. The natural reading of the phrase "any benefit" in s 9 of the Act extends to both direct and indirect benefits. In ordinary usage, a "benefit" may include anything that is for the "good of a person or thing": Macquarie Dictionary (8th ed, Macquarie Dictionary Publishers, 2020) (Macquarie Dictionary). The phrase "have the benefit of" is defined in the Macquarie Dictionary as "to gain an advantage from". In Vasudevan, Nettle JA described the natural and ordinary meaning of a requirement that something be "for the benefit of" a person as that it be "for the advantage, profit or good" of the person citing the Oxford English Dictionary (at [23]). In our view, the natural and ordinary meaning of, relevantly, a requirement that a disposition be "for the benefit of" a director extends to the

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114 See, eg, *Ziade Investments Pty Ltd v Welcome Homes Real Estate Pty Ltd* (2006) 57 ACSR 693 (appeal dismissed: *Welcome Homes Real Estate Pty Ltd v Ziade Investments Pty Ltd* [2007] NSWCA 167); *Re Great Wall Resources Pty Ltd (in liq)* [2013] NSWSC 354 at [46].

115 See, eg, *Yang v Wong* (2026) 315 FCR 420 at [37]; *Changela v Dracoma Pty Ltd* [2025] NSWCA 186 at [25]-[28]; *Vasudevan v Becon Constructions (Aust) Pty Ltd* (2014) 41 VR 445 at 451 [19], 452-453 [26]-[31]; *Pleash (Liquidator), in the matter of SFG Relocations Pty Ltd v Fourie (No 3)* [2024] FCA 583 at [64]-[65]; *In the matter of Gondon Five Pty Ltd (in liq)* [2020] NSWSC 1769 at [16]-[18]; *CEG Direct Securities Pty Ltd v Cooper as liquidator of Runton Investment and Development Pty Ltd (in liq)* (2025) 309 FCR 66 at [109].

116 (2014) 41 VR 445 at 452-453 [26]-[31].

117 (2025) 309 FCR 66 at [105]-[106].

circumstance where a director obtains the right to the chance of an advantageous outcome.

[181] I agree with those statements.

[182] In addition, whilst the rights of a beneficiary under a discretionary trust are usually explained as being limited to the due administration of the trust rather than proprietary rights,[118] the rights of such beneficiaries are still properly to be regarded as "proprietary" or "property" in a more general sense.[119] In my view, those more general notions of the rights of a beneficiary under a discretionary trust are sufficient to amount to a "benefit" or "on behalf of" the relevant person, both for general purposes and for the purposes of s. 588FDA(1)(b)(iii) of the *Corporations Act*. That is especially so in light of the general anti-avoidance purpose of the provision.[120]

[183] For those reasons, I find that the payments to Laxton Fields were made for the benefit of or on behalf of a director or close associate of a director of ADKA (depending on whether Ms O'Grady or Mr Gleeson was the director of ADKA at the time of the transfer).

[184] The question then is whether "it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to" the factors in sub-s. (1)(c).

[185] As set out at [146]-[148], the transfers to Laxton Fields were ultimately used for the benefit of Ms O'Grady and Mr Gleeson personally. There were no benefits to ADKA in making the transfers and the detriment to ADKA was the dissipation of that money. Whilst the defendants say that the payments to Laxton Fields were beneficial for the MTT Group as a whole – for example, by rent, purchase and mortgage payments for the Laxton Rd Property so the business could continue operating from it – ADKA itself received no discernible benefit from the business' continued operation. There is no evidence of ADKA holding any stake in the business or receiving any dividend or other benefits from it. Those matters show that ADKA received no benefits from making the payments to Laxton Fields.

[186] Therefore, I find that a reasonable person in ADKA's circumstances would not have entered into each of the transfers.

[187] For those reasons, I find that each of the transfers to Laxton Fields were unreasonable director-related transactions. Under s. 588FE(6A) of the *Corporations Act*, the payments to Laxton Fields in the four years prior to 13 February 2023 are voidable.

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118 See, eg, *Gartside v IRC* [1968] AC 553.

119 JD Heydon, MJ Leeming, and PJ Turner, *Meagher, Gummow & Lehane's Equity: Doctrines & Remedies* (LexisNexis, 5th ed, 2015) at 118 [4-110]. See also Ben McFarlane and Charles Mitchell, *Hayton and Mitchell: Texts, Cases and Materials on the Law of Trusts and Equitable Remedies* (Sweet & Maxwell, 14th ed, 2015) at 739 [17-024], quoted in Mohammud Jaamae Hafeez-Baig and Jordan English, *The Law of Tracing* (Federation Press, 2021) at 121 [5.14]; Richard Nolan, "Equitable Property" (2006) 122 *Law Quarterly Review* 232 at 256-257.

120 See, eg, *CEG Direct Securities Pty Ltd v Cooper as liquidator of Runton Investment and Development Pty Ltd (in liq)* (2025) 309 FCR 66 at [116]-[125]; *Vasudevan v Becon Constructions (Aust) Pty Ltd* (2014) 41 VR 445 at [19].

IX. Can the monies be traced into the Laxton Rd Property and should a constructive trust be imposed?

[188] Regarding the relief to be granted, the Liquidators claim a constructive trust over a proportion of the Laxton Rd Property commensurate to: (1) the amount of ADKA's funds that can be traced to Laxton Fields' payment of the purchase price for the property ($120,000); and (2) the amount of ADKA's funds that can be traced to Laxton Fields' repayments of mortgages ($208,540).

[189] For the reasons that follow, I find that nearly all of the first category, (1) above, is traceable. The Liquidators should have a constructive trust for a proportional percentage of the Laxton Rd Property. The amounts claimed in the second category, (2) above, cannot be traced into the Laxton Rd Property because of the application of the principles regarding backwards tracing and tracing into overdrawn accounts.

[190] I will begin by briefly setting out the general principles applicable to tracing in equity and its preconditions. Then, I will consider separately the approaches to be taken, and the more specific legal principles, for the two categories of payments sought to be traced into the Laxton Rd Property.

A. General principles of tracing in equity

[191] Tracing is "the process of identifying a new asset as the substitute for the old".[121] It is "neither a claim nor a remedy".[122] It can be distinguished from "following", which involves, for example, locating and claiming against a motorbike that a trustee misappropriates in breach of trust and might now be in the hands of the trustee's friend.[123] Tracing would come into play if the defaulting trustee sold that motorbike and the claimant wanted to claim a proprietary interest in the money the trustee received and still holds. The doctrine would also operate where that defaulting trustee then spent that money on some other asset, like shares.

[192] Hafeez-Baig and English persuasively describe "following" as being concerned with locating the subsisting subject matter of a right and "tracing" as being concerned with the exchange or substitution of one right for another (eg, legal title to the motorbike being substituted for legal title to the sale proceeds or the shares).[124] Edelman, writing extrajudicially, and Bant consider the better explanation of tracing to be a "causally linked transactions" approach.[125] Both reject Smith's theory that tracing is concerned with tracing *value* through a series of substitutions,[126] which was adopted by the Court in *Foskett v McKeown*.[127] This case is not the occasion to delve into that though.

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121 *Foskett v McKeown* [2001] 1 AC 102 at 127.

122 *Boscawen v Bajwa* [1995] 1 WLR 328 at 334.

123 See, eg, *Foskett v McKeown* [2001] 1 AC 102 at 127. Care must be taken when reading the cases, as the words "tracing" and "following" are sometimes used interchangeably.

124 Mohammud Jaamae Hafeez-Baig and Jordan English, *The Law of Tracing* (Federation Press, 2021) at 2. See also *Relfo Ltd v Varsani* [2014] EWCA Civ 360 at [56]-[60].

125 See J Edelman, 'Understanding Tracing Rules' (2016) 16(2) QUT Law Review 1 at 7; James Edelman and Elise Bant, *Unjust Enrichment* (Bloomsbury Publishing, 2nd ed, 2016) at 115-117.

126 Mohammud Jaamae Hafeez-Baig and Jordan English, *The Law of Tracing* (Federation Press, 2021) at 251; J Edelman, 'Understanding Tracing Rules' (2016) 16(2) QUT Law Review 1 at 7-9.

127 [2001] 1 AC 102.

[193] Tracing has its most famous origins in *Taylor v Plumer*, where Lord Ellenborough CJ held:[128]

> … the product of or substitute for the original thing still follows the nature of the thing itself, as long as it can be ascertained to be such, and the right only ceases when the means of ascertainment fail …

[194] In *Foskett v McKeown*, Millett LJ said:[129]

> Tracing is ... neither a claim or a remedy. It is merely the process by which a claimant demonstrates what has happened to his property, identifies its proceeds and the persons who have handled or received them, and justifies his claim that the proceeds can properly be regarded as representing his property. Tracing is also distinct from claiming. It identifies the traceable proceeds of the claimant's property. It enables the claimant to substitute the traceable proceeds for the original asset as the subject matter of his claim. But it does not affect or establish his claim.

[195] The goal of tracing is to establish the claimant's proprietary interest in some property, in respect of which equitable remedies are then available.

[196] There are several rules or preconditions to tracing, the relevant of which are as follows.

[197] First, the claimant must have a proprietary base (meaning they had some proprietary interest in the original property). In this case, that is ADKA's money (strictly, the relevant property is ADKA's chose in action against the bank, but I will stick with the term "money" as shorthand).

[198] Second, arguably property must have been transferred away pursuant to a breach of fiduciary duty. There is controversy in the law as to whether fiduciary duties must have been owed,[130] but that need not be determined here because fiduciary duties were owed in any event. As I decided in my above reasons, the transfers from ADKA to Laxton Fields are breaches of fiduciary duties.

[199] Third, each person into whose hands the property is sought to be traced must not be a bona fide purchaser for value without notice of the equitable interest or breach of trust.[131] In this case, the only relevant person is Laxton Fields, which by reason of the knowing receipt finding above is not a bona fide purchaser for value without notice.

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128 (1815) 3 M&S 562 at 575. See also *Harrison v Pryce* (1740) 27 ER 664; *Harrison v Harrison* (1740) 26 ER 476.

129 [2001] 1 AC 102 at 128, approved in *Robb Evans of Robb Evans and Associates v European Bank Ltd* (2004) 61 NSWLR 75 at [133]; *Russell Gould Pty Ltd v Ramangkura* (2014) 87 NSWLR 552 at [31]-[32].

130 See, eg, the discussion in G E Dal Pont, *Equity and Trusts in Australia* (Thomson Reuters, 8th ed, 2023) at 1198-1200 [39.25]-[39.40]; Mohammud Jaamae Hafeez-Baig and Jordan English, *The Law of Tracing* (Federation Press, 2021) at 153-156.

131 See, eg, *Foskett v McKeown* [2001] 1 AC 102 at 130-132.

[200] Tracing is possible even where the property sought to be traced is mixed in a homogeneous group which contains other like property, so long as the group consists of fungible property.[132] Examples include shares, money, and even livestock.

B. The first category: $120,000 purchase price contribution

[201] The facts and tracing exercise are relatively simple for the first category of transfers. On 1 September 2020, ADKA transferred $120,000 to Laxton Fields. Laxton Fields' account had a negligible balance in it at the time. The same day, Laxton Fields transferred $118,577.60 to the "Griffiths Parry Trust Acc", a little short of the $120,000 claimed by the Liquidators.[133] Griffiths Parry were the solicitors for Laxton Fields for the conveyance of the Laxton Rd Property.

[202] Whilst records for the Griffiths Parry trust account are not in evidence, and therefore it cannot be certain what Griffiths Parry did with the money, I infer that the money went towards the Laxton Rd Property. A similar approach to such fact-finding was endorsed by Allsop ACJ in *Toksoz v Westpac Banking Corporation* (Hoeben JA and Sackville AJA agreeing):[134]

> Money can be traced notwithstanding an inability of the follower to connect each link in the chain of accounts. Commonsense and reasonable inference play their part, especially if there is fraud involved and if there is a lack of explanation, when the circumstances cry out for honesty to be explained, if it can be.

[203] I also take into account that the defendants do not deny that the money went into the Laxton Rd Property, not in their pleadings, nor evidence, nor submissions.

[204] Therefore, $118,577.60 can be traced into the Laxton Rd Property. This is so despite the general indefeasibility of land in the Torrens system because that indefeasibility is defeated by fraud.[135] Knowledge of the kind I set out above in the knowing receipt section is sufficient to amount to fraud for these purposes.[136]

[205] The question then is whether the Liquidators should have a constructive trust over the Laxton Rd Property in proportion to the contribution of $118,577.60. A constructive trust is often imposed after success in tracing and is the presumptive remedy for breach of fiduciary duty and knowing receipt,[137] although it is discretionary[138] and may only be imposed after consideration of whether there is an appropriate remedy which falls short of the imposition of a constructive trust.[139]

[206] Considering Ms O'Grady and Mr Gleeson's breaches of directors' duties, and Laxton Fields' knowing receipt of the proceeds of those breaches, it would be inequitable for

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132 *Brady v Stapleton* (1952) 88 CLR 322.
133 See [20], Amended Statement of Claim.
134 (2012) 289 ALR 577 at [8], quoted with approval in *Sze Tu v Lowe* (2014) 89 NSWLR 317 at 397 [468].
135 Section 184(2), *Land Titles Act 1984* (Qld).
136 *Templeton v Leviathan Pty Ltd* (1921) 30 CLR 34.
137 See *Hospital Products Ltd v United States Surgical Corp* (1984) 156 CLR 41 at 100, 107-110.
138 G E Dal Pont, *Equity and Trusts in Australia* (Thomson Reuters, 8th ed, 2023) at 1192 [38.10].
139 *Giumelli v Giumelli* (1999) 196 CLR 101 at [10]; *Bathurst City Council v PWC Properties Pty Ltd* (1998) 195 CLR 566 at [42]; *John Alexander's Clubs Pty Limited v White City Tennis Club Limited* (2010) 241 CLR 1 at [128]-[129].

Laxton Fields to retain those proceeds. There is no evidence of any third party interests that would be adversely affected by a constructive trust. In personam remedies are unlikely to be satisfied because of the MTT Group's parlous financial situation and Ms O'Grady and Mr Gleeson's likely poor financial state. In addition, there is no evidence about the current value of the Laxton Rd Property, meaning the value of an equitable charge cannot be ascertained. Therefore, I consider the most equitable result to be the imposition of a constructive trust over the Laxton Rd Property in proportion to ADKA's contribution to it of $118,577.60.

[207] The denominator to $118,577.60 in the function to ascertain the appropriate proportion in which to impose the constructive trust is the cost of acquiring the Laxton Rd Property. The only evidence about the cost of acquiring the property is the settlement statement, which lists the purchase price as $1,990,000 (including deposit) and stamp duty as $98,348.06, which totals to $2,088,348.06. I regard that evidence as sufficient to assign an appropriate proportion for the constructive trust. That proportion is 5.678%.

[208] The settlement statement also records $4,345 for seller's legal fees and $8,310.51 to go to Griffiths Parry Lawyers at settlement. However, seller's legal fees are not properly to be regarded as part of the cost of acquiring the property. Regarding the amount stated to go to Griffiths Parry Lawyers, that is far higher than a normal conveyancing fee, and Griffiths Parry Lawyers were not only Laxton Fields' conveyancing lawyers (for example, Mr Gleeson sought a template debenture agreement from those lawyers). If the defendants wanted to disaggregate that amount and argue the conveyancing portion should form part of the cost of acquisition, it was incumbent on them to do so given Griffiths Parry Lawyers were *their* lawyers.

[209] Likewise, whilst there may have been other costs associated with acquiring the property, the evidentiary onus was on the defendants to have raised those costs. Had the defendants raised some sufficient evidence to indicate such other costs, the onus would have been on the Liquidators to prove that those other costs were not properly part of the acquisition costs. A plaintiff is not required to disprove all possibilities to satisfy their legal burden.

[210] For those reasons, I find that Laxton Fields holds 5.678% of the Laxton Rd Property on constructive trust for ADKA and the Liquidators. This means the $118,577.60 sum can no longer form part of the relief for breach of directors' duties.

C. The second category: payments towards the Laxton Rd Property mortgages

[211] Turning now to the second category, the Liquidators will not be successful in tracing ADKA's funds that went towards mortgage repayments because the claim fails at the level of principle. In considering this issue, I will assume for the moment that ADKA's funds can be followed in their entirety into Laxton Fields' mortgage repayments and there are no problems regarding the mixing of funds in Laxton Fields' bank account. Even on that generous assumption, tracing fails.

[212] Generally, tracing into an overdrawn account is not possible as a matter of law.[140] That is because paying money into an overdrawn account has the effect of extinguishing part of a person's indebtedness to the bank, which is not a "right" for which money is substituted. When a person exchanges their rights in the form of money for the extinguishment of a pre-existing debt, that extinguishment, or in other words reduced indebtedness, is not a "right" that the person "owns". The original rights in the money for tracing purposes have been dissipated, and no substitute rights known to the law have been created, meaning the tracing exercise cannot be carried out.[141]

[213] In *Williams v Peters*, McMurdo P held:[142]

> I agree with Muir JA's reasons for concluding that the primary judge erred in finding that the company held either of the payments of $165,000 in its overdraft account on trust for Mr Peters. As the company's overdraft account was in debit, when the payments of $165,000 were made into that account they were subsumed into the debit account and ceased to exist as money, regardless of whether the company held any of that amount on trust for Mr Peters.

[214] Muir JA reasoned as follows:[143]

> It is unnecessary to decide whether a trust in respect of the monies paid by Daimler came into existence in consequence of the operation of the Act or by reference to the principles relating to the constitution of trusts of whatever nature. That is because the payment of the monies by Daimler into the company's overdraft account had the consequence that, if a trust had existed, any consequent proprietary claim against the company was lost, leaving the respondent with a personal claim for breach of trust. That claim did not entitle the respondent to any priority over any other unsecured creditors in the winding up.
>
> An overdraft account is a current account which the customer is permitted to have in debit up to an amount agreed with the bank. The debit balance of a current account is referred to as "an overdraft".
>
> …
>
> … The bank cheque represented a further borrowing by the company from its bank. The cars, acquired by the company before any trust arose, could hardly be considered to be trust property.

[215] Backwards tracing is a contentious principle that involves tracing into property that was acquired *before* the receipt of the relevant trust property. For example, in the case of the misappropriated motorbike discussed above, say that, *before* misappropriating the motorbike, the trustee takes out a loan and buys some shares with that loaned money. The trustee then misappropriates the motorbike and sells it.

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140 *Re Global Finance Group Pty Ltd (in liq)* (2002) 26 WAR 385 at [129]; *Williams v Peters* [2010] 1 Qd R 475 at [5], 492–493 [31]-[44]; *Russell Gould Pty Ltd v Ramangkura* (2014) 87 NSWLR 552 at 559-560 [36]-[37].

141 See *Re Global Finance Group Pty Ltd (in liq)* (2002) 26 WAR 385 at [135].

142 [2010] 1 Qd R 475 at [5] (citations omitted).

143 *Williams v Peters* [2010] 1 Qd R 475 at 492–493 [31]-[38] (citations omitted).

Money is received into the trustee's bank account, and the trustee sends it to the financier that provided the loan. If the beneficiary claimed a proprietary interest in the shares, traditional tracing rules would prevent tracing into the loan and consequently from the loan into the shares. If backwards tracing were available, it would permit tracing into the debt, any overdrawn account, and the shares.[144]

[216] There are few authorities considering backwards tracing, but those authorities tend to agree that even if it is available as a general principle, that is only when there is some sort of coordination between the misappropriation of the trust property (the motorbike) and the acquisition of the asset the subject of the tracing exercise (the shares).[145] For example, where the trustee took out the loan intending at that time to misappropriate the motorbike and sell it to repay the loan, and perhaps even intending to subvert the tracing rules by so doing.

[217] The seminal case is *Federal Republic of Brazil v Durant International Corporation* (***Durant***), where the Privy Council held:[146]

> The development of increasingly sophisticated and elaborate methods of money laundering, often involving a web of credits and debits between intermediaries, makes it particularly important that a court should not allow a camouflage of interconnected transactions to obscure its vision of their true overall purpose and effect. If the court is satisfied that the various steps are part of a co-ordinated scheme, it should not matter that, either as a deliberate part of the choreography or possibly because of the incidents of the banking system, a debit appears in the bank account of an intermediary before a reciprocal credit entry. The Board agrees with Sir Richard Scott V-Cs observation in *Foskett v McKeown* [1998] Ch 265, 283 that the availability of equitable remedies ought to depend on the substance of the transaction in question and not on the strict order in which associated events occur.
>
> … An account may be used as a conduit for the transfer of funds, whether the account holder is operating the account in credit or within an overdraft facility.
>
> The Board therefore rejects the argument that there can never be backward tracing, or that the court can never trace the value of an asset whose proceeds are paid into an overdrawn account. But the claimant has to establish a co-ordination between the depletion of the trust fund and the acquisition of the asset which is the subject of the tracing claim, looking at the whole transaction, such as to warrant the court attributing the value of the interest acquired to the misuse of the trust fund. This is likely to depend on inference from the proved facts, particularly since in many cases the testimony of the trustee, if available, will be of little value.

144 *Federal Republic of Brazil v Durant International Corporation* [2016] AC 297 at [38]-[40].
145 *Federal Republic of Brazil v Durant International Corporation* [2016] AC 297 at [40].
146 [2016] AC 297 at 312-313 [38]-[40].

[218] The 1924 judgment of the Full Court of this Court in *Moffatt v Crawford*[147] is particularly on point. Another person, Heiner, was trustee of the estate of Moffatt. Heiner misappropriated some of the estate's money and mixed it in several of his personal accounts with his personal money. He also purchased a piano and gifted it to his wife several days later. The purchase was intended to be a "cash transaction" but was not – title to the piano passed but payments for it did not begin until two weeks later. There were three payments in total over six months. Therefore, the purchase was effectively on credit.

[219] The trustees and beneficiaries of Moffatt's estate claimed proprietary interests in the piano as against Heiner's wife. The primary judge, Lukin J, dismissed the third payment[148] on other grounds relating to the rule in *Re Hallett's Estate*.[149] However, his Honour held that the first and second payments were entirely sourced in trust funds and reasoned as follows:[150]

> Then can it be said the trust was impressed on that first payment – that is to say, not only after it had become his property, but also after the property therein had passed to his wife? I think not. Trust money is not here followed [traced] in property in which it has been invested or into which it has been converted. The trust money at the most has been used to pay a past debt that no doubt originally became due in consequence of such purchase, but I do not think the principle of following trust property has been, or could from its nature be, extended to property acquired by a past transaction.

[220] McCawley CJ agreed entirely with Lukin J.[151] Whilst the reported version of the case does not record the reasons of the other members of the Full Court (Shand and O'Sullivan JJ), they must have agreed with the Chief Justice.

[221] The only Australian case I have found in which the *Durant* decision was positively applied is Boddice J's judgment in this Court in *Leighton Contractors Pty Ltd v O'Carrigan*.[152] His Honour applied the backwards tracing principles from *Durant* despite the *Moffatt v Crawford* decision. That case involved certain misappropriated funds being transferred from a bank account into a credit card account, which was itself used to purchase various assets. The claimant sought to trace from the initial funds into those assets. His Honour allowed this and determined the claimant had a proprietary interest in the assets.

[222] Boddice J based his judgment on one of two grounds, although it is unclear which was determinative. The first was that a credit card is a substitute for cash and therefore is not the same as an overdrawn account,[153] but that is not relevant in the present case where no credit cards were used. The second was based on *Durant*. His Honour held that there existed the relevant coordination between the initial funds and the purchase of the assets and that such coordination was an exception to the rule

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147 [1924] St R Qd 241.
148 [1924] St R Qd 241 at 245.
149 (1880) 13 Ch D 696.
150 [1924] St R Qd 241 at 246.
151 [1924] St R Qd 241 at 248.
152 [2016] QSC 223.
153 [2016] QSC 223 at [104].

preventing tracing into an overdrawn account and tracing backwards.[154] Boddice J held that the defaulting fiduciary "always … [had the] intention to use funds misappropriated by him to acquire the assets" and used the credit card to do that.[155]

[223] There may be an issue as to whether *Durant*, and consequently Boddice J's reliance on it, is contrary to the decision in *Moffatt v Crawford*[156] that rejected the possibility of tracing through a debt repayment into the asset underlying the debt. That judgment is binding. However, that need not be explored further in this case because there is no evidence (or submission from the Liquidators) that the defendants purchased the property with the intention to repay the mortgage using ADKA monies.

[224] In *UDP Holdings Pty Ltd v Esposito Holdings Pty Ltd (in liq)*,[157] Richards J considered the narrow point of whether funds could be traced "backwards" into an overdrawn home loan account. In earlier arbitration proceedings, the tribunal had determined that the defaulting fiduciary held the relevant funds on constructive trust for UDP Holdings.[158] Before receiving any of the funds subject to a constructive trust, however, the defaulting fiduciary had purchased a property, using its own funds as well as a home loan.[159] The defaulting fiduciary later transferred some of the trust money into its home loan account, which brought the balance to zero.[160] But the defaulting fiduciary then withdrew all of those funds and more.[161] The mortgage was not discharged until the property was sold some time later.[162] UDP Holdings sought to trace into the property, which was by that point the balance of the property sale proceeds that remained after the mortgagee and others were paid out.[163]

[225] Richards J held that, as a general principle, tracing into an overdrawn account is not possible as a matter of law.[164] Her Honour held it was not necessary to decide whether backwards tracing applied in Australia because the claim would fail even if it did.[165] The defaulting fiduciary did not expect receiving the payments from UDP Holdings (the subject of the constructive trust) at the time of purchasing the property.[166] In addition, the trust monies were only temporarily held in the home loan account and the purpose was merely to reduce interest until the defaulting fiduciary could decide what to do with them.[167] Therefore, her Honour could not find there was any coordination between the purchase of the property and the receipt of the trust monies.[168]

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154 [2016] QSC 223 at [105]-[107].
155 [2016] QSC 223 at [108]
156 [1924] St R Qd 241.
157 [2021] VSC 528.
158 [2021] VSC 528 at [3].
159 [2021] VSC 528 at [30], [51].
160 [2021] VSC 528 at [30], [51].
161 [2021] VSC 528 at [30], [51].
162 [2021] VSC 528 at [30], [51].
163 [2021] VSC 528 at [52].
164 [2021] VSC 528 at [55]-[59].
165 [2021] VSC 528 at [65].
166 [2021] VSC 528 at [68].
167 [2021] VSC 528 at [69].
168 [2021] VSC 528 at [70].

[226] The Court in *Grimaldi*,[169] the Court in *Elite Realty Development Pty Ltd v Sadek*,[170] and Besanko J in *Georges v Seaborn International Pty Ltd (Trustee), in the matter of Sonray Capital Markets Pty Ltd (in liq)*[171] mentioned backwards tracing only in passing.

[227] *Bishopsgate Investment Management Ltd v Homan* is a curious case in that there were two opposing judgments, one finding that backwards tracing should be possible and the other finding it should not, and a third judgment which agreed with both of the opposing judgments.[172]

[228] Whilst there is much to say in support of permitting backwards tracing and tracing into overdrawn accounts at least in some circumstances, there is binding intermediate appellate authority which forecloses that avenue.[173]

[229] In my view therefore the Liquidators cannot trace the mortgage repayments or those amounts into the Laxton Rd Property. They are limited to an *in personam* remedy in that respect.

X. Relief and costs

[230] There will be a constructive trust imposed over 5.678% of the Laxton Rd Property in favour of ADKA and the Liquidators.

[231] There will be a compensation order against the defendants under s. 1317H of the *Corporations Act.* In respect of all defendants, I reduce the $1,125,040 amount by the value of the money that can be traced into the Laxton Rd Property, being $118,577.60. In respect of Ms O'Grady's liability only, I also carve out the $2,600 transferred after she ceased being a director of ADKA – resulting in $1,003,862.40. The order as against Mr Gleeson and Laxton Fields is $1,006,462.40.

[232] Pre-judgment interest is awarded on each transfer, calculated at the interest rates prescribed by Supreme Court Practice Direction 6/2013 from the day of the transfer being made until today. Where a payment is made from Laxton Fields to ADKA, that is in effect a repayment and the interest award should not include interest for amounts repaid. Therefore, I also calculate the interest on those amounts, but I subtract them from the overall interest award to reflect the lower interest that accrues as a consequence of the repayments. I also do not award interest for the traceable $118,577.60, in respect of which a constructive trust is awarded. The calculations are set out in Appendix B. The result is $157,241.31 in interest.

[233] I do not make any declarations of contravention of s. 181(1) of the *Corporations Act* as sought by the Liquidators. Such declarations of contravention under s. 1317E of the *Corporations Act* can only be sought by ASIC.[174] The compensation order does not rely upon a declaration of contravention having been made.

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169 *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296 at [707].
170 [2023] NSWCA 165 at [84]-[85].
171 (2012) 206 FCR 408 at [184].
172 [1995] Ch 211 at 217, 221, 222.
173 [1924] St R Qd 241.
174 See s. 1317J(1)-(4), *Corporations Act 2001* (Cth) and *Manthey Redmond (Aust) Pty Ltd (in liq) v Manthey* (2017) 121 ACSR 389 at [51]-[53].

[234] With respect to costs, the standard rule is that costs follow the event. I consider that the Liquidators were successful in most respects of their claim but, as set out above (in particular in Section II), their pleadings were far from clear, they ran their case in far from an efficient manner and they ran several causes of action or claimed several categories of relief[175] which did not succeed. In respect of those, both the Liquidators and the defendants likely wasted some, but not many, costs. I consider a 10% reduction in standard costs to adequately take that into account. Therefore, ADKA and the Liquidators should have 90% of their costs on the standard basis.

[235] My orders are as follows:

1. Pursuant to s. 1317H of the *Corporations Act 2001* (Cth), the defendants are to jointly and severally compensate the first plaintiff for their contraventions of s. 181(1) of the *Corporations Act 2001* (Cth) in the amount of $1,003,862.40 plus pre-judgment interest up to and including 26 June 2026 in the amount of $156,986.27.

2. Pursuant to s. 1317H of the *Corporations Act 2001* (Cth), the first defendant and the third defendant are to jointly and severally compensate the first plaintiff for their further contraventions of s. 181(1) of the *Corporations Act 2001* (Cth) in the amount of $2,600 plus pre-judgment interest up to and including 26 June 2026 in the amount of $354.17.

3. It is declared that the third defendant holds 5.678% of the real property at 110 Laxton Road, Palmview in the State of Queensland (more properly described as Lot 62, Crown Plan CG6396, Local Government: Sunshine Coast, title reference 18001015) on constructive trust for the first plaintiff.

4. The defendants jointly and severally pay 90% of the plaintiffs' costs of the proceeding on the standard basis.

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175 Eg, loan, money had and received, statutory appointment of a trustee for the sale of the Laxton Rd Property, ADKA's right to be indemnified out of the assets Laxton Fields holds on trust for the ADKA Trust, uncommercial transactions.

Annexure A

Date	Transferred amount	Possible source of transfer funds
30 January 2018	$250.00	Illingworth deposit 29 January 2018 ($50,000)
1 February 2018	$500.00	Illingworth deposit 29 January 2018
2 February 2018	$35,000.00	Illingworth deposit 29 January 2018
14 February 2018	$3,000.00	Illingworth deposit 13 February 2018 ($100,000)
19 February 2018	$1,000.00 $2,000.00 $2,000.00	Illingworth deposit 13 February 2018
19 March 2018	$200.00	Gaulton/McRae deposit 19 March 2018 ($200,000)
26 March 2018	$1,000.00	Gaulton/McRae deposit 19 March 2018 Illingworth deposit 23 March 2018 ($50,000)
29 March 2018	$2,000.00	Gaulton/McRae deposit 19 March 2018 Illingworth deposit 23 March 2018
4 April 2018	$3,500.00	Gaulton/McRae deposit 19 March 2018 Illingworth deposit 23 March 2018
9 April 2018	$25,000.00	Gaulton/McRae deposit 19 March 2018 Illingworth deposit 23 March 2018
18 July 2018	$2,500.00	Gaulton/McRae Super Funds 13 July 2018 ($100,000)
19 July 2018	$2,500.00	Gaulton/McRae Super Funds 13 July 2018
20 July 2018	$2,000.00	Gaulton/McRae Super Funds 13 July 2018
24 July 2018	$5,000.00	Blue deposit 23 July 2018 ($100,000)
27 July 2018	$2,000.00	Blue deposit 23 July 2018
30 July 2018	$2,000.00	Blue deposit 23 July 2018
1 August 2018	$5,000.00	Blue deposit 23 July 2018
3 August 2018	$2,000.00	Blue deposit 23 July 2018

	$2,000.00	
7 August 2018	$25,000.00	Blue deposit 23 July 2018
10 August 2018	$3,500.00	Blue deposit 23 July 2018
13 August 2018	$2,000.00	Blue deposit 23 July 2018
17 August 2018	$3,000.00	Blue deposit 23 July 2018
24 August 2018	$2,000.00	Blue deposit 23 July 2018
28 August 2018	$2,000.00	Blue deposit 23 July 2018
Total:	**$137,950.00**	

Annexure B

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
7-Dec-17	$1,000.00		$178.35
8-Dec-17	$4,000.00		$713.22
14-Dec-17	$500.00		$89.03
3-Jan-18	$500.00		$88.59
~~30-Jan-18~~	~~$250.00~~		
~~1-Feb-18~~	~~$500.00~~		
2-Feb-18		$1,000.00	-$175.94
~~2-Feb-18~~	~~$35,000.00~~		
12-Feb-18	$2,000.00		$351.06
~~14-Feb-18~~	~~$3,000.00~~		
~~19-Feb-18~~	~~$1,000.00~~		
~~19-Feb-18~~	~~$2,000.00~~		
~~19-Feb-18~~	~~$2,000.00~~		
1-Mar-18	$4,000.00		$699.33
8-Mar-18		$200.00	-$34.91
8-Mar-18	$25,000.00		$4,363.60
~~19-Mar-18~~	~~$200.00~~		
~~26-Mar-18~~	~~$1,000.00~~		
~~29-Mar-18~~	~~$2,000.00~~		
~~4-Apr-18~~	~~$3,500.00~~		
~~9-Apr-18~~	~~$25,000.00~~		
24-Apr-18	$2,000.00		$345.22
3-May-18	$5,000.00		$861.21
3-May-18	$5,000.00		$861.21
3-May-18	$10,000.00		$1,722.42
7-May-18	$5,000.00		$860.39
7-May-18	$25,000.00		$4,301.95
11-May-18	$5,000.00		$859.57
11-May-18	$5,000.00		$859.57
14-May-18	$5,000.00		$858.95
22-May-18	$5,000.00		$857.31
23-May-18	$2,000.00		$342.84
30-May-18	$1,000.00		$171.13
30-May-18	$2,000.00		$342.27
4-Jun-18	$5,000.00		$854.64
5-Jun-18	$10,000.00		$1,708.86
7-Jun-18	$25,000.00		$4,270.10

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
15-Jun-18	$1,000.00		$170.48
20-Jun-18	$1,000.00		$170.27
22-Jun-18	$1,000.00		$170.19
27-Jun-18	$2,000.00		$339.96
2-Jul-18	$5,000.00		$849.19
4-Jul-18	$1,500.00		$254.63
6-Jul-18	$1,000.00		$169.67
6-Jul-18	$5,000.00		$848.37
6-Jul-18	$20,000.00		$3,393.48
11-Jul-18	$2,500.00		$423.67
~~18-Jul-18~~	~~$2,500.00~~		
~~19-Jul-18~~	~~$2,500.00~~		
~~20-Jul-18~~	~~$2,000.00~~		
~~24-Jul-18~~	~~$5,000.00~~		
~~27-Jul-18~~	~~$2,000.00~~		
~~30-Jul-18~~	~~$2,000.00~~		
~~1-Aug-18~~	~~$5,000.00~~		
~~3-Aug-18~~	~~$2,000.00~~		
~~3-Aug-18~~	~~$2,000.00~~		
~~7-Aug-18~~	~~$25,000.00~~		
~~10-Aug-18~~	~~$3,500.00~~		
~~13-Aug-18~~	~~$2,000.00~~		
~~17-Aug-18~~	~~$3,000.00~~		
~~24-Aug-18~~	~~$2,000.00~~		
~~28-Aug-18~~	~~$2,000.00~~		
3-Sep-18	$5,000.00		$836.25
4-Sep-18	$2,000.00		$334.42
7-Sep-18	$5,000.00		$835.42
7-Sep-18	$25,000.00		$4,177.12
14-Sep-18	$2,000.00		$333.59
14-Sep-18	$3,000.00		$500.39
21-Sep-18	$1,500.00		$249.76
25-Sep-18	$500.00		$83.17
26-Sep-18	$1,200.00		$199.56
28-Sep-18	$500.00		$83.11
28-Sep-18	$5,000.00		$831.11
2-Oct-18	$5,000.00		$830.29
4-Oct-18	$1,000.00		$165.98

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
5-Oct-18	$2,000.00		$331.87
8-Oct-18	$30,000.00		$4,974.33
19-Oct-18	$1,000.00		$165.36
25-Oct-18		$2,000.00	-$330.22
31-Oct-18		$2,000.00	-$329.73
1-Nov-18	$4,500.00		$741.71
5-Nov-18	$1,000.00		$164.66
6-Nov-18	$5,000.00		$823.10
6-Nov-18	$25,000.00		$4,115.48
9-Nov-18	$2,000.00		$328.99
16-Nov-18	$2,000.00		$328.42
23-Nov-18	$1,000.00		$163.92
26-Nov-18	$100.00		$16.38
26-Nov-18	$500.00		$81.90
28-Nov-18	$500.00		$81.86
30-Nov-18	$2,000.00		$327.27
30-Nov-18	$7,500.00		$1,227.25
5-Dec-18	$1,000.00		$163.43
7-Dec-18	$1,000.00		$163.35
7-Dec-18	$1,000.00		$163.35
10-Dec-18	$25,000.00		$4,080.55
11-Dec-18	$1,500.00		$244.77
13-Dec-18	$3,000.00		$489.30
14-Dec-18	$1,500.00		$244.59
21-Dec-18	$1,500.00		$244.15
3-Jan-19	$5,000.00		$810.87
7-Jan-19	$500.00		$81.00
21-Jan-19	$500.00		$80.72
4-Feb-19	$4,500.00		$723.87
15-Feb-19	$250.00		$40.10
15-Feb-19	$500.00		$80.20
18-Feb-19	$250.00		$40.07
21-Feb-19	$500.00		$80.08
22-Feb-19	$200.00		$32.02
26-Feb-19	$500.00		$79.98
1-Mar-19	$2,800.00		$447.53
1-Mar-19	$4,500.00		$719.24
1-Mar-19	$6,500.00		$1,038.90

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
7-Mar-19		$5,000.00	-$797.92
20-Mar-19	$250.00		$39.76
20-Mar-19	$500.00		$79.53
21-Mar-19	$1,000.00		$159.01
22-Mar-19	$1,000.00		$158.97
25-Mar-19	$750.00		$119.13
29-Mar-19	$500.00		$79.34
8-Apr-19	$200.00		$31.65
12-Apr-19	$500.00		$79.05
12-Apr-19	$1,000.00		$158.11
18-Apr-19	$500.00		$78.93
23-Apr-19		$250.00	-$39.41
23-Apr-19	$5,000.00		$788.27
8-May-19		$1,000.00	-$157.04
10-May-19		$250.00	-$39.24
20-May-19	$500.00		$78.27
24-May-19	$1,000.00		$156.38
24-May-19	$30,000.00		$4,691.38
31-May-19	$150.00		$23.41
3-Jun-19	$500.00		$77.98
3-Jun-19	$5,000.00		$779.84
3-Jun-19	$38,500.00		$6,004.79
13-Jun-19	$400.00		$62.22
13-Jun-19	$500.00		$77.78
28-Jun-19	$300.00		$46.48
5-Jul-19	$150.00		$23.21
9-Jul-19	$30,000.00		$4,638.06
12-Jul-19	$500.00		$77.25
15-Jul-19	$500.00		$77.20
19-Jul-19	$200.00		$30.85
22-Jul-19	$200.00		$30.83
23-Jul-19	$250.00		$38.53
26-Jul-19	$500.00		$77.01
26-Jul-19	$500.00		$77.01
2-Aug-19	$500.00		$76.89
5-Aug-19	$300.00		$46.10
5-Aug-19	$1,000.00		$153.68
8-Aug-19	$1,000.00		$153.57

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
8-Aug-19	$30,000.00		$4,607.24
13-Aug-19	$600.00		$92.04
14-Aug-19	$500.00		$76.68
19-Aug-19	$500.00		$76.60
20-Aug-19		$2,500.00	-$382.91
23-Aug-19	$2,000.00		$306.12
26-Aug-19	$2,000.00		$305.92
2-Sep-19	$1,000.00		$152.72
4-Sep-19	$1,000.00		$152.65
6-Sep-19	$1,500.00		$228.87
12-Sep-19	$500.00		$76.19
24-Sep-19	$500.00		$75.98
30-Sep-19	$1,000.00		$151.76
30-Sep-19	$30,000.00		$4,552.79
2-Oct-19	$1,000.00		$151.69
4-Oct-19	$2,000.00		$303.25
8-Oct-19	$500.00		$75.74
8-Oct-19		$700.00	-$106.04
11-Oct-19	$1,000.00		$151.38
18-Oct-19	$500.00		$75.57
23-Oct-19	$500.00		$75.49
25-Oct-19	$1,000.00		$150.90
25-Oct-19	$1,000.00		$150.90
25-Oct-19	$2,500.00		$377.26
1-Nov-19	$500.00		$75.33
1-Nov-19	$600.00		$90.40
1-Nov-19	$6,500.00		$979.31
7-Nov-19	$6,500.00		$977.98
8-Nov-19	$500.00		$75.21
11-Nov-19	$500.00		$75.16
11-Nov-19	$1,000.00		$150.32
19-Nov-19	$1,000.00		$150.05
20-Nov-19	$500.00		$75.01
22-Nov-19	$1,000.00		$149.94
25-Nov-19	$500.00		$74.92
25-Nov-19	$30,000.00		$4,495.25
2-Dec-19	$500.00		$74.80
2-Dec-19	$1,000.00		$149.60

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
2-Dec-19	$1,000.00		$149.60
2-Dec-19	$6,000.00		$897.61
3-Dec-19	$1,500.00		$224.35
4-Dec-19	$1,000.00		$149.53
6-Dec-19	$250.00		$37.37
9-Dec-19	$350.00		$52.28
18-Dec-19	$250.00		$37.26
19-Dec-19	$1,000.00		$149.02
27-Dec-19	$1,000.00		$148.75
2-Jan-20	$500.00		$74.28
2-Jan-20	$700.00		$103.99
3-Jan-20	$500.00		$74.27
3-Jan-20	$1,000.00		$148.54
10-Jan-20	$450.00		$66.78
10-Jan-20	$1,000.00		$148.39
16-Jan-20	$1,000.00		$148.27
17-Jan-20	$1,000.00		$148.25
17-Jan-20	$100,000.00		$14,824.93
24-Jan-20	$1,000.00		$148.11
29-Jan-20	$2,000.00		$296.01
30-Jan-20	$500.00		$73.99
31-Jan-20	$2,000.00		$295.92
3-Feb-20	$500.00		$73.95
4-Feb-20	$1,000.00		$147.88
7-Feb-20	$500.00		$73.91
7-Feb-20	$500.00		$73.91
14-Feb-20	$1,000.00		$147.67
24-Feb-20	$1,000.00		$147.47
25-Feb-20	$15,000.00		$2,211.72
3-Mar-20	$1,000.00		$147.30
5-Mar-20	$500.00		$73.63
9-Mar-20	$500.00		$73.59
13-Mar-20	$500.00		$73.55
16-Mar-20	$500.00		$73.52
16-Mar-20	$9,000.00		$1,323.33
19-Mar-20	$500.00		$73.49
20-Mar-20	$500.00		$73.48
25-Mar-20	$5,000.00		$734.26

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
27-Mar-20	$1,000.00		$146.81
30-Mar-20	$400.00		$58.70
2-Apr-20	$1,000.00		$146.69
3-Apr-20	$1,000.00		$146.67
6-Apr-20	$500.00		$73.30
8-Apr-20	$500.00		$73.28
9-Apr-20	$150.00		$21.98
9-Apr-20	$500.00		$73.27
14-Apr-20	$400.00		$58.58
16-Apr-20	$6,500.00		$951.60
17-Apr-20	$750.00		$109.78
21-Apr-20	$5,000.00		$731.49
24-Apr-20	$500.00		$73.12
24-Apr-20	$2,000.00		$292.47
28-Apr-20	$750.00		$109.62
30-Apr-20	$1,000.00		$146.11
4-May-20	$1,000.00		$146.03
7-May-20	$500.00		$72.98
7-May-20	$500.00		$72.98
8-May-20	$400.00		$58.38
14-May-20	$750.00		$109.37
15-May-20	$1,500.00		$218.71
20-May-20	$5,000.00		$728.51
22-May-20	$200.00		$29.13
22-May-20	$500.00		$72.83
27-May-20	$1,000.00		$145.56
29-May-20	$500.00		$72.76
4-Jun-20	$1,000.00		$145.39
5-Jun-20	$1,000.00		$145.37
11-Jun-20	$500.00		$72.62
15-Jun-20	$500.00		$72.58
19-Jun-20	$500.00		$72.54
19-Jun-20	$500.00		$72.54
22-Jun-20	$500.00		$72.51
26-Jun-20	$150.00		$21.74
26-Jun-20	$5,000.00		$724.71
7-Jul-20	$500.00		$72.41
16-Jul-20	$500.00		$72.38

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
17-Jul-20	$300.00		$43.43
24-Jul-20	$500.00		$72.35
7-Aug-20	$1,500.00		$216.91
10-Aug-20		$500.00	-$72.29
14-Aug-20	$750.00		$108.42
14-Aug-20	$3,000.00		$433.68
20-Aug-20	$2,000.00		$289.04
21-Aug-20	$500.00		$72.26
24-Aug-20	$500.00		$72.25
24-Aug-20	$1,000.00		$144.49
27-Aug-20	$250.00		$36.12
28-Aug-20	$500.00		$72.23
31-Aug-20	$500.00		$72.22
31-Aug-20	$500.00		$72.22
1-Sep-20		$1,000.00	-$144.44
1-Sep-20	$120,000.00		$205.45 (only on non-constructive trust portion)
4-Sep-20	$500.00		$72.21
4-Sep-20	$5,500.00		$794.29
7-Sep-20	$500.00		$72.20
14-Sep-20	$500.00		$72.17
16-Sep-20	$500.00		$72.17
17-Sep-20	$1,500.00		$216.49
21-Sep-20	$500.00		$72.15
23-Sep-20	$700.00		$101.00
25-Sep-20	$500.00		$72.14
30-Sep-20	$340.00		$49.04
1-Oct-20	$8,000.00		$1,153.86
6-Oct-20	$500.00		$72.10
12-Oct-20	$500.00		$72.08
13-Oct-20		$30,000.00	-$4,324.50
23-Oct-20		$5,000.00	-$720.41
26-Oct-20	$30,000.00		$4,321.83
28-Oct-20		$5,000.00	-$720.24
24-Nov-20		$5,000.00	-$719.31
27-Nov-20		$10,000.00	-$1,438.42
30-Nov-20	$10,000.00		$1,438.21

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
21-Dec-20	$10,000.00		$1,436.77
23-Dec-20	$7,000.00		$1,005.65
8-Jan-21	$1,000.00		$143.58
12-Jan-21	$150.00		$21.54
15-Jan-21	$750.00		$107.67
21-Jan-21	$200.00		$28.71
28-Jan-21	$250.00		$35.88
29-Jan-21	$500.00		$71.76
1-Feb-21	$500.00		$71.76
1-Feb-21	$3,000.00		$430.55
1-Feb-21	$7,500.00		$1,076.38
4-Feb-21	$1,250.00		$179.39
5-Feb-21	$1,000.00		$143.51
9-Feb-21	$500.00		$71.75
17-Feb-21	$900.00		$129.13
19-Feb-21	$600.00		$86.08
25-Feb-21	$50.00		$7.17
26-Feb-21		$1,500.00	-$215.17
26-Feb-21	$4,000.00		$573.79
1-Mar-21	$7,000.00		$1,004.08
11-Mar-21	$500.00		$71.71
19-Mar-21	$250.00		$35.85
19-Mar-21	$500.00		$71.70
23-Mar-21	$250.00		$35.85
29-Mar-21	$100.00		$14.34
1-Apr-21	$500.00		$71.68
1-Apr-21	$7,000.00		$1,003.49
16-Apr-21	$500.00		$71.66
16-Apr-21	$500.00		$71.66
23-Apr-21	$500.00		$71.65
23-Apr-21	$2,000.00		$286.59
26-Apr-21	$500.00		$71.64
30-Apr-21	$500.00		$71.64
30-Apr-21	$7,000.00		$1,002.93
10-May-21	$750.00		$107.44
12-May-21	$500.00		$71.62
12-May-21	$500.00		$71.62
14-May-21	$1,000.00		$143.24

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
19-May-21	$2,000.00		$286.45
20-May-21	$500.00		$71.61
21-May-21	$300.00		$42.97
31-May-21	$250.00		$35.80
2-Jun-21	$8,000.00		$1,145.48
7-Jun-21	$300.00		$42.95
10-Jun-21	$200.00		$28.63
18-Jun-21	$500.00		$71.57
23-Jun-21	$500.00		$71.56
28-Jun-21	$200.00		$28.62
28-Jun-21	$500.00		$71.56
2-Jul-21	$8,000.00		$1,144.86
5-Jul-21	$200.00		$28.62
6-Jul-21	$250.00		$35.77
6-Jul-21	$250.00		$35.77
7-Jul-21	$100.00		$14.31
21-Jul-21	$100.00		$14.31
22-Jul-21	$1,500.00		$214.58
26-Jul-21	$50.00		$7.15
29-Jul-21	$250.00		$35.76
30-Aug-21	$8,000.00		$1,143.57
2-Sep-21	$8,000.00		$1,143.50
10-Sep-21	$250.00		$35.73
13-Sep-21	$750.00		$107.18
15-Sep-21	$250.00		$35.73
17-Sep-21	$250.00		$35.72
23-Sep-21	$100.00		$14.29
23-Sep-21	$250.00		$35.72
27-Sep-21	$100.00		$14.29
1-Oct-21	$400.00		$57.14
1-Oct-21	$1,000.00		$142.86
1-Oct-21	$2,000.00		$285.72
25-Oct-21	$7,000.00		$999.55
28-Oct-21	$500.00		$71.39
28-Oct-21	$500.00		$71.39
29-Oct-21	$1,500.00		$214.17
1-Nov-21	$400.00		$57.11
2-Nov-21	$500.00		$71.39

Date	Transfer to Laxton Fields	Payment from Laxton Fields	Interest
26-Nov-21	$7,500.00		$1,070.29
30-Nov-21	$50.00		$7.13
30-Nov-21	$50.00		$7.13
1-Dec-21	$1,100.00		$156.96
31-Dec-21	$7,000.00		$998.26
31-Oct-22	$5,000.00		$696.40
8-Nov-22		$300.00	-$41.73
17-Nov-22		$100.00	-$13.89
17-Nov-22		$100.00	-$13.89
12-Jan-23	$50.00		$6.84
12-Jan-23	$1,500.00		$205.07
13-Jan-23	$50.00		$6.83
27-Jan-23	$500.00		$67.72
27-Jan-23	$500.00		$67.72
Totals	**$1,198,440.00**	**-$73,400.00**	**$157,340.44**
Net Total		**$1,125,040.00**	
First and third defendants' liability (deducting $118,577.60 for the constructive trust)		**$1,006,462.40**	
Second defendant’s liability (deducting $2,600)		**$1,003,862.40**	