Neutral Citation Number: [2017] EWHC 2573 (Ch)

Case No: HC-2015-004059
HC-2015-004059

IN THE HIGH COURT OF JUSTICE
THE BUSINESS AND PROPERTY COURTS

The Rolls Building
7 Rolls Buildings
Fetter Lane, London EC4A 1NL
Date: 20 October 2017

Before:
HIS HONOUR JUDGE DAVIS-WHITE QC
(SITTING AS A JUDGE OF THE HIGH COURT)

- -

Between:

(1) AL RUSHAID PETROLEUM INVESTMENT COMPANY
(A COMPANY INCORPORATED UNDER THE LAWS OF THE KINGDOM OF SAUDI ARABIA)

(2) AL RUSHAID PARKER DRILLING COMPANY LIMITED
(A COMPANY INCORPORATED UNDER THE LAWS OF THE KINGDOM OF SAUDI ARABIA)

Claimants

- and –

(1) JOHN BRADNAM
(2) JB CONS (2003) LIMITED
(3) JB MANAGEMENT LIMITED
(4) JOHN BRADNAM (trading as JB Consulting)

Defendants

- -
- -

Mr Justin Fenwick QC and Mr Matthieu Gregoire (instructed by **Byrne and Partners**) for the Claimants
Mr Harry Hodgkin (instructed under the public access scheme) for the 1st, 3rd and 4th Defendants
The 2nd defendant was not represented and did not appear
Hearing dates: 2 October (reading), 3-5 October 2017

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

HIS HONOUR JUDGE DAVIS-WHITE QC (SITTING AS A JUDGE OF THE CHANCERY DIVISION)

His Honour Judge Davis-White QC :

Introduction

1. This case has factual connections with proceedings in which Lord Justice Floyd, sitting as a Judge of the Chancery Division, gave judgment on 8 May 2013: *Shekhar Dooma Shetty-v-Al Rushaid Petroleum Investment Company (& Ors)* [2013] EWHC 1152 (Ch) (the "**2013 Judgment**").

2. In those proceedings, the claimant, Mr Shetty, brought a claim for sums alleged to be owing to him from, and for compensation following the termination of, his employment with the first and second defendants in those proceedings. That first defendant in those proceedings is the first claimant in the proceedings before me, Al Rushaid Petroleum Investment Company ("**ARPIC**"), a company incorporated under the laws of the Kingdom of Saudi Arabia. There was also a claim for false imprisonment which was abandoned following cross-examination.

3. By counterclaim and additional claim in those proceedings, the defendants in those proceedings, which included for these purposes the third defendant to those proceedings, Al Rushaid Parker Drilling Limited, another Saudi company ("**ARPD**"), made claims against Mr Shetty and the third and fourth parties, Mr Caplis and Dr Wight. ARPD is the second claimant in the proceedings before me.

4. The defendants' said counterclaims and claims were essentially claims based on the taking, by Mr Shetty, Mr Caplis and Dr Wight via a BVI company, TSJ Engineering Consulting Limited ("**TSJ**"), of alleged secret commissions on supplies to ARPD. In broad terms, the commissions were said to be secretly made in breach of duties owed by the three men to the defendants. Accordingly, it was asserted that the three men were due to compensate the defendants and that the dismissal of Mr Shetty as employee was justified.

5. One of the main defences asserted by Mr Caplis and Dr Wight to the claims raised against them, was that the sums received by TSJ were in respect of genuine work undertaken by TSJ for suppliers to ARPD. Mr Shetty's position was that he did not know what the details of the payments were for, but he did not admit that they were commissions on supplies to ARPD.

6. Floyd LJ determined (among other things) that, as a matter of Saudi law, Mr Shetty and (up to the end of March 2007) Mr Caplis owed duties to ARPD not to accept secret commissions, if by so doing they caused ARPD loss. So far as Dr Wight was concerned, he found that, on balance, he was not satisfied that Dr Wight was an employee of any relevant Al Rushaid company. On the other hand, he was clear that Dr Wight was appointed as ARPD's agent for the purposes of procuring the equipment for the joint venture that I shall explain further below. He decided that Dr Wight was not an external technical consultant. Accordingly, he decided that Dr Wight owed ARPD a duty, similar to that owed by Mr Shetty and Mr Caplis, not to act in the course of his agency for ARPD in the procurement of property in such a way as to harm ARPD.

7. Floyd LJ also decided that secret commissions were paid to the three men in question by a number of suppliers to ARPD and that such payments were received in breach of duty by the three men in question, thus enabling ARPD to recover any loss suffered as a result. He found that APRD had suffered loss. Mr Shetty and Dr Wight were each ordered to pay some US$1,859,682. Mr Caplis was ordered to pay some US$1.266,266 million. Mr Shetty's claims all failed and were dismissed.

8. Among the payments considered by Floyd LJ were various payments said to be made against invoices issued by TSJ to a company described by him as JB Consulting Limited "*for the provision of consulting and engineering design service fees*". These were referable to various purchase orders for goods and/or equipment issued by ARPD to JB Consulting Limited. As regards these matters Floyd LJ found as follows:

> "*[153] TSJ issued invoices to JB Consulting "for the provision of consulting and engineering design services fees as per the agreement". These were dated 27 April 2006 for £116,000; 27 July for £147,500; 27 January 2007 for £154,800. On 24 August 2008 TSJ issued an invoice for "Engineering Services and Consulting Fees for the following: CAT 3561B diesel engines reconfiguration" in the sum of US$124,500,*
>
> *[154] The explanation of Mr Caplis and Dr Wight for these payments was that they were in respect of engineering work carried out on the 16 Caterpillar engines purchased from JB Consulting. This was pursuant to a verbal agreement entered into with JB. They gave details in their joint statement of the work done to convert the engines.*
>
> *[155] not without some hesitation, I conclude that it is not established that these payments were in respect of secret commissions. Dr White's account is supported by at least one of the invoices, and the account of what was done has detail which is absent in the other cases."*

9. In the light of these findings, Floyd LJ granted no relief in respect of the impugned transactions concerning "JB Consulting". The invoices identified by Floyd LJ in the passage above are those set out in the Appendix to his judgment under Transaction Nos. 3, 4, 8 and 12.

10. In the proceedings before me, Mr Bradnam, the first defendant, and, trading as "JB Consulting" the fourth defendant, is alleged also to have been, at all material times until in or about November 2010, a director and shareholder of the second defendant before me, JB Cons (2003) Limited ("**JBCL**"). The third defendant, JB Management Ltd, featured little in the evidence before me. In closing, it was accepted by Mr Fenwick QC on behalf of the claimants, that on the material before me there is no case against that entity and I need say no more about it. He also accepted that, in light of the evidence, if any causes of action were made out they vested in the 2nd claimant, ARPD.

11. Much more evidence is before me about the role of JB Consulting and JBCL than was before Floyd LJ. In summary, the claimants say that Mr Bradnam, directly or through JBCL, was a knowing party to the payment of secret commissions or bribes to Dr Wight and/or his associates. They say that they are entitled to recover from Mr Bradnam and/or JBCL, the amount of such bribes, together with (a) commissions taken by Mr Bradnam and/or JBCL and (b) further sums charged by Mr Bradnam and/or JBCL, described in evidence as "extra margin" which were kept secret, not only from ARPD, but also from Dr Wight. The claims are brought by way of claims in restitution and/or damages, alternatively as damages for conspiracy. I will say more later in this judgment about the defences that are raised; they include limitation.

12. JBCL and the third defendant are companies incorporated in England and Wales. They were restored to the register of companies on 31 May 2016, pursuant to Orders of DJ Lambert,

sitting in the County Court at Central London, on 9 May 2016. JBCL had been sold by Mr Bradnam and his wife to a Mr Dariush Yazdi of an address in Tehran, Iran on or about 1 November 2010 in circumstances that I will come on to describe.

Representation

13. The claimants were represented by Mr Justin Fenwick QC leading Mr Matthieu Gregoire and the Defendants (other than JBCL) were represented by Mr Harry Hodgkin, instructed under the direct access scheme. JBCL did not appear and was not represented before me. I am grateful to all Counsel for their assistance in this case and for the efficient and realistic way in which they dealt with their respective clients' cases.

14. The defendants, other than JBCL, had previously had solicitors acting for them, who had instructed different Counsel. Mr Hodgkin came into the case at a comparatively late stage. The initial skeleton argument that he lodged was prepared with the benefit of having seen that of the claimants.

15. On 4 October 2017, at the end of Mr Bradnam's oral evidence, the trial was adjourned for half a day to enable Mr Hodgkin to speak to his client, Mr Bradnam and to take instructions. This also enabled Mr Fenwick QC and his junior, time to put in brief written notes of their closing submissions and a helpful schedule dealing with the transactions in question. On resuming the trial the following morning, I was informed by Mr Hodgkin that Mr Bradnam had, overnight, been taken to hospital with a suspected heart attack. Although he had been unable to take Mr Bradnam through the schedule that I have referred to, Mr Hodgkin confirmed to me that he was satisfied both that Mr Bradnam wished the trial to continue in his absence and that he, Mr Hodgkin, had been able the day before properly to discuss the case with Mr Bradnam, to advise him appropriately and to take instructions. In those circumstances, closing submissions were made and that part of the trial concluded. I wish Mr Bradnam a speedy recovery.

16. I should add that, in my assessment. The trial afforded a proper and fair opportunity to Mr Bradnam to put forward his case and, despite the difficulties that I have mentioned, Mr Hodgkin, though constrained by the law, the evidence as it emerged and his duties to the court, was able to, and did, raise all points that could properly be taken on his clients' behalf.

The evidence

17. As I have mentioned, the evidence before me has been more wide-ranging than that before Floyd LJ. In particular, Mr Bradnam has given disclosure of copies of documents of JBCL, which he had retained on a memory stick from the time of its sale, and which, as I understand it, were not (or the majority of which were not) available to Floyd LJ.

18. Apart from contemporaneous documents, I received a report from Mr Kenneth Christopher Shortall BSc Ceng M I Mar Est, instructed by the parties as a single joint expert. Mr Shortall was not called to give oral evidence. His evidence was largely directed at the issue of what was required to modify certain of the engines provided by or through Mr Bradnam/JBCL and the cost of the same. In the light of the other evidence in the case this evidence turned out to have little significance and I was not referred to it in any detail.

19. For the claimants, I heard oral evidence from Mr Rasheed Al Rushaid ("**Mr Al Rushaid**"), the President and Vice Chairman of the Al Rushaid Group of Companies, which includes the

claimant companies. He is the son of the founder of the Al Rushaid Group, Sheikh Abdullah Al Rushaid ("**the Sheikh**"). The Sheikh is the Chairman and Chief Executive Officer of the Al Rushaid Group.

20. I also heard from Dr Gerold Ibler ("**Dr Ibler**"), who has, since September 2009, been the Chief Financial Officer of the 1st Claimant. In early 2009, he was introduced to Mr Al Rushaid and asked to investigate the role of Mr Shetty, then director of ARPD and CFO of the Al Rushaid Group, and his activities within that Group.

21. I found both witnesses to be honest, doing their best to assist the court and reliable. The relevance of Mr Al Rushaid's oral evidence, so far as it was challenged, in reality turned upon what he was told by an internal audit manager of the Al Rushaid group who had had contact with Mr Bradnam in 2007, and what happened at a meeting at Claridge's Hotel, London between him, Dr Ibler and Mr Bradnam and another person in September 2010. At the latter meeting the claimants say that Mr Bradnam admitted the bribes and that they involved wrongdoing on his part and that he promised to put forward a financial offer to settle and to provide further evidence. Mr Bradnam admits that, at that meeting, he confirmed that payments had been made to Dr Wight, but denies that he admitted any wrongdoing or gave any intimation that he would be prepared to make a financial offer to settle any claims. I will deal with this meeting in more detail below.

22. Other than that, Mr Al-Rushaid, as he explained in his witness statement, was not involved in the day to day management and implementation of the Aramco contracts. That was the responsibility of Mr Shetty, Mr Caplis and Dr Wight. Mr Al Rushaid's unchallenged evidence on this point was that he and his father were aware of the overall terms of the Aramco contracts and had a general awareness of the identity of the suppliers to ARPD. He was kept updated if there were problems and was aware, in broad terms, of the Caterpillar power unit issues that I refer to later.

23. Another contested area of evidence related to the time at which the Al Rushaid Group found out about relevant matters concerning JBCL and Mr Bradnam. This is particularly relevant to the limitation defence raised on the pleadings. This was a matter on which Dr Ibler gave evidence that was wholly convincing. Indeed, in light of that evidence, Mr Hodgkin did not feel able to continue with the limitation defence. I will deal with this issue further below.

24. For the defendants, I heard the oral evidence of Mr Bradnam. Although, in certain respects, full and frank I find that on a number of issues Mr Bradnam was simply wrong in his evidence and not telling the truth. In part, this was, in my assessment, the product of his belief that he had done no wrong and an attempt to justify that belief. I am therefore reluctant to accept his evidence unless it is corroborated by other evidence, it fits with the overall probabilities given all the evidence or it is against his interest. I deal with Mr Bradnam's evidence on specific topics in more detail later in this judgment.

The Al Rushaid Group's agreements to supply equipment

25. The Al Rushaid group (the "**Group**"), which may not be a "group" in the technical Companies Act 2006 sense, among other things, provides equipment and services to the onshore and offshore oil industry in Saudi Arabia. It commonly enters into joint venture arrangements with non-Saudi companies. ARPD was one such joint venture entity. It was formed in about November 2005. The joint venture was for the supply of oil drilling equipment and services to the Saudi Arabian Oil Company ("**Saudi Aramco**"), Saudi Arabia's national oil company. The

other joint venture partner was Parker Drilling Company Limited LLC. In about March 2008, the interest of Parker Drilling Company Limited LLC in ARPD was transferred to another Al Rushaid company, Abdullah Rushaid Al Rushaid Company for Drilling Oil Wells & Gas Limited ("**ARDOWG**").

26. On or about 1 November 2005, ARDOWG entered into four contracts with Saudi Aramco, for the supply of drilling equipment and services, in relation to drilling rigs. As I understand it, performance of ARDOWG's obligations under these contracts was later taken over by ARPD, following its incorporation in about December 2005. ARPD entered into two further contracts with Saudi Aramco in respect of a further two drilling rigs.

27. Under each of the Saudi Aramco contracts that I have mentioned, the relevant Al Rushaid company was required to supply equipment with various specifications and various services. In each case the detail was set out in Schedule G to the relevant agreement. Among the items in question were, in the case of each of the initial 4 contracts, four Caterpillar power units, also described in the evidence as "engines" or "generators", with model specification 3512-B. In the case of each of the two further contracts that I have mentioned, the requirement was five Caterpillar power units with those specifications. Thus, in total, 26 Caterpillar 3512B power units were to be supplied. Caterpillar is a well-known manufacturer of construction and mining equipment. For present purposes, the case turns in large part on the 24 Caterpillar power units that were in fact sourced, directly or indirectly, through Mr Bradnam. However, other items, supplied ultimately to Saudi Aramco, are also the subject matter of the current proceedings, many (but not all) of which are connected to modifications and additions to the Caterpillar power units that were acquired by ARPD. Such extra items include base frames, generator couplings, alternators, cranes and trucks.

28. So far as the Caterpillar power units are concerned, it appears that there was a shortage of 3512-B models available at the relevant time. However, it was possible to obtain Caterpillar Model 3516 power units which could be modified for use on the same basis as the 3512-B model. Saudi Aramco agreed that ARPD could supply on this basis under the contracts that I have mentioned.

29. There was a further complication arising from Caterpillar distributorship agreements. An initial 8 power units were, with the assistance of Mr Bradnam sourced from and supplied directly, and charged directly, by Caterpillar's distributor in the USA, Ring Power Corporation ("**Ring Power**") to ARPD. For various reasons, under its agency agreement Ring Power could sell direct to ARPD in relation to these units. When later units were identified as available from a UK Caterpillar distributor, that company was unable to sell them direct to ARPD and instead sold them to JBCL, which in turn sold them onto ARPD.

Mr Bradnam's involvement

30. According to Mr Bradnam, in early 2006, he was contacted by Dr Wight regarding the sourcing of equipment for the Saudi Aramco contracts and the components (including among others, cranes and power units to generate power for the drill and mud pumps). He was initially consulted regarding the provision of Terex cranes and for reasons relating to the constraints of distributorship agreements, it was agreed that Mr Bradnam would purchase the cranes and then sell them on to ARPD. This sale and purchase was routed through JBCL. Mr Bradnam says, and I accept to this extent, that he agreed with Dr Wight that a 10% margin would be built into the price of the cranes charged by JBCL to ARPD. Further transactions in relation to the Al-Rushaid needs under the Saudi Aramco contracts followed. I also accept that, from an early

stage, Mr Bradnam agreed with Dr Wight that JBCL would add a 10% margin to the price charged to ARPD and that this would be shared with Dr Wight, as later encapsulated in the February 2006 email correspondence I set out below.

31. Although it is not strictly necessary to resolve this issue, I find that this arrangement existed in relation to the very first sourcing of relevant equipment for ARPD from, through or as identified by Mr Bradnam/JBCL. In his witness statement Mr Bradnam appears to suggest that the first transaction related to Terex cranes and the agreement was that he (through JBCL) would take the full 10% commission and the agreed sharing of commission took effect later, in relation to subsequent transactions. However, the purchase order for Terex cranes seems to have followed on from the formalisation of the agreement regarding the sharing of commission with Dr Wight and his nominees in the February 2006 emails, as the orders are referred to in those emails. In cross-examination, Mr Bradnam also agreed that the commission sharing arrangements with Dr Wight were entered into at the very start of his relationship with Dr Wight in connection with the Al-Rushaid matter. If I am wrong about this, it was clearly agreed at a very early stage in the relationship that Dr Wight and his nominees would share in a 10% commission, or mark up on the purchase price charged by third party suppliers, such commission being charged by JBCL/Mr Bradnam.

32. Over time, a number of items were ordered by ARPD from Mr Bradnam. These include 24 Caterpillar 3516 power units. As he explained in evidence, and I accept, where goods were to be ordered by ARPD for supply by Mr Bradnam his practice was to place the transaction through his company, JBCL. This was so as to take advantage of limited liability. Although some of the paperwork, (for example, purchase orders from ARPD), sometimes refers to "JB Consulting Limited", in fact the transactions where Mr Bradnam agreed to supply goods directly, (rather than being supplied and invoiced to ARPD directly by a third-party supplier) were all ones where the relevant obligations were entered into under a contract concluded by JBCL.

33. As Mr Bradnam explained in evidence, although individual supply contracts to ARPD would be "put through" JBCL by him so as to take advantage of trading with limited liability, JBCL had no other real role in dealings with ARPD. The overall relationship between him, on the one hand, and ARPD and Dr Wight, on the other, was one conducted by him in his personal capacity.

34. So far as his dealings with ARPD are concerned. Mr Bradnam said, and I accept, that other than dealings on certain administrative matters, for example banking matters, his relationship with ARPD was conducted through Dr Wight. This is subject to three particular incidents and one course of communications: first, he had dealings with an internal accountant of the Al-Rushaid group in connection with an internal audit of the Al-Rushaid Group in about February 2007. Secondly, he met with Mr Al Rushaid and Dr Ibler at Claridge's Hotel in September 2010. Thirdly, in circumstances that I will come onto, he had contact with Mr Caplis in about 2010 resulting ultimately in the sale of JBCL with the view of removing its documents from the jurisdiction so that they would not be available to the Al-Rushaid Group, whether through disclosure in legal proceedings or otherwise.

35. I have referred to the initial 8 power units, sourced from Ring Power. A further 16 Caterpillar power units required by ARPD were supplied under two orders from ARPD to JBCL, each for 8 Caterpillar power units, dated respectively 7 April and 3 November 2006. The power units in question were supplied by a UK Caterpillar distributor, Finning (UK) Limited ("**Finning**"), to JBCL. JBCL then sold the same to ARPD. The first 8 of these power units were delivered to

Saudi Arabia where they were integrated with base frames and modified (particularly as regards the rpm that they would run at). This work was carried out by Caterpillar's local distributor in Saudi Arabia, Zahid Tractor. The remaining 8 power units were modified by Finning before the power units were shipped to Saudi Arabia.

36. Various problems emerged over time regarding the proposed adaptation of the 3516 units, but these problems were overcome. For example, in about May 2006, Finning identified a solution to any problems in matching up the power units and the alternators which involved new base frames (see emails of 14 May 2006 between Mr Bradnam and Dr Wight). In addition, alternators were sourced from another third-party supplier, Leroy-Somer.

37. Turning to equipment generally, as with the Caterpillar power units sourced from Finning that I have referred to, on occasion equipment was purchased by JBCL and sold onto ARPD. On other occasions, equipment was arranged to be sold directly from a supplier to ARPD, JBCL acting, in effect, as the broker or introducer. In the latter case, commission would be charged by Mr Bradnam to the third-party supplier which would be, in effect, reflected in a (non-disclosed) 10% mark up in the third party supplier's price to ARPD. It is apparent from the documentation before me that the transactions involving equipment sales to ARPD, either by JBCL or from a third-party supplier, and in relation to which it is alleged that secret commissions or bribes were paid, span a period commencing in or about late January 2006 and going on to about late 2008.

The commission agreement between Dr Wight and Mr Bradnam (the "Commission Agreement")

38. Although issues were raised as to the authenticity and date of two crucial emails regarding the payment of commissions in relation to supplies of equipment to ARPD agreed with, or brokered by, Mr Bradnam and/or JBCL, the claimants ultimately accepted, for the purposes of the proceedings before me, that these emails were indeed sent on 13 February 2006 in the form below.

39. The first email was from Mr John Bradnam. In the email he describes himself, in signing off, as "Director JB Consulting (2003) Ltd". The email was addressed to Dr Wight and was in the following terms:

> "*Dear Jim,*
>
> *Following are numerous telephone and email communications I suggest that we should now have a more formal agreement between us. This agreement is to cover all business transactions together on behalf of Al Rashaid* [sic] *Trading Ltd and other companies from time to time.*
>
> *The essence of the agreement is that when I or my company acquire or supply any equipment at your instruction commission will be included in the price. This commission will be structured as follows:*
>
> *1. an overall commission of 10 per cent will be included in the price charged.*
>
> *2. This commission will be divided in the following manner*
>
> *2.5% for J Bradnam*

2.5% for J Wight

5.0% for others as nominated by J Wight

Where equipment is supplied by J. Bradnam then this commission will be included in any deposit taken, where equipment is supplied by others then J. Bradnam will invoice the supplier for the entire 10% and then disperse immediately upon receipt in the manner and proportion described above.

All parties will be responsible for their own expenses with regard to any business that may be transacted.

If you are in agreement with this proposal please confirm agreement by email message stating your agreement and the serial number of this message."

40. The reply, also by email, from Dr Wight was as follows:

"john,

having read your email referenced above we confirm that we find it in agreement with regards to our understanding and are happy to accept it.
please also find attached POs for yourself for the Terex cranes and for leroy somer for generator sets.
If you could have them invoice us for the 30% deposit we would be most grateful.
any problems please let me know.

best regards

jim wight"

41. Mr Bradnam accepted in cross-examination that the agreement was one between him and Dr Wight, each acting in their personal capacities.

42. Apparently pursuant to this agreement a number of "commission payments" were made by JBCL against invoices raised by two companies, TSJ and Joy Drilling and Engineering Limited ("**Joy Drilling**"). Not all the relevant invoices were in evidence before me. Of those that are, and as regards the latter company, the relevant invoices set out an address for such company in Al-Khobar in the Kingdom of Saudi Arabia. On the TSJ invoices the payment details are to a branch of Citibank NA New York for the benefit of Pictet and Co Bankers Geneva, in turn for the credit of TSJ. On the Joy Drilling invoices, the payment details are given as being an account of "Gwendoline Wight" at a branch of the Bank of Scotland at Brechin, Angus, Scotland.

43. As frankly explained by Mr Bradnam, which evidence I accept, where he had expended effort in locating equipment which was then purchased direct from a third-party supplier, he would seek and obtain a commission of 10% on what would have been the third-party supplier's purchase price, payable by the third-party supplier, to him or JBCL. The third-party supplier would mark up its price to ARPD to include that commission payment though that would not be revealed to ARPD. The commission would then be split between Dr Wight and his nominees, as

evidenced by invoices received from TSJ and Joy Drilling, as to 7.5% with the balance of 2.5% being paid to Mr Bradnam. However, in cases where Mr Bradnam agreed to purchase the equipment from the third-party supplier and then sell it to ARPD, he would conduct the purchase and sale though JBCL. The 10% commission would be included in the purchase price charged by JBCL to ARPD. In both cases, ARPD would ultimately receive an invoice for the goods, part of which was referable to the payments amounting to the 10% commission, although this was not spelled out on the face of any of the invoices received by ARPD, whether from JBCL or from the 3rd party supplier.

44. So far as Mr Bradnam's share of the 10% commission is concerned, that is the 2.5%, Mr Bradnam frankly accepted in cross-examination that this commission was taken by him personally and that it was never an asset of JBCL.

45. The main paper trail before me (but not the only documents before me on each transaction nor the only documents that would have been generated at the time) evidencing these 10% commission payments was, in brief, as follows:

.1 A purchase order would be issued by ARPD, either to the 3rd party supplier or to JBCL (the "**Purchase Order**"). These were usually signed by Dr Wight and one or two others. In some cases, one of the signatories was the Sheikh, in other cases it was the managing director of ARPD. The managing director is a person of whom Mr Al Rushaid had no suspicions of improper involvement. In some cases, one of the signatories was Mr Caplis;

40.2 An invoice would be issued by the supplier (JBCL or the third-party supplier) (the "**Supplier Invoice**");

40.3 In cases where the third-party supplier supplied direct to ARPD, an invoice for commission at 10% would be issued by JBCL, though in at least one case the heading to the invoice was "JB Consulting" and in at least one other the payment details were for payment to a "JB Consulting" bank account (the "**JBCL Commission Invoices**");

40.4 A commission statement would be issued by Mr Bradnam (usually through JBCL) to Dr Wight setting out the amount of the 10% commission and showing the breakdown of entitlements in accordance with the 13 February 2006 e-mail (the "**Commission Statement**");

40.5 TSJ and Joy Drilling would then issue invoices, which in each case look as though they were produced using the same format, in respect of Dr Wight's commission of 2.5% and the commission of his "nominees" for 5% (the "**Wight Commission Invoices**"). The descriptions on the invoices varied. For example, in some cases they state simply "*Consulting Fees for the following*" and then list the items of equipment purchased by ARPD. In other cases, they state: "*For the provision of consulting and engineering design service fees as per the agreement*". In yet other cases they state: "*Engineering Services & Consulting Fees with reference to* [an ARPD purchase order number]".

Extra commission or margin charged by Mr Bradnam

46. In addition to his 2.5% commission, Mr Bradnam confirmed, in cross-examination that, on occasion, he would also earn extra money from a sale which was not revealed to Dr Wight (not

least because Dr Wight would have wanted to receive a share of it). In this sense, he made further sums of money from deals which he kept secret from Dr Wight.

47. An obvious example relates to the purchase, and subsequent sale to ARPD, by JBCL of eight 3516B power units, invoiced to ARPD at £220,000 per power unit at a total price of £1.76 million. The Commission Statement provided to Dr Wight showed that the power units had been purchased by JBCL from Finings at a price per unit of £200,000 and a total price of £1.6 million. The 10% Commission (described as "margin" on the Commission Statement), to be shared with Dr Wight and his nominees, was shown as £160,000, of which Mr Bradnam's share (2.5%) was shown as being £40,000. In fact, as the quotation from, and the purchase order from JBCL to, Finings shows, and as Mr Bradnam frankly admitted in the course of his cross-examination, the actual purchase price charged to, and paid by, JBCL was not £200,000, but £180,000 per unit. The result was that ARPD paid not an extra 10% on top of the price charged to JBCL, but an extra 20%. Further, instead of earning £40,000 (2.5%) on the total price charged to JBCL, as agreed with Dr Wight, Mr Bradnam earned some £200,000, amounting to 12.5% of the purchase price charged by Finning.

48. There are a number of other examples in the papers before me of such an "extra" margin charged and earned by Mr Bradnam. This extra margin was of a variable percentage of the purchase price charged to JBCL. In the example above, it was an extra 10%. In another example, that relating to base frames invoiced to ARPD by JBCL's invoice dated 20 June 2006, the "extra" mark-up, over and above the 10%, was some 0.7% (£4,000),

49. I consider the circumstances of, and explanations for, these further "mark ups" later in this judgment. In the Defence, they are pleaded as being "*a commercial profit element*" reflecting "*the services provided in sourcing* [equipment] *and the commercial and credit risks being run by* [JBCL] *in purchasing the* [equipment]*….and selling it on to ARPD*."

50. As is apparent from the Appendix to this judgment, there appears to be at least one case where, rather than charging a mark-up (undisclosed to Dr Wight) on an onwards sale to ARPD, extra commission was charged by Mr Bradnam (or JBCL) to a third-party supplier to ARPD, which commission was not disclosed to Dr Wight.

Al Rushaid internal audit: February 2007

51. In about February 2007, Mr Bradnam was contacted by a representative of the Al Rushaid Group who was an internal audit manager within the Al Rushaid Group. There was some uncertainty in the evidence as to the precise identity of this individual and his given name. (Mr Al Rushaid knew him as Naresh Prakesh. Mr Bradnam suggested that his name was Naresh Chouhan) However, it was common ground between the witnesses giving oral evidence that his given name was Naresh. His precise identity does not in fact matter.

52. I accept the evidence of Mr Al Rushaid that this was a routine audit inspection and that it was not a case of a visit triggered by, or taken against the background of, suspicions of Dr Wight, Mr Shetty or Mr Caplis or of any possible secret commissions or other impropriety.

53. By e-mail dated 14 February 2007, Mr Bradnam alerted Dr Wight to this matter as follows:

> "*New subject: I am receiving a visit on Thursday from a guy at* [ARPD] *. His name is Naresh and he has already been in contact with Michael Turwitt at Ring Power. He asked Mike for documentary evidence on pricing. Mike told him that all units supplied were*

openly invoiced and paid for by LC and any further information would need a written request from [ARPD] in Saudi but that the price charged was the price and there was no further information to be given.

Can you give me any background on this guy as he seems to be very inquisitive."

54. This email was forwarded by Dr Wight to Mr Caplis, copied to Mr Shetty. There is no reason to think that Mr Bradnam saw or was aware of this forwarding or of the result. In Dr Wight's email, he expresses disappointment that he had not been told about the visit of Naresh and the contact with Ring Power and asserts that it proves that there is a witch hunt against him. He refers to his conspiracy theory, which he says these matters support, and said he was reconsidering his position with Al-Rushaid. In an e-mail of reply from Mr Shetty the latter seeks to re-assure Dr Wight and explains that he thought he had mentioned the visit of Naresh and that there is nothing to worry about as the visit is only to complete the audit and to put records straight. Before me these matters were explored with a view to addressing the issue of Dr Shetty and Mr Caplis' involvement in the overall commission agreement, and Mr Bradnam's knowledge of the same, but I am unable to reach any conclusions in this respect from the limited material before me.

55. The more important issue is whether or not, as pleaded in his defence, Mr Bradnam explained the commission payments to Naresh and "*believed in good faith*" that he had disclosed the relevant payments to ARPD. Apart from his limitation defence, these matters are relevant to the credibility of Mr Bradnam's evidence and defence that at all times he was, and believed himself to be, acting entirely properly in entering into the commission agreement with Dr Wight and making payments to TSJ and Joy Drilling pursuant to it.

56. In his witness statement, Mr Bradnam said of this meeting that he brought with him the Commission Statements (or copies of them) as provided by him to Dr Wight. He does not say that he handed them over or showed them to Naresh. In his description of what he told Naresh he simply says that he told Naresh that where JBCL had in effect facilitated the supply of equipment to ARPD it would expect to be paid commission. He went on to say that he explained "how the contract value and how the open book margin (i.e. charging 10% on top) agreed with the customer was structured. In cross-examination, he explained that this was a generic reference and explanation to Naresh as to how JBCL operated generally, rather than specifically being related to the ARPD arrangements. In his witness statement, he went on to say that he explained to Naresh that where JBCL supplied equipment directly it would add margin and pay commission to any introducer to it. Having heard Mr Bradnam's oral evidence, I am satisfied that the commission payments to Dr Wight and his associates were not revealed and that Naresh was not made aware in fact, nor would a reasonable person have been made aware from what was said, that commission was being or had been paid by Mr Bradnam/JBCL to anyone at or connected with ARPD, let alone the main person responsible for sourcing the equipment and negotiating and placing orders. I accept the evidence of Mr Al Rushaid that had Naresh realised this then he would have reported the matter upwards within ARPD.

57. I also accept Mr Al Rushaid's evidence, that some-time after the audit visit, Naresh told him that Mr Shetty had told him, at about that time, to leave JB Consulting alone and keep out of it. With the benefit of hindsight this looks suspicious. However, I also accept Mr Al Rushaid's evidence that, had Naresh known or been told that commissions were being paid to Dr Wight and his nominees in connection with JB Consulting matters he would have reported the matter

further up the chain of management and that this would have been so even if Mr Shetty had "warned off" Naresh from taking the question of JB Consulting any further.

ARPD has suspicions about Mr Shetty and discovers payments by JBCL to TSJ

58. In early 2009 Dr Ibler, who had then established and incorporated a consultancy business under the name of Stratex Capital Inc ("**Stratex**"), met with Mr Al Rushaid and was asked to review various Al Rushaid businesses and to investigate the role of Mr Shetty, then Chief Financial Officer of the Al Rushaid Group. In about September 2009, the investigation, carried out through Stratex, uncovered various emails on Mr Shetty's computers in London which revealed or suggested that he, Mr Caplis and Dr Wight were considering incorporating, or even possibly had incorporated, TSJ. A draft consultancy agreement between TSJ and Shandong Kerui, one of Al Rushaid's suppliers, was found. Shandong Kerui was a Chinese manufacturer with whom ARPD placed orders for the rigs the subject of some or all of the Saudi Aramco contracts. Mr Shetty was dismissed in September 2009. The process is explained in the 2013 Judgment of Floyd LJ and started on about 11 September 2009. As found by Floyd LJ, the significance of TSJ was only discovered by Dr Ibler and Mr Al Rushaid very shortly after 30 September 2009. I am satisfied that by that date, if not before, the draft consultancy agreement and its potential significance had also been discovered. At the time of the trial before Floyd LJ, secret commissions of some $1.6 million paid by Shandong Kerui to TSJ, and invoiced by TSJ over the period July 2006 to February 2007 had been identified.

59. In his witness statement, as expanded upon under cross-examination, Dr Ibler explained that the discovery of the payments alleged to be secret commissions in the case before me had not been identified in September 2009. The fact that payments had been made which might amount to secret commissions in connection with the involvement of Mr Bradnam and JBCL only came to the attention of the Al Rushaid Group much later.

60. Dr Ibler's evidence was that in September 2009 the Al Rushaid Group had no evidence that TSJ had come into being and was in existence. In or about September 2009 Mr Shetty commenced his wrongful dismissal proceedings. The Al Rushaid Group caused an application for disclosure to be brought in the British Virgin Islands. That disclosure provided evidence that TSJ existed and that Dr Wight Mr Shetty and Mr Caplis were directors. It also revealed a TSJ bank account at Bank Pictet in Geneva. Subsequently, and by about April 2010, TSJ became the subject of a criminal investigation in Switzerland. In September 2010, the Swiss prosecutor provided to the Al Rushaid Group's lawyers banks statements of the TSJ account with Bank Pictet. From reviewing (among other things) those statements it became clear to Dr Ibler, and therefore the Al Rushaid Group, (for the first time) that substantial payments had been made by ARPD to entities controlled or owned by Mr Bradnam (including JBCL) and that those entities had made substantial payments to TSJ. I accept Dr Ibler's evidence on these points.

July 2010-November 2010: JBCL's documents and the Claridge's Hotel meeting on 21 September 2010

61. In cross-examination, Mr Bradnam explained that he came to know of a connection between Dr Wight and Mr Caplis in about July 2010. He said that in a conversation with Dr Wight, Dr Wight explained to him that he, Dr Wight, and Mr Caplis and Mr Shetty were being chased in the Swiss courts and other places as a result of the Saudi Aramco project. Mr Bradnam said that this was the first time that he began to have suspicions that Dr Wight might have done something wrong. Mr Bradnam said that he was asked to be a witness for the three of them and he agreed. Subsequently, he said, there were protracted communications with Mr Caplis, and Dr Wight, in which they asked for the records from Mr Bradnam's company, JBCL. Mr

Bradnam said that initially they simply wanted access to the records but by September were asking to acquire the records. This position had been established before the meeting at Claridge's Hotel on 21 September 2010.

62. The Claridge's Hotel meeting was set up under a subterfuge. Mr Al Rushaid and Dr Ibler wanted to meet Mr Bradnam to talk about the payments by ARPD for supplies by or organised through Mr Bradnam and his companies and the question of payments then made by him and/or his companies to Dr Wight, Mr Caplis and Mr Shetty through TSJ. They were concerned that he would not meet them if he knew the true purpose of the meeting. Mr Bradnam was therefore ostensibly invited to a meeting by a US company called Capvesco with a view to exploring new business in the oil field equipment market in the Middle East. The meeting was set up on the basis that Capvesco would be represented by Tony Hussain (who was in fact from Capvesco and who was the person who initially met Mr Bradnam). A Ms Elaine Medler from the Al Rushaid group set up the meeting though Mr Bradnam assumed that she was from Capvesco. Whether or not she was present at the meeting does not matter for present purposes, though it appears that she was not.

63. Shortly after Mr Bradnam met Mr Hussain, they were joined by Mr Al Rushaid and Dr Ibler. The three witnesses agree that the question of secret bribes or commissions paid to Dr Wight and others by Mr Bradnam and/or his company was discussed. However, there are a number of key respects in which their accounts differ. Mr Bradnam's account is bolstered by a note that he took of the meeting which seems to have been created some two days after the meeting.

64. According to Mr Bradnam, at the meeting he was threatened with legal proceedings and told that the Al Rushaid Group was "out to get" all individuals who had dealt with Dr Wight and others at ARPD. They threatened his wife in like manner. (In his witness statement, Mr Bradnam said that she had not been involved in the matter at all but this is not quite correct because his split of the 10% mark-up/commission seems to have been paid to her bank account.) They required him to offer compensation to ARPD and provide complete access to JBCL's records and said that if he did not agree legal action would follow. They waved the inducement of further lucrative business if he helped them. Mr Bradnam says that he denied that he or his companies had done anything illegal and confirmed that all dealings with Dr Wight were transparent and fully documented. He denies that he was shown any documents by Dr Ibler and Mr Al-Rushaid.

65. Mr Bradnam's note of the meeting largely bears out the above points.

    65.1 Mr Bradnam's assertion that he had done no wrong is bolstered by a recorded statement in the note that *"our understanding was that Mr* (sic) *Wight was an independent consultant and had acted as a business introducer and been remunerated on a commission basis for all orders introduced*";

    65.2 The threats of legal action in the note seem to vary. For example, at one point there is a reference to "veiled threats of legal action" and at another point to Mr Al Rushaid stressing that he wished "*all of this to be settled in a gentlemanly like way without recourse to the courts";*

    65.3 So far as company records are concerned, the note records a response from Mr Bradnam that "*we could give access to records but that would take time and would have to be against proper safeguards if at all."*

66. The evidence of Mr Al Rushaid and Dr Ibler, not supported by any contemporaneous notes, was markedly different. According to them, they explained what they had learned from the BVI and through the Swiss proceedings. In cross-examination, Dr Ibler said that he showed some documents, taken from a small folder that he had with him, to Mr Bradnam, who was surprised that they had evidence, and in particular some Pictet payment confirmations with regard to the TSJ bank account. Dr Ibler said that he hadn't thought of the production of documents at the meeting when preparing his witness statement (which did not refer to any documents being produced) but remembered now having a small file with him, as it was about 10 days before then that relevant documents had been obtained from the Swiss prosecutor. Mr Bradnam, they say, effectively admitted that he had paid secret commissions and/or bribes to TSJ and that he had made a lot of money as a result of his dealings with ARPD. (In cross-examination Dr Ibler remembered the word "bribes" being used.) Mr Bradnam, they said, agreed to provide the Al-Rushaid companies with all his documentary records relating to the unauthorised payments but said that this would take time and there would need to be proper safeguards. Mr Bradnam also said that he would consider making a financial proposal to ARPD to resolve the claims of ARPD against JBCL. They denied making "threats" of legal proceedings but, as I took it, were really seeking to counter any suggestion that they had browbeaten Mr Bradnam with threats. As Dr Ibler put it, his recollection was that the meeting was conducted in a "*professional and polite manner*".

67. A few hours after the meeting Dr Ibler sent an email to Mr Bradnam in the following terms:

> "*Dear John,*
> *Rasheed and I enjoyed meeting you today. Thank you for your honesty. We look forward to receive the following shortly:*
> 1. *All records relating to the equipment purchased by Al Rushaid, payments commissions etc.*
> 2. *Your financial proposal to us.*
>
> *In the spirt of cooperation we will hold off bringing legal actions against you for the next two weeks so we can resolve this matter in an amicable fashion among gentlemen.*
> [there followed contact details]"

68. Mr Bradnam replied by email the same day as follows:

> "*Dear Gerold,*
>
> *I will certainly do as we agreed today. I will be responding over the next couple of days as we recover the relevant records from archive*"

69. In my view, this email exchange is, on its face, strongly supportive of Mr Al Rushaid's and Dr Ibler's account of the meeting to the effect that Mr Bradnam frankly admitted wrongdoing, offered to put forward settlement proposals and offered to make relevant records available. That view was only strengthened by the cross-examination of Mr Bradnam on the subject. I hold that those three elements were a feature of the meeting at Claridge's Hotel.

70. Meanwhile, Mr Bradnam remained in discussion with Mr Caplis regarding the records of JBCL. It was decided that rather than sell the records the company itself would be sold and the records transferred overseas. The matter is revealed by a chain of short emails, closely following on each other in time, and passing on 28 September 2010 onwards. The sale of the

company was in principle agreed by that date. Mr Bradnam asked for the purchaser to get in touch with his accountant. Mr Caplis asked an entity called Marine Services to give the matter "urgent attention". That entity emailed Mr Bradnam and his accountants on the 29 September seeking information about the sale and contracts and making a request: "please mention price and all cost." Mr Bradnam emailed back that the price would be £20,000. "*Speed is of the essence as others are pushing me to sell to them. I have not disclosed anything connected to this negotiation*". In cross-examination, he admitted that there were no other buyers, though of course ARPD was interested in the records. Marine Services sought to negotiate a lower price by asking for the "lowest possible offer" but Mr Bradnam stuck to his guns at £20,000. "*The price reflects quality of information in company records and the fact that others have an equal and opposite interest in obtaining it*." As was clear to me from his cross-examination, and despite his assertions that there was intellectual property which might be of value among the records, I am satisfied that the only real value in the records was to stop AL Rushaid getting hold of them and this is what the emails were all about when they referred to others being interested and the quality of information being such that others were interested in it. In the email chain, Mr Bradnam said he needed to know the names and address of the proposed transferees of the shares and gave details of his bank account into which the purchase monies were to be paid: "*We need to do this today so that we can inform others if we need to, that the company has been take over and we cannot respond to any of their enquiries. We are preparing records for early handover".*

71. The purchase price was eventually agreed. Payment was made and the name of the transferee was given as "*Mr D Yazdi, director of the company iran marine*". The share transfers are dated 1 November 2010 and give Mr Yazdi's address as an address in Tehran, Iran.

72. However, secretly from Mr Caplis and Mr Yazdi, and undermining the whole point of the scheme from the perspective of Dr Wight, Mt Caplis and Mr Shetty, Mr Bradnam kept, on a memory stick, electronic versions of a substantial number (but not all) of the documents belonging to JBCL. This, he said, was by way of "insurance policy". This strengthens my conclusion reached, having heard Mr Bradnam's oral evidence, that by this time he was well aware that Dr Wight's conduct in relation to the commission payments was at the least extremely questionable and that he knowingly joined in the scheme to remove JBCL's papers from the jurisdiction so as to deny them to the Al Rushaid Group in its claims against Dr Wight and his associates.

73. On 22 November 2010 Kingsley Napley, solicitors for various Al Rushaid companies, including ARPD, sent a letter before action to Ms Jacqueline Bradnam. That letter referred to the bribes, referred to Mr Bradnam's admissions at the Claridge's Hotel meeting and sought full disclosure of relevant payments and delivery up of all relevant documents associated with the relevant transactions. It is likely that letters in similar terms were sent to Mr Bradnam and his wife. That would make sense and such letters appear to be referred to in a letter dated 1 December 2010 from Mr Bradnam to Dr Wight's solicitors, Geldards LLP, which he sent to Kingsley Napley.

74. The immediate response from Mr Bradnam, by email, was not to deny the allegations of bribery or that he had made admissions of wrongdoing or involvement in wrongdoing at the Claridge's Hotel meeting but to assert that it was not possible to provide the company documents of JBCL because the company was taken over "*by Iranian interests*" on 1 November 2010.

The issues before me

75. In broad terms, the issues before me are:

.1 What are the relevant payments that have been made to Dr Wight, his associates and Mr Bradnam/JBCL ("the payments")?

.1 Were the payments to Dr Wight/his associates secret commissions/bribes for which they had to account or payments for services rendered to Mr Bradnam/JBCL which they were entitled to retain ("the nature of the payments")?

.1 From Mr Bradnam/JBCL's perspective, are the payments to Dr Wight and his associates bribes or secret commissions for which they are liable ("knowledge/intention of Mr Bradnam")

.1 Is Mr Bradnam/JBCL liable for the tort of conspiracy ("conspiracy")?

.1 If liable, what is the measure or quantum of liability ("quantum")?

.1 Is interest payable on any damages and, if so, at what rate ("interest")?

The Law

76. I turn first to the law. The relevant principles were effectively agreed. The first issue is whether English law governs or some other law. In the 2013 Judgment, with regard to the liabilities of Mr Shetty, Dr Wight and Mr Caplis this issue loomed large. Before me the parties were agreed that I should apply English law to the question of the liability of the defendants (whether on the basis that English law applied or there is no evidence as to foreign law, which should therefore be assumed to be the same as English law). The case has been pleaded throughout on the basis that English law governed.

77. Although, to some extent, Mr Bradnam (or JBCL) may have said to have been the agent or at least a fiduciary in relation to ARPD the case against the defendants is not pleaded in that way nor, as was made clear to me in submissions, is agency of Mr Bradnam relied upon by the claimants.

78. The claimants' case is put on the basis of bribe, further or alternatively conspiracy. I have been referred to a number of authorities in these areas.

79. So far as bribes are concerned, in *Industries and General Mortgage Company Limited v Lewis* [1949] 2 All ER 573 Slade J said as follows:

> "*For the purposes of the civil law a bribe means the payment of a secret commission, which only means (i) that the person making the payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent. Those three are the only elements necessary to constitute the payment of a secret commission or bribe for civil purposes*."

80. Slade J went on to hold that proof of corruptness or corrupt motive on the part of the bribe is unnecessary, relying on the Court of Appeal decision in *Hovenden and Sons v Millhoff* (1900) 83 LT 41.

81. In *T. Mahesan S/O Thambiah v Malaysia Government Officers' Co-operative Housing Society Ltd* [1979] AC 374, Lord Diplock gave the judgement of the Privy Council. As he explained, as against the bribed agent or fiduciary, the principal is entitled (i) in equity to the recovery of the bribe, without any need to show that loss has been incurred as a result of the agent's conduct, (and/or) as money had and received or (ii) in tort, to damages for the loss sustained by the principal in consequence of entering into the contract in respect of which the bribe is given. There cannot however be double recovery and the principal will have to elect between the two remedies. So far as the briber is concerned, the principal's remedies include rescission of the contract in respect of which the bribe had been given, recovery of the bribe or damages in tort, for fraud, in respect of relevant losses sustained by reason of having entered into the relevant contract. This latter liability is joint and several with that of the person bribed. Leaving aside the remedy of rescission, Lord Diplock summed the matter up as follows:

> " *So both as against the briber and the agent bribed the principal has these alternative remedies:*
>
> *(1) for money had and received under which he can recover the amount of the bribe is money had and received or,*
>
> *(2) for damages for fraud, under which he can recover the amount of the actual loss sustained in consequence of his entering into the transaction in respect of which the bribe was given,*
>
> *but he cannot recover both."*

82. In *Fyffes Group Ltd v Templeman* [2000] 2 Lloyds LRep 643, Toulson J considered the law relating to bribes. He helpfully summed up the matter at page 660 of the Law report.

(1) "*The archaic action for money had and received has now become part of the law of restitution. Under it a principle whose agent has been bribed is entitled to recover from the briber (or from the agent) the amount of the secret commissions paid to the agent: Mahesan v Malaysia Housing Society [1979] AC 374*";

(2) A principal is entitled to recover as damages for tort any loss which they can prove to have suffered as a result of entering into the relevant contract, brought about by the bribery (see *Mahesan*);

(3) The briber may also be liable to pay equitable compensation for dishonestly assisting in the briber's breach of fiduciary duty (see e.g. *Royal Brunei Airlines Sdn. Bhd. v Tan* [1995] 2 AC 378.

83. In this case, although on the facts dishonest assistance in breach of fiduciary duty may be made out, it is not, in my assessment, a cause of action that is clearly pleaded in the particulars of claim and accordingly I say no more about it.

84. So far as conspiracy is concerned, the claimants rely upon "unlawful means" conspiracy. For present purposes, it is sufficient to say that, in essence, the tort is committed where two or

more persons combine to take, and take, action which is unlawful in itself with the intention of causing damage to a third person, who thereby suffers the intended damage (see Clerk & Lindsell on Torts cited by Supperstone J in *Baxendale Walker v Middleton* [2011] EWHC 998 (QB) (now the 21st Edition paragraph 24-98 onwards).

85. As a general matter, I also confirm that I have in mind that the standard of proof is the civil standard and what has been said in the authorities about that standard and inherent probabilities (see *re H (minors)* [1996] AC 563; *Re B* [2009] 1 AC 11 and *Re S-B* [2009] UKSC 17; [2010] 1 AC 678). In assessing Mr Bradnam's evidence I also bear in mind the general guidance about lies, conventionally given to juries in criminal cases but of relevance in the civil sphere: see *Re Lucas* [1981] QB 720.

86. So far as limitation is concerned, the payments, or some of them, as I say, go back more than 6 years before the bringing of proceedings in this case. However, in the light of the evidence, Mr Hodgkin disavows any reliance on a limitation defence. In my assessment, he is correct to do so. S32 of the Limitation Act 1980 in my view provides a clear answer to any assertion that the 6 year anniversary of the date of the payment in question is the relevant date for Limitation Act purposes by which proceedings must be commenced. The relevant facts were only discovered in (and were not discoverable before) September 2010. These proceedings were commenced within 6 years of that date, 23 September 2015. Mr Hodgkin took no point on the pleadings. I am not sure that s32 Limitation Act 1980 is in terms pleaded by the claimants but if necessary would have given permission to amend given that the factual basis of s32 Limitation Act has long been on the table as the answer to any 6 year Limitation Act point and that the facts relevant to such a defence have long been in play as facts relevant to the underlying causes of action. I should note that I do not have to resolve the issue of the extent to which Mr Bradnam is bound by the amended defence to the effect that various findings of fact in the 2013 Judgment, including one apparently highly relevant to limitation and resulting in the same conclusion as regards s32 of the Limitation Act, are admitted.

The payments

87. Attached to this judgment as Appendix 1 is a table identifying the relevant payments relied upon by the claimants. The dates and rates of exchange are agreed between the parties and I am satisfied that, so far as such agreement does not bind JBCL, they are appropriate. I am satisfied that payments as set out in that Schedule were made. I deal with their nature later in this judgment. The payments are largely agreed between Mr Hodgkin and Mr Fenwick QC based upon the documentary evidence before me and the oral evidence that I heard. As I have mentioned, not all the relevant contemporaneous documents are in evidence before me. Where particular points arise, as between Mr Bradnam on the one hand and the claimants on the other, in relation to specific transactions I deal with those below. As a general matter however, having been taken through the relevant documents, Mr Bradnam fully and fairly admitted that the payments were made as set out in Appendix 1 even where the documents were sparse (for example in some cases there was little more than an invoice from TSJ). References below to "Transaction Nos" are to the numbers of the transactions as set out in Appendix 1.

88. So far as extra margin is concerned, the claimants do not ask me to draw any general conclusions as to Extra Margin being paid to Mr Bradnam or JBCL but rely solely on individual transactions where they say that the evidence establishes that such margin was paid in an identifiable amount (or at least up to an identifiable amount).

89. Transaction no 5: In the documents, there is little more than an invoice from TSJ for £147,500. In oral evidence Mr Bradnam accepted that he would have received commission in line with the agreement with Dr Wight contained in the February 2006 emails. However, he suggested that in the case of transaction no 5 the commission paid to TSJ of £147,500 represented the full 7.5% payable to Dr Wight and Dr Wight's nominees. At the end of the day his reason for thinking that the invoice from TSJ was for the full 7.5% was that the sum seemed rather high. On balance I am satisfied that, as was the case with the other transactions, Joy Drilling did invoice and get paid a further sum (in effect the 2.5% commission agreed) and that the sum invoiced by TSJ represented the 5% share payable to Dr Wight's nominees.

90. Transaction 10: 6 x Kenworth (C550 Twin steer Chassis trucks). As regards these trucks the Commission Statement provided to Dr Wight by Mr Bradnam showed total commission earned (then split in accordance with the Commission Agreement) as being $180,000. However, the invoice for commission by JBCL to the supplier, RIHM Kenworth, shows commission totalling $249,000. This amounts to an extra commission to Mr Bradnam of some $69,000 which was not disclosed to Dr Wight. In oral evidence, Mr Bradnam ended up by saying that he was not sure how matters had ended up and that he might have or he might not have received the extra commission. As I understood his evidence he was fairly confident that he would have received it at an early stage (commission was usually invoiced by JBCL and to be paid by the third-party supplier in effect from the deposit paid by ARPD) but thought there was a possibility it had later been repaid as part of financial adjustments resulting from difficulties that RIHM Kenworth had had with its own supplier/sub-contractor. On balance, I am satisfied that the extra commission was received and retained by Mr Bradnam.

91. Transaction 11: 1 x Terex A600 Rough Terrain Crane. The sum charged to ARPD by JBCL is evidenced by an invoice. There is no invoice to JBCL from Terex. In oral evidence Mr Bradnam explained that Terex was treated by him as an independent distributor where it was possible to add a margin on the price charged by Terex when fixing the price that JBCL would charge ARPD. In this case he thought the margin was about £5,000 to £6,000 but could not be precise. The claimants are content to limit their claim to £5,000 in this respect and invite me to hold that there was an extra margin charged by Mr Bradnam and hidden from Dr Wight of £5,000. In the light of the evidence that I heard, I make that finding.

92. I am not sure that all of the transactions in the Appendix are in fact pleaded in the particulars of claim. However, the particulars of claim do seek in effect relevant accounts and inquiries. Based on the information before me the claimants say that there need be no further account or inquiry and that in effect the evidence at trial has identified the relevant transactions that might otherwise be subject of an account or inquiry. I am content to proceed on this basis and if necessary would have given formal leave to amend to rely upon any transactions which are set out in the appendix but not particularised in the particulars of claim.

The Nature of the payments

93. As I have said, in the proceedings leading to the 2013 Judgment, Floyd LJ was not satisfied, on the evidence before him, that certain of the transactions set out in the Appendix to this judgment represented payments to TSJ of bribes or commissions rather than being genuinely payment for work carried out by TSJ.

94. Mr Bradnam's evidence was that the agreement that he had with Dr Wight from the beginning was that he, Mr Bradnam, would be obtaining a 10% commission in respect of the price charged to ARPD and that that sum would be split so that 2.5% was received by Mr Bradnam; 2.5% by Dr Wight and 5% by Dr Wight's associates as set out in the February 2006 emails. The 10% would either be included in the price charged by a third-party supplier to ARPD or comprise a mark-up in the purchase price charged to ARPD by JBCL. This was not dependent on Dr Wight or his associates doing any work for JBCL or Mr Bradnam.

95. I am satisfied that where the invoices from TSJ referred to charges "as per the agreement!" the agreement in question was the commission agreement, not any agreement to carry out work or provide services as had been asserted by Dr Wight, Mr Shetty and Mr Caplis before Floyd LJ. Although Mr Bradnam sought to suggest that TSJ (or Dr Wight) had in fact from time to time carried out some work in connection with identifying appropriate specifications to permit adaptation of the power units in fact supplied to ARPD, I am satisfied that the payments to TSJ and Joy Drilling were made solely because of the commission agreement reached in February 2006 and that no relevant work was done by them for Mr Bradnam or JBCL. The work on the engines themselves seems to have been carried out by others (most notably Finning and/or Zahid in Saudi Arabia) and it appears that it was the third-party suppliers who were coming up with solutions, not Dr Wight (or indeed Mr Bradnam).

96. I am further satisfied that, to the extent that it could be said Dr Wight or any of his associates did any work in respect of the supply of equipment to ARPD, that was carried out by them in their capacity as employees or, in effect, agents of ARPD and that they were not entitled to take payment for the same from Mr Bradnam and/or JBCL and that the relevant payments set out in the Appendix are unauthorised (by ARPD) secret profits in respect of which they would be obliged to account to ARPD.

The knowledge and intention of Mr Bradnam

97. Mr Bradnam was cross-examined carefully regarding his case that (a) he believed at all material times that Dr Wight was authorised by ARPD to negotiate commission for himself and his nominees and (b) that in negotiating the Commission Agreement with Dr Wight he was thereby disclosing the same to ARPD.

98. Mr Bradnam's pleaded case that the Commission Agreement was one entered into between JBCL and ARPD was abandoned early in his oral evidence. He frankly accepted that all commission payable to JBCL was for his personal benefit. Further, he accepted that the Commission Agreement was one between himself and Dr Wight in their personal capacities. His evidence in this respect is borne out by various of the terms of the emails in question.

99. However, Mr Bradnam continued to assert that he believed that Dr Wight was an independent external consultant to ARPD who was authorised by ARPD to negotiate the terms of the Commission Agreement and receive commission under it. I do not accept his evidence on this nor do I accept that that was his belief at the time. It must have been obvious to him at the time that Dr Wight was negotiating commission for himself and yet was also the person either placing or at the very least having a large say in the placing of orders by ARPD. In other words, the entry by ARPD into the relevant purchases, was largely the decision of Dr Wight. This was obvious from the relevant purchase orders from ARPD. It was also inherent in the emails of February 2006, the Commission Agreement covering "business transacted together" on behalf of Al Rushaid to apply when Mr Bradnam or his company acquires of supplies equipment "at your instruction".

100. Further, I reject the defence case that Mr Bradnam disclosed or even thought he had disclosed the commissions to ARPD.

101. First, and as regards the Commission Agreement itself, I reject as fanciful his suggestion that he believed that making the Commission Agreement with Dr Wight amounted to disclosing the agreement to Al Rushaid. That in itself is hardly consistent with the idea that Dr Wight was an independent external consultant who had been authorised to enter separate commission agreement, for commission payable by suppliers to ARPD. Further, I reject the submission that as a matter of fact and law such agreement was, by being made with Dr Wight, thereby disclosed to Al Rushaid. The fact that Dr Wight wished for half of the overall 10% commission to be paid to his nominees itself was deeply suspicious. The fact that Mr Bradnam agreed to this without further enquiry again suggests that he knew that that element at least of the commission was not agreed by ARPD and that Dr Wight was seeking to hide it. That suspicion must have become stronger when invoices came in from a BVI company, when Mr Bradnam did not know who was behind that nominee. His evidence was that he believed at various times that the nominee might be Mr Wight's son, Mr Wight himself (or members of his family) or associates of his. He says Dr Wight said that it was other people involved who had to be paid commission.

102. Secondly, I am satisfied that the matter was not disclosed at the time of the visit by the internal audit manager of Al Rushaid to that person.

103. Thirdly, I am satisfied that the matter was disclosed and that liability was accepted by Mr Bradnam at the Claridge's' Hotel meeting. I am satisfied not only that the disclosure was made but that it was genuine and not a false admission brought about by browbeating or intimidation or threat. In my assessment of Mr Bradnam as a witness he is not a person easily threatened or browbeaten and I am satisfied that the meeting was not of the nature where it largely comprised threats.

104. Fourthly, I am satisfied that in his business dealings in relation to this matter Mr Bradnam has been dishonest in other respects and that such dishonesty is indicative of a dishonesty in the original Commission Agreement. Thus, I am satisfied that he in effect cheated Dr Wight by lying about the turn he, Mr Bradnam, was making when he presented commission statements to Dr Wight which asserted an incorrect purchase price for equipment supplied to JBCL and then on supplied to ARPD, with a view to hiding the extra margin that he Mr Bradnam was making. It follows that as Dr Wight was the only person at ARPD with relevant transparency about pricing and making the decisions that the effect was also to mislead ARPD. Dr Wight negotiated prices for ARPD on the basis, as represented by Mr Bradnam, that Mr Bradnam was obtaining a 2.5% turn on the deals, not that he was also taking a concealed turn in an amount that he felt he could get away with. I am also satisfied that, vis a vis Dr Wight and Mr Caplis, Mr Bradnam was also dishonest in selling JBCL with a view to its papers being taken from the jurisdiction so they would not be accessible to Al Rushaid but then retaining copies of a large portion of them as an insurance policy. I am also satisfied that the steps taken are not consistent with honesty about the commissions generally. Mr Bradnam said he did not know who to believe: Al Rushaid or Dr Wight. However, if genuinely in that position the honest response would have been to make the papers available to Al Rushaid and Dr Wight: not to sell them to Dr Wight at the best price obtainable on the basis that they would be sent out of the jurisdiction and out of the reaches of ARPD.

105. Finally, although Mr Bradnam was honest in admitting a number of matters, those were in large part matters where the documents spoke for themselves. Even in respect of such matters, Mr Bradnam had a tendency to try and downplay or adjust the facts. Thus, he suggested that there was a real value, over and above their value to Dr Wight in keeping them secret, in intellectual property terms in the papers of JBCL which helped explain the £20,000 sale price. Whatever value there may have been was very small and the price actually negotiated had nothing to do with any such value in intellectual property. There is no evidence the buyer knew or cared anything about it and the emails are consistent with it not being mentioned, let alone being any incentive. Another example is Mr Bradnam's assertion that services were provided to some extent by Dr Wight to JBCL thereby justifying commission payments to him and the wording on some of the TSJ and Joy Drilling invoices. As I have held, there were no such services provided. A final example is Mr Bradnam's assertion that his Extra Margin was justified by the risks that he had to take in buying equipment for onward supply to ARPD in circumstances where there was a risk that ARPD might not pay. Whether or not, as asserted, there was on one early transaction a delay in a relevant letter of credit being put in place by ARPD I am satisfied that this fails to explain all the extra margin payments received or the extra commission, hidden from Dr Wight, in respect of the one Terex crane. In my judgment the truth was, as Mr Bradnam's evidence was, that he charged extra margin where he felt he could get away with it and calculated in such amount as he thought he could get away with. It was not based on there being specific risks borne by him or JBCL. The, to my mind, inconsistent, assertion that Dr Wight was at one and the same time an independent external consultant authorised or entitled to charge commission but at the same time the representative of ARPD authorised to disclose such payments to ARPD, made little sense and was of the same sort.

Conspiracy

106. It also follows that I am satisfied that the claim in conspiracy is made out. Mr Bradnam and his company JBCL and Dr Wight (whether or not with others) agreed to cause damage to ARPD by causing it to enter into contracts for the purchase of equipment which resulted in it paying over the odds because of concealed unlawful secret commissions or bribes to Dr Wight and/or others being incorporated in the purchase price. They intended thereby to cause harm to ARPD and harm was thereby caused.

Quantum

107. So far as the bribes to Dr Wight and his associates are concerned (i.e. the payments to TSJ and Joy Drilling), these are recoverable from Mr Bradnam either as bribes in restitution or their quantum as damages in fraud or as damage in conspiracy. He accepted in evidence that the deals would have been done by him for his 2.5% commission. The only reason he agreed to pay the bribes was to get the work (and in effect his 2.5% commission). The quantum of the same are also recoverable from JBCL as damages for conspiracy.

108. So far as the extra margin (or in one case extra commission) is concerned, the quantum of the same is only recoverable as damages either related to the bribes or in conspiracy. In each case the measure of damage is the same. I am satisfied that these sums are extra damage because they were over and above the 2.5% commission that Mr Bradnam said in evidence he would have been content to accept. In effect, from his perspective they were an opportunistic windfall.

109. So far as the 2.5% commission payments to Dr Bradnam are concerned, I am satisfied that this represents yet further damage suffered by ARPD. It is difficult to see why the direct sales

needed a third party to arrange them. The only reason Dr Wight used a third party was to enable himself to gain commissions. It might be said that an intervening purchase/sale was necessary because (e.g.) Finning could not sell direct to Saudi. However, Mr Al Rushaid gave evidence that there was the possibility of contacting all Caterpillar suppliers and getting the goods supplied direct. Further, although not explored in evidence, there was a possibility that Al Rushaid could itself have incorporated an entity to interpose in a chain.

Interest

110. I have been referred to the cases set out in Civil Procedure 2017 ("the White Book) in particular under CPR Part 7 at the notes, paragraphs 7.07 to 7.19. Doing the best that I can, based on the submissions made to me, considering the likely period over which interest will be payable and taking into account the base rate from time to time, I consider that 2% above base rate is the fair and appropriate rate of interest that should apply to any damages or sums recovered by way of restitution.

Conclusion

111. It follows that there should be judgment for ARPD in the sum of £2,353,753.18, together with interest thereon pursuant to s35A of the Senior Courts Act 1981, jointly and severally, against Mr Bradnam and JBCL. In the period between the provision of this judgment in draft pursuant to the Practice Direction to CPR Part 40 and the formal handing down of this judgment the parties have been able to agree a form of order to give effect to this judgment which, with minor additions, I now make. The main substantive additions to the order are first, that there be liberty to apply to the trial Judge, that is me, within 7 days of the sealing of the order in relation to the budgeted costs in this case. This is because I am unclear whether or not an issue regarding budgeted costs has been resolved and, if it has not, whether it is a matter for me or the Costs Judge. The second provision is that the question of whether the trial Judge, that is me, should grant permission to appeal is adjourned to another date but any such application is to be made and brought on before him within 21 days of the date of sealing of this Order. The third provision is that the time for lodging a notice of appeal is extended to 21 days after the date of the sealing of this Order. The final provision is that there should be no order as against the Third Defendant.