

ENGLAND AND WALES / JUDGMENT

L&S Accounting Firm Umbrella Ltd v Shiloh House Holdings Ltd [2026] EWHC 618 (Ch) (13 March 2026) [2026] EWHC 618 (Ch)

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Case No: BL-2025-000934

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST

INSOLVENCY AND COMPANIES COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

13th March 2026

B e f o r e :

Richard Farnhill

(sitting as a Deputy Judge of the Chancery Division)

Between:

L&S ACCOUNTING FIRM UMBRELLA LTD

(IN LIQUIDATION)

Claimant

- and -

SHILOH HOUSE HOLDINGS LTD

Defendant

Christopher Brockman (instructed by Wedlake Bell LLP) for the Claimant

Owusu Abebrese (instructed by Emmanuel Solicitors) for the Defendant

Hearing dates: 3-4 February 2026

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Richard Farnhill (sitting as a Deputy High Court Judge of the Chancery Division):

The Claimant (

Umbrella

) seeks summary judgment against the Defendant (

Shiloh

) in respect of sums said to have been wrongly diverted from Umbrella by two of its former
directors, Mr and Mrs Oronsaye, into the acquisition of three properties in Bedford between
August 2022 and February 2023 (the

Properties

):

i) Unit E, Midland Road (

Unit E

).

ii) 38 Water Lane (

Water Lane

).

iii) 6 Vulcan Street (

Vulcan Street

).

All of the Properties were acquired by Shiloh, although only Water Lane has been registered in its name. Throughout the relevant period Mr Oronsaye was a director of Shiloh; Mrs Oronsaye was a director on incorporation but purported to resign immediately after. I say purported because there is evidence of her ongoing control of Shiloh after the date she was said to have resigned and the documents recording her resignation were only filed at Companies House well after the date when it is said to have happened. Mr and Mrs Oronsaye, along with their children all of whom were minors at the relevant time, were also shareholders in Shiloh.

The Properties are currently frozen pursuant to a proprietary injunction issued by Mellor J on 30 July 2025 and continued by Leech J on 14 August 2025. At the hearing of this application Shiloh sought the discharge of that injunction. I refused that application in an ex tempore judgment and certified it as totally without merit.

This is the latest leg of an ongoing litigation. Significantly, on 26 July 2024 HHJ Hodge KC granted summary judgment (the

2024 Judgment

) in favour of Umbrella against Mr and Mrs Oronsaye, L&S Financials Ltd (

L&S Financials

), L&S Accounting Firm Ltd (

L&S Accounting

) and Mimshach Management Services Ltd (

Mimshach

) along with a post-judgment freezing order against Mr and Mrs Oronsaye. Permission to appeal was sought from and refused by both HHJ Hodge and the Court of Appeal. The 2024 Judgment is therefore final and binding on Mr and Mrs Oronsaye and the other parties to it.

Overview

This is not an application that divides neatly into issues of fact and issues of law. In establishing what the facts are one must have in mind that this is a summary judgment application, and as such a different standard applies to that at trial. Moreover, Mr Brockman relied heavily on the 2024 Judgment for its findings of fact in respect of the duties owed to Umbrella by Mr and Mrs Oronsaye and the breaches of those duties found by HHJ Hodge. Mr Abebrese resisted that on the ground that Shiloh had not been a party to those proceedings and so, he submitted, was not bound by the 2024 Judgment. Much turns on who is right on that question. Finally, in terms of

precursors to the factual findings, this is a case that involves the alleged flow of money from Umbrella through to the funding of the acquisition of the Properties. In some cases that flow is direct and no issue of tracing arises; in others it involves tracing through mixed accounts and so the applicable rules on tracing are important for Umbrella to be able to establish its factual case.

With that in mind, this judgment tackles the issues in the following order:

- i) The summary judgment standard. This was not controversial, but it is important always to have it in mind, particularly in a case such as this where there are allegations of dishonesty.
- ii) Is Shiloh bound by the factual findings in the 2024 Judgment? In my view it is, both as a privy to the parties to the proceedings that gave rise to the 2024 Judgment and because, even if it is not a privy, it would be an abuse of process to allow Shiloh to relitigate those findings.
- iii) What is the relevant approach to tracing? The 2024 Judgment found that Mr and Mrs Oronsaye were fraudsters on a massive scale who repeatedly breached their fiduciary duties to Umbrella. It is apparent from the findings in the 2024 Judgment and the evidence before me that they mixed Umbrella's assets with their own, in the form of payments into bank accounts they held. The approach to tracing in such cases is that set out in

Shalson v Russo

[2003] EWHC 1637 (Ch)

at [144] and in Goff & Jones, "The Law of Unjust Enrichment (10

th

Ed) at 7-53. In short, to quote the language of

Shalson

, "

if the trustee can be shown to have made an early application of the mixed fund into an investment, the beneficiary is entitled to claim that for himself.

"

iv) Factual findings. Applying those standards, I accept that Umbrella's assets can be traced into the acquisition of the Properties with the exception of payments made to the auctioneers on the acquisition of Water Lane and Vulcan Street, the source of which has not been identified. I specifically reject the assertion by Shiloh that Mr and Mrs Oronsaye had independent resources that would have permitted them to acquire the Properties. That assertion is inconsistent with the 2024 Judgment and, in any event, wholly unsustainable on the evidence before me. Even were it to have some factual basis it would be irrelevant given the tracing rules that apply.

- v) The parties agreed on the legal test for knowing receipt, which is set out in the Court of Appeal's judgment in

El Ajou v Dollar Land Holdings

[1994] 2 All ER 685

at 700g. Umbrella must show a disposal of its assets in breach of fiduciary duty, beneficial receipt by Shiloh of assets representing the traceable proceeds of the Umbrella assets and knowledge on the part of Shiloh that the assets it received were the traceable proceeds of a breach of duty. On the basis of the findings in the 2024 Judgment and the evidence before me I consider that all three elements are established

vi) Defences: Shiloh asserted a number of defences to the claim. None have any basis.

I therefore consider that Umbrella has shown that it is entitled to summary judgment on its application to establish a constructive trust over the Properties as to: Unit E: 100%; Water Street 90.16%; Vulcan Street: 90.36%.

The Rules Relevant to Factual Findings in this Application

Summary Judgment

The parties were agreed on the relevant standard and largely referred me to the same cases.

CPR 24.3 states:

"The court may give summary judgment against a claimant or defendant on the whole of a claim or an issue if –

- (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at trial."

The question is therefore whether Shiloh has any real prospect of successfully defending the claim. If it does not, there is a further question of whether there exists some other compelling reason why the claim should be disposed of at a trial, rather than at this stage.

Both parties referred me for a summary of the law to the judgment of Lewison J, as he then was, in

EasyAir Ltd v Opal Telecom

[2009] EWHC 339 (Ch)

at [15]:

"As Ms Anderson QC rightly reminded me, the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:

- i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success:

Swain v Hillman

[2001] 2 All ER 91

ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable:

ED & F Man Liquid Products v Patel

[2003] EWCA Civ 472

at [8].

iii) In reaching its conclusion the court must not conduct a "mini-trial":

Swain v Hillman

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents:

ED & F Man Liquid Products v Patel

at [10];

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial:

Royal Brompton Hospital NHS Trust v Hammond (No 5)

[2001] EWCA Civ 550

;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case:

Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd

[2007] FSR 63

...."

Mr Brockman recognised that this guidance is focussed on summary judgment applications made by defendants, but referred me to the point made by Edwin Johnson J

Umbrella Care Limited (In Liquidation) v Khair Un Nisa

[2022] EWHC 86 (Ch)

at [42] that it applies equally where summary judgment is sought by a claimant on the basis that the defendant has no real prospect of a successful defence to the claim. I did not understand that to be disputed by Mr Abebrese.

Lewison J noted the importance of the court avoiding conducting a mini-trial on the hearing of a summary judgment application. Mr Abebrese placed some stress on this but he recognised that where the court was satisfied that it had before it all the evidence necessary for the proper determination of the issues, and the parties had had an adequate opportunity to address that evidence in argument, it should "

grasp the nettle and decide

" the point. That reflects a point made by Cockerill J, as she then was, in

King v Stiefel

[2021] EWHC 1045 (Comm)

, at [21]-[22]:

"21. The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that – even bearing well in mind all of those points – it would be contrary to principle for a case to proceed to trial.

22. So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up."

As Cockerill J went on to address at [24], where the claim involves allegations of fraud or dishonesty particular care must be taken by the court:

"The reality is that while the court will be very cautious about granting summary judgment in fraud cases, it will do so in suitable circumstances, and there are numerous cases of the court doing so. This is particularly the case where there is a point of law; but summary judgment may be granted in a fraud case even on the facts. I have done so in a case heard very close in time to this application:

Foglia v The Family Officer and others

[2021] EWHC 650 (Comm)

, where at [14] I gave some examples of other cases in which this course was also followed. In other cases, such as

AAI Consulting Ltd v FCA

[2016] EWHC 2812 (Comm)

and

Cunningham v Ellis

[2018] EWHC 3188 (Comm)

fraud claims were struck out on the basis that the particulars of claim were inadequate in themselves to support the claims being made."

I note that the summary of the relevant approach that I have just given reflects that adopted by HHJ Hodge in the 2024 Judgment, subject to the further points he made at [14] and [19]: it is appropriate for the court to consider what further evidence might emerge on disclosure but where, as here, there have already been extensive disclosure obligations pursuant to various court orders it is reasonable to assume that no additional, relevant documentary evidence will be available at trial. That point seems to me even stronger here because further disclosure orders have been made following the 2024 Judgment.

Does the 2024 Judgment bind Shiloh?

I should note at the outset that Mr Abebrese, doubtless on instructions from his client, suggested that the 2024 Judgment and the order that followed it remained subject to challenge by Mr and Mrs Oronsaye. I see no basis on which they can do so. Permission was sought to appeal that order and was refused, both by HHJ Hodge and by the Court of Appeal. There has subsequently been a separate challenge to the order. That challenge failed before HHJ Keyser in January and was certified to be totally without merit. None of that means that the 2024 Judgment binds Shiloh, of course, but it does mean that the 2024 Judgment and the order made by HHJ Hodge are final. Whatever challenge to it Mr and Mrs Oronsaye might now have in mind cannot affect the analysis of the question I must address.

Turning to that question, Shiloh's case was very straightforward: it was not a party to the 2024 Judgment, was not involved in those proceedings in any way and so should not be bound by their outcome.

To counter that Mr Brockman relied on two separate, albeit related, lines of authority.

The first is *res judicata*. If Shiloh is a privy of Mr and Mrs Oronsaye or the other defendants in the earlier proceedings, it is bound by the 2024 Judgment. In considering the privity of interest test Mr Brockman referred me to Spencer Bower and Handley "*Res Judicata*" at paragraph 9.42, which addressed the decision of Megarry VC in

Gleeson v Whipple & Co Ltd

[1977] 1 WLR 510, 514–515:

"... only privity of interest can be in question. One difficulty about this is the protean nature of the word interest . . . From such authorities as there are it is by no means easy to discern any principle . . . [

Mercantile Investment

[1894] 1 Ch 578

] an agreement to indemnify creates no privity . . . Privity . . . is not established by having some interest in the outcome of the litigation . . . The doctrine of privity for this purpose is somewhat narrow . . . I do not think that the word interest can be used in the sense of mere curiosity or concern . . . it does seem to me that, having due regard to the subject matter of the dispute, there must be a sufficient degree of identification between the two to make it just to hold that the decision to which one was party should be binding in proceedings to which the other is party."

In

PJSC National Bank Trust and another v Mints and others

[2022] EWHC 871 (Comm)

at [33] Foxton J, as he then was, said of this test:

"Megarry VC described the concept of privity as "

protean

", and his "test" is criticised in Spencer Bower & Handley as "

circular

". It is fair to say that the "test" is essentially conclusory, and that it falls to be applied in circumstances in which there are a wide variety of combinations of factors which might lead to a conclusion of privity, or be insufficient to support it, in different cases. To that extent, it is a multi-factorial rather than rule-based principle. This limits the extent of the guidance which can be obtained from cases considering particular applications of the test."

He identified three signposts:

a) "i) The starting point – or "basic rule" – is that "

before a person is to be bound by a judgment of a court, fairness requires that he should be joined as a party in the proceedings, and so have the procedural protections that carries with it

" (Sales J in

Seven Arts Entertainments Ltd v Content Media Corp plc

[2013] EWHC 588 (Ch)

, [73]). As Sales J noted, "

the importance of the general rule and fundamental importance of the principle of fair treatment to which it gives expression indicate the narrowness of the exception to the rule

".

- b) ii) The test of identification is sometimes approached by asking if the party sought to be bound can be said "in reality" to be the party to the original proceedings ([

Resolution Chemicals Ltd v H Lundbeck A/S

[2013] EWCA Civ 924

], [52]).

- c) iii) That argument must be approached with particular caution when it is alleged that a director, shareholder or another group company is privy to a decision against a company, because it risks undermining the distinct legal personality of a company as against that of its shareholders and directors. The danger is particularly acute as the company must necessarily act through and be subject to the ultimate control of natural persons, and directors and shareholders who "control" the company in this sense will frequently have a commercial interest in the company's success. The need for particular caution about privity arguments in this context is emphasised in

Standard Chartered Bank (Hong Kong) Ltd v Independent Power Tanzania Ltd

[2015] EWHC 1640

, [143]-[145] and

MAD Atelier International BV v Manès

[2020] EWHC 1014 (Comm)

, [67]-[69]. Nonetheless, there are cases which, on their particular facts, have found privity between a company and a controlling director/shareholder: for example

Secretary of State for Business, Innovation & Skills v Potiwal

[2012] EWHC 3723

, (Ch) (decision of VAT tribunal against company binding on its director, controller and significant shareholder in director's disqualification proceedings)."

Possibly in light of Foxton J's third signpost, Mr Brockman conceded that the simple fact that Mr and Mrs Oronsaye were directors and shareholders of Shiloh was of itself not sufficient. I accept that must be the case. Were it otherwise, identity of interest would exist in a great many corporate scenarios where currently it does not. Foxton J referred to the judgment of Flaux J, as he then was, in

Standard Chartered v Independent Power Tanzania Ltd

[2015] EWHC 1640 (Comm)

, where the point is clearly made at [145]:

"Third, the corporate relationship and financial interest alleged cannot on any view be sufficient to establish privity of interest. The contrary conclusion would effectively drive a coach and horses through the doctrine of separate corporate personality and lead to piercing of the corporate veil, something which is not to be encouraged given the limited scope ascribed to the doctrine of piercing the corporate veil by the Supreme Court in

Prest v Prest

[2013] UKSC 34

;

[2013] 2 AC 415

. Furthermore, as

Resolute Chemicals

demonstrates, a mere commercial interest in the outcome of litigation against SCB is insufficient to establish privity of interest."

The corporate relationship to which Flaux J was referring was that one party was a 100% subsidiary of the other.

In this case there is no claim for veil piercing advanced by Umbrella. However, Mr Brockman submitted that this was still more than a simple shareholding situation. Specifically:

- i) The Oronsayes have, at least on some occasions, treated their companies almost interchangeably. In particular, the original purchaser of Unit E was intended to be Mimshach, which was a defendant before HHJ Hodge and plainly is a party to the 2024 Judgment and bound by it. Mimshach was replaced by Shiloh on the day of completion, which was also the date of Shiloh's incorporation, at a point after the deposit had been paid and some of the purchase price had been transferred to the seller's solicitors. In both cases, the source of funds was presumably Mimshach, and in the case of the deposit it could not have been Shiloh because the transfer pre-dated Shiloh's incorporation. No reason is given for the switch. Mrs Oronsaye explained in an email to the buyer's solicitors that: "

We

[Mr and Mrs Oronsaye]

own both companies but just decided to use this company for this purchase.

" There is no evidence that further client verification checks were carried out on Shiloh; given that lack of evidence, and given that Mrs Oronsaye wrote at 1:17pm and the solicitors replied to her email at 2:15pm to say the sale had completed, it seems unlikely that there were. All of this suggests a very close identity of interest between at least Mimshach and Shiloh. They were treated by Mr and Mrs Oronsaye as being essentially interchangeable. Had the incorporation of Shiloh happened slightly later, maybe as little as an hour later, Mimshach would have been the purchaser of Unit E, and as regards that property at least these issues would have been squarely before HHJ Hodge.

ii) At least one of the Properties has obviously been managed by Mr Oronsaye directly. There is an assured shorthold tenancy of Vulcan Street showing that the rent is to be paid in cash. It seems from Mr Oronsaye's evidence in his bankruptcy examination that the same is true of Water Street. In both cases, he collects the rent himself or has it paid to a friend, Mr Osari. Obviously, if those properties are rented that is trading activity but Ms Irabor, who is the director and shareholder of Shiloh, seems wholly unaware of it since she said in her Fourth Witness Statement, dated 22 January 2026, that Shiloh is a holding company and has never traded. Legally, Shiloh was the purchaser of the Properties but its factual role in the ownership and management of at least two of them is therefore apparently nominal; it is Mr Oronsaye who is intimately involved in their management and who benefits from the income they generate.

iii) I am told by Umbrella, and Shiloh does not dispute, that the evidence used by Shiloh in this application is almost identical to that relied on by the defendants before HHJ Hodge.

iv) Throughout the hearing before me Mr Abebrese took his instructions from, and really only from, Mrs Oronsaye. There was no indication that he ever needed to refer to Ms Irabor or his instructing solicitors.

Short of veil piercing it is hard to see how the relationship could therefore have been any closer between Mr and Mrs Oronsaye and Shiloh. They used it as a vehicle for the purchases, when in at least one case they came within less than an hour of using one of their other companies, Mimshach, which was a party to the 2024 Judgment; they controlled the application before me just as they controlled the application before HHJ Hodge and they fought both on the basis of very similar evidence; they use Shiloh's assets as their own, apparently without letting Shiloh know what they are doing.

I do not take Flaux J in

Standard Chartered

to be saying that there can never be privity in the absence of veil piercing, simply that such cases would be rare. As Foxton J noted in

PJSC National Trust Bank

examples of privity in a corporate context do exist. I accept that such cases are very much the exception, but it seems to me this is one of them. There is such a strong community of interest between Shiloh and the defendants before HHJ Hodge that it was prepared to let them use its assets, run its litigation and was prepared, on no notice, to take over one of their transactions. Moreover, the risks to fairness to which the first signpost refers are not as acute in this case. Both the litigation before HHJ Hodge and the application before me were run and controlled by Mr and Mrs Oronsaye, with little if any input from Shiloh's director, Ms Irabor. There is nothing to suggest that Shiloh would have adopted a different stance on the Umbrella fraud before HHJ Hodge to that taken by the Oronsayes or, in particular, Mimshach; nor is there anything to suggest that it intends to take a different position in this claim if it goes to trial. It simply wants to relitigate the points in the hope that they might turn out more favourably.

This is therefore a claim where the procedural protections that underpin the "basic rule", while always important, are not likely to make a difference; Shiloh wants another round of running the same points, not to advance an independent case of its own. The identity between Shiloh, the Oronsayes and Mimshach is extremely close. Those factors, taken together, seem to me enough to get over the high bar of showing that Shiloh should be bound by the 2024 Judgment.

In my view one arrives at the same conclusion through Mr Brockman's second route. He submitted that allowing Shiloh to relitigate the points determined in the 2024 Judgment would amount to an abuse of process. It is worth emphasising at the outset that this is a distinct concept to *res judicata* as, for example, Lord Sumption stressed in

Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd

[2013] UKSC 46

at [25]. Even were Shiloh and the Oronsayes not privies, seeking to relitigate issues determined in the 2024 Judgment could still be abusive.

Mr Brockman referred me to

Secretary of State for Trade and Industry v Bairstow

[2003] EWCA Civ 321

. There, the Court of Appeal at paragraph [38] found that:

- i) A collateral attack on a previous finding is not necessarily an abuse of process;
- ii) If the parties to the later civil proceeding were not parties to or privies of those who were parties to the earlier proceedings then it will only be an abuse of process to challenge an earlier decision:
 - a) If it would be manifestly unfair to a party to the later proceedings that the same issues should be relitigated, or;

b) If to permit such re-litigation would bring the administration of justice into disrepute.

The two are not, of course, mutually exclusive.

Bairstow

was applied in

Secretary of State for Business, Innovation & Skills v Potiwal

[2012] EWHC 3723 (Ch)

. The case arose out of a finding by the VAT Tribunal that a company called Red 12, of which Mr Potiwal was the sole director, had participated in the fraudulent evasion of VAT and that Mr Potiwal was aware of that fact. Neither the Secretary of State nor Mr Potiwal had been parties to the proceedings before the VAT Tribunal. However, Briggs J, as he then was, found that it was both manifestly unfair to require the Secretary of State to relitigate the issues and to permit Mr Potiwal to do so would bring the administration of justice into disrepute:

27. In those [circumstances] I consider that it would indeed be manifestly unfair to impose the cost of relitigating that issue upon the Secretary of State. The critical distinction between this case and

Secretary of State v Bairstow

is that, prior to the disqualification proceedings against Mr Bairstow, the taxpayer had incurred no costs at all in relation to the issues which Mr Bairstow wished to relitigate. The previous proceedings had been between him and his solvent company. By contrast in the present [circumstances], the taxpayer has been the funder of the litigation involving Red 12 and Mr Potiwal throughout, first for the purpose of defending the public purse from a fraudulent claim, and now for the purpose of seeking the disqualification of the sole director of a corporate participant in that fraud.

28. I have also concluded that to permit the issue as to Mr Potiwal's knowledge to be relitigated would indeed bring the administration of justice into disrepute, in the eyes of right-thinking people. In

Re Thomas Christy (in liquidation)

[1994] 2 BCLC 527 Mr Manson sought to relitigate with his company's liquidator issues as to breach of duty and misfeasance which had been decided against him in earlier disqualification proceedings brought by the Secretary of State. The liquidator expressly disclaimed any suggestion that he and the Secretary of State had the requisite privity of interest to give rise to an estoppel per rem judicatam. After a review of the authorities, Jacob J said this, at page 537:

"The Companies Court of the Chancery Division of the High Court has found, after a full trial, Mr Manson guilty of the five wrongful acts specified above. To allow relitigation of those before the self-same court would seem absurd to Joe Citizen who through his taxes pays for the courts and whose own access to justice is impeded by court congestion. Doing a case twice over would make no sense to him: all the more so if he was told that the costs of this would in all likelihood be borne by innocent creditors of the company which Mr Manson ran."

29. It makes no difference in my view that, in the present case, two different tribunals are involved, namely the VAT Tribunal and the Companies Court. Apart from that, Jacob J's words are fully applicable to the present case. Where, as here, the issue as to a director's knowledge of a complex MTIC fraud has been fully and fairly investigated by an experienced tribunal and the director found to have had the requisite knowledge, it [seems] to me that right-thinking members of the public would regard it as an unpardonable waste of scarce resources to have that issue relitigated merely because, by a simple denial and without deducing any fresh evidence, Mr Potiwal seeks to require the complex case against him to be proved all over again. In that context the facts that Mr Potiwal was indeed in privity of interest with Red 12, that he was its sole director and that he had the conduct of Red 12's appeal makes the point all the stronger.

In

Wilson v Mehta

[2023] EWHC 1214 (Ch) ICC Judge Jones applied these decisions and held that retrying a First Tier Tribunal finding that a company had been involved in fraud on a subsequent application under section 213 of the Insolvency Act 1986 by the liquidator of the company against the director of the company would be an abuse of process.

In my view the following factors are relevant to the question of abuse of process:

i) One of the joint liquidators, Mr McTear, provided affidavit evidence (the

McTear Affidavit

) in support of Umbrella's application for the proprietary injunction. He adopted that evidence in his First Witness Statement before me. In the McTear Affidavit he explained that the only reason Shiloh was not a party to the original proceedings and claims in respect of the Properties were not made was that the liquidators of Umbrella were unaware of the existence of Shiloh or the Properties. I accept that point. I also accept, for reasons that I go on to address, that Mr and Mrs Oronsaye knew that Umbrella's funds were wrongfully diverted to be used in the acquisition of the Properties. At the very least Mr Oronsaye was a director of Umbrella throughout and so was under a duty to disclose his own misconduct to Umbrella (

FM Capital Partners Ltd v Marino

[2018] EWHC 1768 (Comm)

at [77], referencing

Item Software (UK) Ltd v Fassihi

[2004] EWCA Civ 1244

at [41] and [63]-[68]). Since I accept Mr McTear's evidence that no such disclosure was made, that duty was breached. It was repeatedly pressed on me, by Mr Brockman, that there was also a breach of the disclosure obligations in the various freezing injunctions issued before the 2024 Judgment. None of those orders were before me however, and while I am familiar with the standard terms associated with a freezing injunction I am not prepared simply to assume that they were present in unqualified terms here. Even if they were, it is not immediately obvious why an order made in favour of, for example, HMRC would also impose an obligation in favour of Umbrella. Given that there was a duty to disclose these matters on the directors of Umbrella in any event that does not seem to me to matter, however. I accept that Umbrella was unable to sue Shiloh or bring a claim in respect of the Properties before HHJ Hodge because it was unaware of their existence and that arose from a breach of duty by at least Mr Oronsaye.

ii) By contrast, Mr and Mrs Oronsaye did know about Shiloh, the flow of funds through bank accounts under their control and the acquisition of the Properties by Shiloh. They could have joined Shiloh to the earlier proceedings, or at least invited Umbrella to do so, so as to allow all related issues to be addressed in a single set of proceedings. It was the unilateral choice of Mr and Mrs Oronsaye to hold the Shiloh issues back.

iii) That decision was made against a backdrop of Mr and Mrs Oronsaye knowing that in the context of at least Unit E Shiloh's position was essentially interchangeable with that of Mimshach. It is hard to reach any other conclusion when, as I have noted above, the whole transaction was conducted and, apparently, funded by Mimshach and Shiloh was only substituted as purchaser less than an hour before completion. The only reason for the change was that Mr and Mrs Oronsaye "

own

[ed]

both companies but just decided to use

[Shiloh]

for this purchase.

"

- iv) That position has continued since the purchase of the Properties. Once again as I have noted above, Shiloh's director, Ms Irabor, seems wholly unaware that the company profits from the Properties; she considers it to be a dormant, non-trading company. In part this seems to be because Mr Oronsaye runs the Properties as if they were his own and takes the rent, in cash or paid to one of his friends, direct from the tenants without ever declaring to Ms Irabor that he is doing so.
- v) Finally, and yet again as I have noted, this is an apparent re-run of the summary judgment application before HHJ Hodge. Both parties are relying on much of the same evidence and many of the same arguments; the only differences stem from the need to show the flow of funds in these specific transactions.

Those factors lead me to conclude that both limbs of

Bairstow

are satisfied here. As to unfairness, the claim before HHJ Hodge was that Mr and Mrs Oronsaye used Umbrella as a vehicle to perpetrate a fraud on the Revenue and then diverted the proceeds of that fraud into various assets held by them or a company owned or controlled by them. The claim before me is that Mr and Mrs Oronsaye used Umbrella as a vehicle to perpetrate a fraud on the Revenue and then diverted the proceeds of that fraud into various assets held by a company owned or controlled by them. It does not require any great grasp of the rules of civil procedure to see that this claim could have been brought before HHJ Hodge; the reason it was not so brought is that Mr Oronsaye, at least, failed to disclose the existence of Shiloh or the flow of funds to acquire the Properties for its benefit in breach of his duty of loyalty to Umbrella. It would, in my view, plainly be unfair to allow Mr and Mrs Oronsaye to profit from that breach by allowing them to run before a second judge many of the same defences that had so wholly failed before HHJ Hodge.

The unfairness is compounded by the fact that the costs of this litigation fall on the creditors of Umbrella, the very company that Mr and Mrs Oronsaye are already found to have fraudulently mismanaged and which has already paid significant sums to establish the facts underpinning that conclusion. The position is made even more acute here because of the way the litigation is being conducted. In the proceedings directly against them Mr and Mrs Oronsaye are already the subject of an extended civil restraint order by virtue of the number of totally without merit applications they have made. In these proceedings, which have run for nowhere near as long, Shiloh has already made two totally without merit applications and Mr Brockman has indicated that he will invite me to make a civil restraint order in due course. Whether I do or not, simply the making of totally without merit applications necessarily means it has been a needlessly expensive way to conduct civil proceedings. So far as I am aware, the Properties are Shiloh's only assets, such that if Umbrella is successful any costs order it secures will be paid from assets that will have been found to be its assets. All of that is manifestly unfair.

It also seems to me that to allow the matter to be relitigated would bring the administration of justice into disrepute. HHJ Hodge is a highly experienced judge and permission to appeal the 2024 Judgment was refused by the Court of Appeal; a subsequent challenge to his order has likewise been refused and certified as totally without merit by HHJ Keyser KC, himself a highly experienced judge. To paraphrase

Bairstow

, the questions of Mr and Mrs Oronsaye's dishonesty in the labour supply fraud perpetrated through Umbrella and their breaches of duty to Umbrella have already been fully and fairly addressed by the court.

There is no suggestion of any new evidence. There is a complaint by Shiloh that Mr and Mrs Oronsaye were not able to access their computers or documents but as Mr Brockman noted it is framed in entirely generic terms. Mr and Mrs Oronsaye in their evidence have never identified any document or specific class of documents that they say will help prove their case or disprove Umbrella's case. Moreover, again as Mr Brockman submitted, Mr and Mrs Oronsaye (and through them Shiloh) have been able to produce multiple further documents in this application, such that I question how much of an impediment there is on them accessing data in practice. On the issues around the breach of duty owed to Umbrella this is simply a further iteration of Mr and Mrs Oronsaye, and the companies they control, denying the findings in the 2024 Judgment. I respectfully agree with the approach in

Potiwal

, that to allow them to relitigate those issues on the basis of a simple denial would be an unpardonable waste of scarce resources.

I have found that Shiloh is in privity of interest with Mr and Mrs Oronsaye and (at least for Unit E) Mimshach, but even were that not the case

Bairstow

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Re Thomas Christy

and

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make clear that privity is not necessary for there to be an abuse of process. As I have noted the interests of the parties here are very closely aligned. Specifically, in the context of Unit E, Shiloh was brought in as purchaser in place of Mimshach at the very last moment and apparently almost on a whim. I think most people would find it odd in the extreme if, as a result of that whim, Shiloh was able to relitigate issues that have already been determined conclusively against the company it replaced in the transaction. More generally, while Shiloh may have been the nominal

purchaser of the Properties it was Mr and Mrs Oronsaye who drove the acquisition and directed the flow of funds and who now manage the Properties and profit from them. To ignore all that and treat Shiloh as a truly independent third party to Mr and Mrs Oronsaye would, in my view, be to permit an abuse of the court's process.

For these reasons I consider that the 2024 Judgment is binding on Shiloh in respect of the issues it determines that are elements of this claim. Obviously, to the extent that there are distinct facts in this claim, including different flows of funds, it is for Umbrella to establish them to the summary judgment standard.

The rules on tracing

As I will shortly go on to address, the funds are said by Umbrella to have flowed from it into the ultimate acquisition of the Properties in one of three ways:

- i) Some payments are said to have gone direct from Umbrella to the solicitors acting for Shiloh on the purchase.
- ii) Some payments went through a further bank account but that account was nothing more than a conduit which, at least during the relevant period, simply channelled money from an Umbrella bank account to the solicitors acting for Shiloh.
- iii) Most of the payments, however, were mixed with Mr and Mrs Oronsaye's own funds in their personal accounts, which received other credits and were used to make other payments.

The latter category presents an evidential issue: assuming one accepts that Umbrella's money was paid into the account, how does one determine whether the payments out of that account that ultimately funded the purchase of one of the Properties represented the assets of Umbrella?

In its evidence and earlier skeleton arguments Shiloh has made repeated reference to

Foskett v McMeown

[2001] 1 AC 102

. There, Lord Millett summarised the issue at 127H-128D:

"We speak of money at the bank, and of money passing into and out of a bank account. But of course the account holder has no money at the bank. Money paid into a bank account belongs legally and beneficially to the bank and not to the account holder. The bank gives value for it, and it is accordingly not usually possible to make the money itself the subject of an adverse claim. Instead a claimant normally sues the account holder rather than the bank and lays claim to the proceeds of the money in his hands. These consist of the debt or part of the debt due to him from the bank. We speak of tracing money into and out of the account, but there is no money in the account. There is merely a single debt of an amount equal to the final balance standing to the credit of the account holder. No money passes from paying bank to receiving bank or through the clearing system (where the money flows may be in the opposite direction). There is simply a

series of debits and credits which are causally and transactionally linked. We also speak of tracing one asset into another, but this too is inaccurate. The original asset still exists in the hands of the new owner, or it may have become untraceable. The claimant claims the new asset because it was acquired in whole or in part with the original asset. What he traces, therefore, is not the physical asset itself but the value inherent in it.

Tracing is thus neither a claim nor 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."

The reference to "the process" should not be taken to suggest that there is only one approach. There are several and, as Goff & Jones at paragraph 7-31 stresses, the choice between them has a policy element:

"The rules of tracing are centrally concerned with identifying when one asset can for legal purposes be deemed the "substitute" for the old. However, their precise details are not pre-ordained: there are inevitably policy choices for the courts to confront in developing them. The Privy Council recently acknowledged as much in

Federal Republic of Brazil v Durant International Corp

[2015] UKPC 35

a decision which affirmed a decision of the Jersey Court of Appeal, in which the same point was made very clearly:

"The starting point is to recognise the true nature of the exercise with which the court is engaged when it is asked to trace a plaintiff's property [It] is being asked to identify an asset which represents the plaintiff's property, in other words, an asset which is not in reality the plaintiff's original property but one which the law is prepared to treat as a 'substitute' for the original. That being the true nature of the process, ... the court is liable to be making an evaluative judgment ... [and] is accordingly making a policy choice as to whether the law is prepared to recognise one asset as representing, or as a substitute for, another on the particular facts of the case in hand.""

One sees that starkly in the context of this claim. One of the approaches used where money belonging to innocent parties is mixed is the rule in

Clayton's Case

(

Devaynes v Noble

(1816) 1 Mer 572

) of first in, first out (the alternatives in the case of innocent parties being division on a *pari passu* basis and what is referred to as the "rolling charge" method:

Charity Commrs v Framjee

[2014] EWHC 2507 (Ch)

at [48]). Mr Brockman submitted that would not be appropriate where, as here, there was alleged wrongdoing. What is important is to establish which approach should apply on the facts of this case.

Mr Brockman relied on what was said by the Privy Council in

Federal Republic of Brazil v Durant

[2015] UKPC 35

at [38] and [40]:

"38. 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 coordinated 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-C's observation in

Foskett v McKeown

that the availability of equitable remedies ought to depend on the substance of the transaction in question and not upon the strict order in which associated events occur.

40. 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 coordination 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."

It seems to me that Umbrella does not need to go quite that far. As I have noted, Shiloh is bound by the findings of the 2024 Judgment, one of which was that Mr and Mrs Oronsaye were in breach of the fiduciary duties that they owed to Umbrella. As I will go on to address, funds were paid from Umbrella to accounts held by Mr and Mrs Oronsaye, and from there on to other accounts, also held by Mr and Mrs Oronsaye either jointly or individually. Goff & Jones deals with the situation where a party knowingly mixes their own money with the claimant's money at paragraphs 7-51 to 7-53. The editors favour the approach adopted by Rimer J, as he then was, in

Shalson v Russo

[2003] EWHC 1637 (Ch)

at [144]:

"Normally, it is presumed that if a trustee uses money from a fund in which he has mixed trust money with his own, he uses his own money first (

In re Hallett's Estate

(1880) 13 Ch D 696

). But Mr Smith submits that this is not an inflexible rule and that if the trustee can be shown to have made an early application of the mixed fund into an investment, the beneficiary is entitled to claim that for himself. He says, and I agree, that this is supported by

In re Oatway, Hertslet v

Oatway

[1903] 2 Ch 356

. The justice of this is that, if the beneficiary is not entitled to do this, the wrongdoing trustee may be left with all the cherries and the victim with nothing."

I understood Mr Abebrese, in oral submissions, expressly to accept that

Shalson

was a proper application of

Re Oatway

, and that the editors of Goff & Jones correctly state the law. Certainly, that is my view. Specifically, I agree with what is said at 7-53: "

If the principle that underlies the law in this area is that presumptions should be made against defendants who knowingly create evidential uncertainty by mixing money received from a claimant with their own money, we believe that this principle should extend to giving claimants the right to choose whichever rule produces the best result for them.

" That Mr and Mrs Oronsaye are not defendants in these proceedings seems, to me, to make no difference at all to the application of that principle. They coordinated these transactions throughout, using Shiloh as part of that process, and Shiloh has an identity of interest with them.

Mr Brockman recognised that any approach to tracing would be subject to the "lowest intermediate balance" rule laid down in

James Roscoe (Bolton) Ltd v Winder

[1915] 1 Ch 62 at 67-68: the maximum amount that can be traced is the lowest balance in the account between the point that the trust money is paid in and the point when the sum to be traced is paid out.

The Factual Position

With that quite lengthy preamble concluded, I turn to the facts that underlie the application. For the reasons I have given, significant elements of the factual position can be derived from the 2024 Judgment. As will become apparent, much of the balance is derived from bank statements and solicitors' records, which seem to me to represent the best evidence available of what happened at the time.

The Umbrella fraud

Umbrella was incorporated on 11 October 2011. Mr and Mrs Oronsaye were registered as directors. Mr Oronsaye purported to resign as a director in January 2020, but HHJ Hodge found at paragraph [28] of the 2024 Judgment that this did not affect the day-to-day management of Umbrella:

Mrs Oronsaye clearly was a nerve centre of [Umbrella]; and from my observations of her when her husband was addressing the court, I have little doubt that she played a dominant role in the conduct of [Umbrella's] management and affairs. But I am satisfied that Mr Oronsaye was also one of the nerve centres from which the activities of [Umbrella] radiated.

Umbrella acted as the employer for agency staff placed by its clients, staffing agencies acting principally in the healthcare sector. Umbrella invoiced the agencies for the gross salary of the worker plus VAT at 20%. As the employer, Umbrella was responsible for deducting and accounting for income tax and employee National Insurance contributions and for paying employers' National Insurance contributions.

HMRC started an investigation into the affairs of Umbrella, as part of which it sought and obtained a freezing injunction against Umbrella (at the time still controlled by Mr and Mrs Oronsaye) on 26 October 2022. In response to the HMRC freezing injunction Mrs Oronsaye filed an affidavit dated 31 October 2022 (

Mrs Oronsaye's Affidavit

). There she stated:

There is a bank account with Lloyds Bank PLC, account number 49065268, sort code 30-90-66 which is held in my name t/a L&S Accounting Firm. This account was opened before [Umbrella] was incorporated and is still the account I use for [Umbrella's] business. I confirm therefore that any credit balance in that account is held on trust for the benefit of [Umbrella].

I will refer to that account as the

Umbrella Lloyd's Account

. It is the first step in the tracing exercise for all the transactions in issue before me. HHJ Hodge stated at paragraph [30] of the 2024 Judgment: "

I am satisfied that

[Umbrella]

has established that there is no real prospect of the defendants successfully maintaining at any trial that moneys standing to the credit of the

[Umbrella Lloyds Account]

were not

[Umbrella's]

property.

"

As HHJ Hodge addressed in the 2024 Judgment, following the investigation carried out by HMRC and the liquidators it became apparent that Umbrella had been engaged in what he described (at [48]) as a "

labour supply fraud

". HHJ Hodge found the fraud was on a massive scale. It took, essentially, two forms:

- i) The VAT Fraud is described at paragraphs [47] to [57] of the 2024 Judgment. It was brutally simple: Umbrella charged VAT to its customers but did not account to HMRC for the sums it received, either failing to file VAT returns or filing false VAT returns.
- ii) The PAYE/NICs fraud is addressed at paragraphs [58] to [65] of the 2024 Judgment. Because they were not the employer, the agencies were not obliged to account for PAYE or NICs and paid Umbrella the gross amount payable to workers. Umbrella paid the workers 80% of their gross salary and withheld 20% for itself. This deduction was made up of:
 - a) 12% to 13% of gross salary as a charge for providing this service;
 - b) 7% to 8% for HMRC.

Anyone with even a passing familiarity with UK tax rates will immediately recognise that this bears no resemblance to the way in which tax should have been calculated, deducted and paid to HMRC. Umbrella filed PAYE and NICs returns which grossly understated the amount payable, declaring and paying £2,936,511.84 in total as opposed to the correct amount of £14,164,107.

As I have noted, in part it was concealed by filing false returns with HMRC, but that in itself would not have covered the Oronsaye's trail. As the McTear Affidavit explained, they also needed to disguise Umbrella's true trading levels by filing false annual accounts at Companies House.

Mr and Mrs Oronsaye sought permission to appeal from the Court of Appeal. In refusing permission Nugee LJ found that: "

There was, for the reasons explained in detail by the Judge, a very strong case that the company had been set up and run on a basis that involved a large-scale and systematic fraud on HMRC both in relation to PAYE and in relation to VAT.

"

Umbrella was placed into creditors' voluntary liquidation on 2 October 2023; liquidators were appointed on 13 October 2023.

The relationship between Umbrella, Shiloh and Mr and Mrs Oronsaye

In my view, Mr and Mrs Oronsaye were in control of Umbrella throughout the period when money was being paid away from the Umbrella Lloyds Account by them in breach of their fiduciary duties to Umbrella. They were in control of Mimshach and Shiloh throughout the time when Shiloh was acquiring the Properties.

Mrs Oronsaye was:

- i) The registered director of Umbrella on 24 May 2019 when £2 million was paid away by Umbrella that represents part of the tracing exercise. HHJ Hodge found at paragraph [84] of the 2024 Judgment that this represented a breach by her of her fiduciary duties to Umbrella. She remained a director throughout the period February to November 2022 when further payments were made from the Umbrella Lloyds Account to Mrs Oronsaye's Barclays Account, Mr Oronsaye's Barclays Account and Mrs Oronsaye's HSBC Account (all as defined below) that are relevant to this application. For reasons I go on to address, those further payments were also made in breach of Mrs Oronsaye's fiduciary duties to Umbrella.
- ii) A director of Shiloh at incorporation on 19 August 2022. There is a dispute over how long Mrs Oronsaye remained in a management position. At paragraph 34 of her Third Witness Statement Mrs Oronsaye asserted that she had no management role at Shiloh. Filings at Companies House record that she resigned on the day of incorporation, which is broadly consistent with Mrs Oronsaye's assertion. That evidence, however, seems to me impossible to accept in that it is irreconcilable with the contemporaneous documents. The emails giving instructions to the solicitors acting on the purchases of the different Properties come almost entirely from accounts controlled by Mrs Oronsaye, and critical communications such as the replacement of Mimshach with Shiloh in the Unit E purchase to which I have already referred plainly came from her. On 3 February 2023 she, along with Mr Oronsaye, signed the TR1 Land Registry transfer for Vulcan Street as the directors of Shiloh. Even in the same witness statement where she denied having any management role within Shiloh Mrs Oronsaye acknowledged at paragraph 32 that she and Mr

Oronsaye held "

temporary administrative shares

to enable

...

documentation for property transactions

". That is wholly consistent with the broader narrative that Mrs Oronsaye advances in her Third Witness Statement that Shiloh was an estate planning vehicle that Mr and Mrs Oronsaye were using to acquire the Properties for their children. For reasons I go on to address I do not accept that the funds used for those acquisitions were the Oronsaye's honestly earned funds; they were Umbrella's funds. But even on Mrs Oronsaye's version of events somebody was driving the acquisition process; she accepts that she needed to be involved to execute documents for the property transactions; she never suggests anyone other than she and Mr Oronsaye were involved in the decision-making that gave rise to those documents being executed. The only evidence suggesting Mrs Oronsaye had resigned are the filings with Companies House to which I referred. These were filed over a year after the resignation was said to have happened. Leaving aside the obvious point that errors are more likely with a delay of that magnitude, that meant that anyone who carried out a company search throughout the period when Shiloh was acquiring the Properties would believe Mrs Oronsaye to be a director. Moreover, as I go on to note in connection with the shareholdings in Shiloh other filings with Companies House were contradictory, such that at least some of them must be wrong. At best, therefore, Shiloh was sloppy in the way that it made filings: many were late and some were obviously incorrect. Limited weight can be placed on them as evidence. In any event, even if Mrs Oronsaye did formally resign as a director of Shiloh soon after incorporation, which I doubt, she remained in control of it alongside Mr Oronsaye throughout the time that the Properties were being purchased, as her instructions to solicitors and signature of official documents show.

iii) A registered director of Mimshach from incorporation. She purportedly resigned on 5 June 2019. Once again, the notice of her resignation was not filed at Companies House until much later, in this case over four years later on 22 September 2023. And once again, that purported resignation is impossible to square with events, since as I have noted, and will address further below, she was the person who changed the purchaser of Unit E from Mimshach to Shiloh at the last minute. In any event, HHJ Hodge found at paragraph [39] of the 2024 Judgment that Mrs Oronsaye remained a de facto director of Mimshach until at least September 2023. For the reasons I have given Shiloh is bound by that finding.

Mrs Oronsaye was made bankrupt on 1 July 2025. Mr McTear and Mrs Watts were appointed as her trustees in bankruptcy. As I have noted, it was only after this point that Mr McTear and Mrs Watts gained access to the materials that showed the existence of Shiloh, the Properties and the flow of funds through the various accounts.

Mr Oronsaye was a registered director of:

- i) Umbrella from 1 August 2013 to 31 January 2020. As with Mrs Oronsaye, notice of his resignation was not filed until well after that date, in this case on 3 August 2021. In any event, as I have noted, HHJ Hodge found that Mr Oronsaye continued to act as a manager – a "

nerve centre

" – of Umbrella thereafter. Like Mrs Oronsaye he was found at paragraph [84] of the 2024 Judgment to have breached his fiduciary duties to Umbrella when making the £2 million payment on 24 May 2019. Like Mrs Oronsaye, I consider he was equally in breach of fiduciary duty in 2022 when further sums were paid out of the Umbrella Lloyds Account and into Mr and Mrs Oronsayes' respective Barclays accounts and Mrs Oronsaye's HSBC Account.

- ii) Shiloh from its incorporation until his resignation on 4 March 2024. Notice of his resignation was not filed until 16 August 2024, but since both dates post-date the acquisition of the Properties that is irrelevant to Umbrella's case.

- iii) Mimshach from its incorporation and throughout the relevant period.

Mr Oronsaye was also made bankrupt on 1 July 2025 and Mr McTear and Mrs Watts were appointed as his trustees in bankruptcy. Again, that was a critical step in identifying the existence of Shiloh, the Properties and the relevant payment flows.

Shiloh was incorporated on 19 August 2022. It is impossible to form a clear picture of the shareholding because the documents filed with Companies House are contradictory. The Class A shares were initially owned by Mr and Mrs Oronsaye; the 600 Class B shares were divided between their four children, each owning 150. On 28 September 2023 a Confirmation Statement was filed at Companies House stating that the Class A shares had been transferred to Aimua and Shalom Stephen, two of Mr and Mrs Oronsaye's minor children who therefore both became A and B shareholders. The effective date of that Confirmation Statement was 18 August 2023. It gave full details of all shareholders and did not include Mr or Mrs Oronsaye. However, on 16 August 2024 Mr Oronsaye filed a Notice of ceasing to be a person with significant control stating that he had ceased to have such control on 4 March 2024. Obviously, if the September 2023 Confirmation Statement was accurate he must have ceased to be a person with significant control by no later than 18 August 2023. While the shareholding position has, it seems to me, very little, if any, bearing on the issues, such obvious discrepancies in official documents are one reason I am reluctant to place much weight on what Shiloh filed with Companies House. In any event, to complete the picture that Shiloh's filings paint, on 16 August 2024 notice was filed at Companies House that on 4 March 2024 Paulina Irabor had been appointed the sole director of Shiloh and became a person with Significant Control. On 5 December 2024 a Confirmation Statement was filed stating that Ms Irabor was the owner of all the Class A and B shares.

It is Umbrella's case that Shiloh, Umbrella and, in respect of Unit E, Mimshach were controlled by Mr and Mrs Oronsaye and acted in concert throughout the period during which the Properties were acquired. I accept that to have been the case. Mr Oronsaye was formally a director of Shiloh throughout the relevant period. I believe that Mrs Oronsaye was also a director and that the notice of cessation of directorship filed with Companies House was, for whatever reason, wrong. In any event, she plainly continued to act as if she was a director throughout the acquisition of the Properties. She instructed solicitors and signed formal documents on the express basis that she was a director of Shiloh, her Third Witness Statement records that she knew she was playing a management role in Shiloh's acquisition of the Properties.

The position is similar with respect to both Umbrella and Mimshach. Shiloh is bound by the 2024 Judgment to the effect that Mr and Mrs Oronsaye were managing both companies until at least September 2023, but in the context of Mimshach there is further evidence before me showing that Mrs Oronsaye was controlling that company in the transaction to acquire Unit E.

Acquisition of the Properties

The flow of funds

It is not clear whether Shiloh in fact disputes the flow of funds alleged by Umbrella. As I have noted, in the Third Witness Statement of Mrs Oronsaye she states that Shiloh acquired the Properties using funds from her and Mr Oronsaye as part of their estate planning. Similar points are made in a further un-numbered statement of Mrs Oronsaye dated 13 August 2025. In the Third Witness Statement of Ms Irabor there is also an acceptance that Shiloh acquired the properties with funds from Mr and Mrs Oronsaye, it is simply that in each case the source of the funds is said to be the legitimately earned income of Mr and Mrs Oronsaye. At the same time, the Defence and the Third Witness Statement of Ms Irabor (despite her earlier acceptance that funds for the purchases came from accounts controlled by Mr and Mrs Oronsaye) assert that tracing has not been made out. I will assume that what is said in the Defence represents Shiloh's case, such that it is necessary to work through the various transactions.

As I noted above, Shiloh did not have its own bank account, meaning that the purchase money for the Properties was paid to the solicitors acting on each of the purchases from accounts in the name or names of one or both of Mr and Mrs Oronsaye.

The

Umbrella Lloyds Account

: This was an account with Lloyds Bank, Bedford in the name of "

Mrs I Oronsaye t/a L&S Accounting Firm

" with account number 49065268. In Mrs Oronsaye's Affidavit she admitted that the funds standing to the credit of the Umbrella Lloyds Account were the property of Umbrella. She subsequently sought to resile from that admission, which attempt HHJ Hodge described at paragraph [31] of the 2024 Judgment as "

incredible

". I respectfully agree. In any event, HHJ Hodge went on at paragraph [32] to find, on the basis of other evidence, that the funds in the Umbrella Lloyds Account were those of Umbrella.

On 24 May 2019, £2 million was paid out of the Umbrella Lloyds Account and into the First Oronsaye Lloyds Account, defined below. As I have noted, paragraph [84] of the 2024 Judgment found that payment to be in breach of fiduciary duty on the part of both Mr and Mrs Oronsaye. There was exhibited to the McTear Affidavit a table showing a series of further payments to accounts controlled by Mr and Mrs Oronsaye. This showed:

- i) Payments of £550,000 to Mrs Oronsaye's Barclays Account between February and May 2022 (and total payments into that account of £581,500).
- ii) Two payments each of £25,000 to Mrs Oronsaye's HSBC Account on 13 March 2021 and a further payment of £50,000 to that account on 26 May 2022.
- iii) Payments to Mr Oronsaye's Barclays Account of £20,000 on 11 April 2022; £100,000 on 23 May 2022; £20,000 on 29 July 2022; £3,000, £4,000 and £40,000 all on 2 September 2022; and £4,000 per month between January October 2022

I will address fully the argument advanced by Shiloh that these were payments properly earned by Mr and Mrs Oronsaye when I deal with knowing receipt. Suffice it to say here that I reject Shiloh's position as baseless and wholly unsupported by any reliable evidence. In making these further payments, Mr and Mrs Oronsaye were again in breach of their fiduciary duties to Umbrella.

The

First Oronsaye Lloyds Account

: This was an account with the same branch of Lloyds Bank in Mr and Mrs Oronsaye's joint names, account number 25556468. The extracts from the bank statements exhibited to the McTear Affidavit show the receipt of the £2 million paid out from the Umbrella Lloyds Account on 24 May 2019 that I describe above. Immediately before that receipt the balance of the First Oronsaye Lloyds Account had stood at £228. In a series of seven transactions over the nine minutes following that receipt, £1.75 million was paid out to the Second Oronsaye Lloyds Account (defined below). Over the next three and a half years very little happened – the balance steadily eroded further in a series of minor transactions, with some larger payments running to thousands of pounds to Mr Oronsaye, and also one payment in from each of Mr and Mrs

Oronsaye. In December 2022 it stood at around £224,000, its lowest point since the receipt of the £2 million. On 23 January 2023 there was a further receipt of £200,000 back from the Second Oronsaye Lloyds Account followed three minutes later by a transfer out of the same amount to Mr Oronsaye's Barclays Account (again, defined below). Applying the approach to tracing I have set out above, Umbrella is able to trace all of those payments out.

L&S Accounting Santander Account

: This was an account with Santander in Bootle in the name of Mrs Oronsaye trading as L&S Accounting Firm with account number 5378271. HHJ Hodge concluded at paragraph [35] of the 2024 Judgment that following the HMRC freezing injunction on 26 October 2022 Mr and Mrs Oronsaye were diverting payments to the L&S Accounting Santander Account that were properly due to Umbrella. I note that purely for completeness, because for current purposes what matters is the source of funds before 16 August 2022, when two payments were made from the L&S Accounting Santander Account to Harlington Law (

Harlingtons

), the firm acting for Shiloh on the acquisition of Unit E. In his Third Witness Statement Mr McTear explained that the source of funds in the L&S Accounting Santander Account was either rent from a property called Salamander House (which I understand may have changed its name from Ebenezer House), which under the order of HHJ Hodge was properly due to Umbrella; payments from HMRC under the Covid Job Retention Scheme, which again were properly due to Umbrella; payments made directly from Umbrella; or payments from Mrs Oronsaye's Barclays Account (defined below) which can in turn be traced to the Umbrella Lloyds Account. Again, on the basis of the approach to tracing I have set out above I accept that Umbrella is entitled to trace its funds into the payments to Harlingtons.

The

Second Oronsaye Lloyds Account

: This was, once again, an account with Lloyds Bank in Bedford, again in Mr and Mrs Oronsaye's joint names, with the account number 25557560. As the extracts from the bank statements exhibited to the McTear Affidavit for both the First Oronsaye Lloyds Account and this account show, this was the account that on 24 May 2019 received the £1.75 million from the First Oronsaye Lloyds Account, funds that had, in turn, originated from the Umbrella Lloyds Account less than ten minutes before. There is no obvious good reason why the funds had to be moved through one joint account of the Oronsayes and into another. It appears from the statement extracts that prior to the receipt the balance of the Second Oronsaye Lloyds Account stood at £1.96. Aside from interest nothing more was received into the account until a series of transactions with Harlingtons. Transfers of £25,000 and £602,092 were made to Harlingtons on 16 August and 18 August 2022 respectively. A return payment of £28.85 was made from Harlingtons on 28 September 2022. There followed a payment of £622,322.01 to another L&S Accounting account on

17 November 2022, which is not relevant for these purposes. That was followed by the payment of £200,000 back to the First Oronsaye Lloyds Account on 23 January 2023 that I have noted above. Some further payment flows followed, all apparently involving Mr or Mrs Oronsaye, before the Second Oronsaye Lloyds Account was closed on 14 April 2023. Throughout its existence the only apparent purpose of the Second Oronsaye Lloyds Account was to act as a conduit for money flowing between different accounts controlled by Mr and Mrs Oronsaye or to make the transfers to Harlingtons at the time of the acquisition of Unit E. On any analysis of tracing, Umbrella is entitled to trace through those payment flows for the purposes of the relief it seeks in this application.

Mrs Oronsaye's Barclays Account

: This was an account with Barclays in Bedford, again in Mrs Oronsaye's sole name, account number 40195200. The McTear Affidavit exhibited an Excel spreadsheet of the statements of Mrs Oronsaye's Barclays Account along with a "pivot table" (a feature in Excel that allows for the summarising of data) showing that the total receipts into that account over that period amounted to £594,813, of which £581,500 came from the Umbrella Lloyds account. As I have noted, by way of cross-check, Mr McTear exhibited a spreadsheet of the corresponding payments out from the Umbrella Lloyds Account. Both sets of bank statements show transfers from the Umbrella Lloyds Account to Mrs Oronsaye's Barclays Account of £150,000 on 18 February 2022, another £150,000 on 22 February 2022, £200,000 on 28 March 2022 and £50,000 on 26 May 2022. It is important to record that, unlike the Second Oronsaye Lloyds Account, this account was regularly used by Mrs Oronsaye, particularly for making payments. Most are minor, but some run to thousands of pounds. At no stage after the receipt of the first payment of £150,000 did the balance in this account drop below £144,000. Relevantly for Umbrella's tracing exercise, there was a payment of £40,000 to Mrs Oronsaye's TSB Account on 18 August 2022 and, on 21 November 2022, two payments of £27,115 and £50,000 to Greystone Solicitors (

Greystones

), the lawyers acting for Shiloh at that time on the acquisition of Water Lane. Again, given that those payments total less than the lowest intermediate balance between the first receipt of Umbrella funds and the date of each payment I accept that Umbrella can trace its assets through to those payments.

Mrs Oronsaye's HSBC Account

: This was an account with HSBC, once again in Mrs Oronsaye's sole name with account number 51761625. Statements for this account are exhibited to the McTear Affidavit and show that in March 2021 the balance was £9,309.73. Payments in from the Umbrella Lloyds Account totalling £50,000 (made up of two payments of £25,000) were received on 13 March 2021 and a further £50,000 (this time a single payment) was received on 26 May 2022. There were regular payments out from this account, in particular what appear to be monthly payments to Mrs Oronsaye's

church and the purchase of airline tickets. Throughout that period the balance remained well above £45,000; following the 26 May 2022 receipt the balance in the account remained constantly over £85,000. A payment out was made to Greystones of £25,000 on 21 November 2022. Umbrella is able to trace through to that payment.

Mrs Oronsaye's TSB Account

: This was an account with TSB in Bedford, also in Mrs Oronsaye's sole name with account number 00023028. In early August 2022 the balance in that account was £1,475.94. On 18 August 2022 extracts from her account statements exhibited to the McTear Affidavit show the receipt of £40,000 from Mrs Oronsaye's Barclays Account that I describe above. On 21 November 2022 she made a payment out to Greystones of £25,000. Applying the tracing rules I have outlined, Umbrella can trace the payment out to Greystones back to the receipt from Mrs Oronsaye's Barclays Account and in turn back to its assets.

Mr Oronsaye's Barclays Account

: This was an account with Barclays Direct Banking in Mr Oronsaye's sole name, account number 60894915. The account statements for Mr Oronsaye's Barclays Account are exhibited to the McTear Affidavit. Mr Oronsaye's Barclays Account had a starting balance of £89.45 on 20 January 2022. Both the statements for Mr Oronsaye's Barclays Account and Mr McTear's analysis of the statements of the Umbrella Lloyds Account show transfers to this account of: £20,000 on 11 April 2022; £100,000 on 23 May 2022; £20,000 on 29 July 2022; and £3,000, £4,000 and £40,000 all on 2 September 2022. This account was also receiving £4,000 per month from the Umbrella Lloyds Account between January October 2022. Finally, there was a receipt of £200,000 on 23 January 2023 from the First Oronsaye Lloyds Account, which I have described above. During that period Mr Oronsaye's Barclays Account received other payments; the largest was a little over £2,000 and the total was around £4,525. The vast bulk of the receipts came from the Umbrella Lloyds Account, therefore. Mr Oronsaye used this account regularly to make payments out, many of which appear to be day-to-day expenditure, but some of which ran to thousands of pounds. What matters for current purposes is that the balance in the account never fell below £90,000 between the receipts from Umbrella I have detailed above and the first payment to Greystones from Mr Oronsaye's Barclays Account of £50,000 on 21 November 2022. The balance then remained above £40,000 until further payments to Greystones of £1,000 and £6,353 were made on 1 December 2022. There were two transactions on 23 January 2023: a payment to Greystones of £180,000 and a receipt from the First Oronsaye Lloyds Account (which, as I have noted above, was immediately preceded by a transfer of the same amount from the Second Oronsaye Lloyds Account to the First Oronsaye Lloyds Account; no reason has been offered by Shiloh for this back-to-back transfer). The precise timing of the receipt and payment out is not clear, but from the statement it seems that the payment out may have come first. On the basis of what is said in

Durant

at paragraph [38], quoted above, that does not seem to me to matter, however: the transactions are obviously linked. Finally, there was a payment to Greystones of and £9,773 on 1 February 2023. The balance in Mr Oronsaye's Barclays Account had been well above that level throughout the period following the receipt of £200,000. Umbrella can therefore trace its funds through to the payments to Greystones.

Unit E

The contract for the sale of Unit E originally stated that the purchaser was to be Mimshach. However, on 19 August 2022 Mrs Oronsaye emailed Harlingtons, the solicitors acting for Mimshach, and instructed them to change the purchaser to Shiloh:

As explained all details you have remains same except that I and Stephen will be added as share holders. We own both companies but just decided to use this company for this purchase.

In my view this is a significant email. I have referred to it repeatedly in this judgment, and it is worth pulling together a number of points that flow from it. First, it illustrates the point I have made concerning Mrs Oronsaye's continuing management role at Mimshach. Whatever the formal position might have been it was obvious that Mrs Oronsaye could give instructions to Harlingtons that Mimshach was to step out of the transaction, which up to that point it had funded, and Harlingtons were prepared to act on them.

Secondly, it highlights the interchangeable positions of Mimshach and Shiloh in the Unit E transaction. Mrs Oronsaye sent her email to Harlingtons at 1:17pm. The sale contract was amended in manuscript and at 2:15pm, just under an hour after Mrs Oronsaye had requested the change, Harlingtons replied to Mrs Oronsaye confirming completion of the sale. The completion of Unit E therefore took place on the same day that Shiloh was incorporated. Any delay in Shiloh's incorporation would apparently have meant that the transaction would have proceeded with Mimshach as the purchaser. So far as I am aware there is nothing to show what, if any, due diligence or know your client checks were done by Harlingtons on Shiloh. It is apparent from an email from Harlingtons to the seller's solicitors, Rooks Rider, that before Mrs Oronsaye sent her email funds had been transferred to Rooks Rider. They were still held to Harlingtons' order, but obviously that transfer must have been made on behalf of Mimshach. Shiloh could simply step in and take over the transaction, apparently just because Mr and Mrs Oronsaye had changed their mind as to which vehicle to use.

Thirdly, and relatedly, it is obvious that the whole transaction was really about Mr and Mrs Oronsaye. There is no suggestion in any of this that they viewed Shiloh and Mimshach as distinct entities with distinct interests; they "

just decided

" to use Shiloh, even though it was technically Mimshach that had provided the funds for Unit E.

The leads to the source of the funds for the transaction. To the extent that Mimshach ever had its own bank account it does not seem to have been the source of any of the funds used to purchase Unit E. The completion statement prepared by Harlingtons shows that:

- i) The purchase price was £535,000 plus VAT of £107,000 making a total of £642,000.
- ii) Disbursements, including stamp duty, totalled £25,042
- iii) A deposit of £64,200 had been paid "

From Client

" together with £750 on account. Given that the completion statement was sent to Mrs Oronsaye on 17 August 2022 for completion originally scheduled on 18 August 2023, the day before Shiloh was incorporated, these sums must have been paid on behalf of Mimshach.

That left a total of £602,092 payable on completion.

As the McTear Affidavit explained, the forensic exercise undertaken by the liquidators to trace the flow of funds for this transaction has been complicated by the fact that Harlingtons have ceased practice and their records were not available to him. They had a copy of the completion statement and were able to obtain a copy of the contract from the seller's solicitors, Rooks Rider. The rest of the exercise has involved analysing the payments from the accounts I describe above to Harlingtons.

Statements for the Umbrella Lloyds Account show two payments, of £750 and £100 on 10 June and 28 September 2022 respectively. The figure of £750 obviously matches the money paid on account described in the completion statement. The £750 payment and (so far as it is relevant, in that it post-dates completion) the £100 payment therefore came straight from Umbrella and no issue of tracing arises.

Mr McTear's Third Witness Statement dealt with the L&S Accounting Santander Account. The spreadsheet summarising the analysis of bank statements for that account shows payments to Harlingtons of £4,200 on 15 August 2022 and £35,000 on 16 August 2022. I have explained above why I consider those payments to represent the traceable proceeds of Umbrella's assets.

There were then two payments to Harlingtons of £25,000 and £602,092 on 16 and 18 August 2022 respectively, both from the Second Oronsaye Lloyds Account. As I have noted above, that account seems to have been nothing more than a conduit used to channel the £1.75 million received from the First Oronsaye Account (and so in turn representing funds received from the Umbrella Lloyds Account) on 24 May 2019.

The two payments from the L&S Accounting Santander Account and the first payment from the Second Oronsaye Lloyds Account, all made within around 24 hours of one another, total the deposit from the completion statement. The balance required on the completion statement was £602,902, the amount transferred from the Second Oronsaye Lloyds Account to Harlingtons on 18 August, the contemplated completion date.

In my view it is clear that the transfers to Harlingtons identified by Mr McTear represent the payment of money on account, the deposit and the balance required to complete on Unit E. They total the amount referred to in the Harlingtons completion statement and are made at the time of that statement. At the risk of repetition, all of those transfers happened before Shiloh came into existence. There is nothing to suggest that Shiloh ever reimbursed Mimshach for those payments. That is unsurprising in circumstances where the money came from the Oronsayes' accounts, not an account in the name of Mimshach. This was, ultimately, the Oronsayes purchasing Unit E with money they controlled; the precise vehicle they used was a detail.

In reaching my conclusion I recognise that there is a further payment of £100 to and a refund of £28.85 from Harlingtons. It is not clear what those transfers relate to, and given the difficulties with obtaining Harlington's records it seems to me that that will not be possible to determine with any greater degree of certainty even at trial. Both transfers were in September, however, and so may well be unrelated to this transaction. I also recognise that Mrs Oronsaye wrote to Harlingtons on 17 August 2022 at 4:53pm to say "

Funds fully Transferred!

" but at that time the balance had not been transferred. The deposit had been transferred by that stage, of course, which would be consistent with that email. In any event, Mrs Oronsaye was asked about what that email meant in her bankruptcy examination and was unable to offer a satisfactory answer. In the course of that exchange Chief ICC Judge Briggs warned her that her evidence was evasive and risked being a contempt of court. I have no reason to think that leaving matters until trial will improve Mrs Oronsaye's recollection or the quality of her evidence.

I therefore accept that the purchase of Unit E was funded by payments from the Umbrella Lloyds Account, the L&S Santander Account and the Second Oronsaye Lloyds Account. I further accept that all of those sums can be traced, by Umbrella, as being funds representing its assets.

Water Lane

Greystones acted for Shiloh on the purchase of 38 Water Lane. Completion was on 24 February 2023 and the property is registered in Shiloh's name. Umbrella has obtained a copy of the Shiloh client account statement from Greystones, and this simplifies the practical exercise of identifying the money flows.

The purchase price of Water Lane was £190,000. Of that, £19,000 was paid direct to the auctioneers and the liquidators of Umbrella have been unable to identify the source of those funds. Disbursements totalled £13,468, giving a total acquisition cost of £203,468 and making the balance of the purchase price that needed to be received by Greystones £184,468.

Most of the payments were received by Greystones on 21 November 2022. The first receipt of £27,115 corresponds to a payment out of Mrs Oronsaye's Barclays Account on the same day with a description "Greystone Solicito". Plainly, it is the same payment. There was then a receipt by Greystones of £50,000. Again, that corresponds to a payment out of Mrs Oronsaye's Barclays Account with the description "Greystone Solicito".

A receipt of £25,000 matches a payment out from Mrs Oronsaye's HSBC Account, also with the reference "Greystone Solicito". The conclusion that they are the same payment is obvious. There followed a second receipt of £25,000. That matches a payment out from Mrs Oronsaye's TSB Account. On this occasion the reference is "UE34RSB". On its face that does not tie this payment to the receipt, but it is to my mind notable that one of the payments that was to Greystones from Mr Oronsaye's Barclays Account had the same reference. That, coupled with the timing and the correspondence of amount shows that the payment and the receipt match.

Finally, on 21 November 2022, there was a second receipt of £50,000. That matches a payment out of Mr Oronsaye's Barclays Account on the same date, once again with the reference "Greystone Solicito". This was the payment with reference UE34RSB. Again, it is plain that the two correspond. There were further receipts by Greystones on 1 December 2022 of £6,353 and £1,000 and those correspond to payments out of Mr Oronsaye's Barclays Account, yet again with the reference "Greystone Solicito". To render the position still clearer (to the extent that is possible), they have the further reference "Water Lane".

With the exception of the payment to the auctioneer, the source of which has not been identified, the purchase of Water Lane was therefore funded with payments from Mrs Oronsaye's Barclays Account, Mrs Oronsaye's TSB Account and Mr Oronsaye's Barclays Account. For reasons I have given above, those payments represent the traceable proceeds of Umbrella's assets.

Vulcan Street

The purchase price of Vulcan Street was £202,500 with a deposit payable of £20,250. This was paid direct to the auctioneer and, again, the source is not known. Disbursements were £7,538, giving a total acquisition cost of £210,038 and balance of £189,773 payable on completion.

With the exception of the payment to the auctioneer, the payments came from Mr Oronsaye's Barclays Account on 23 January and 1 February 2023. For the reasons I have already given Umbrella can trace its funds through Mr Oronsaye's Barclays Account and into the acquisition of Vulcan Street.

Again it is worth emphasising that the TR1 transfer was signed by Mr and Mrs Oronsaye in their capacities as directors of Shiloh on 3 February 2023. That is consistent with the other evidence, including evidence from Mrs Oronsaye herself in her Third Witness Statement, showing that she was managing Shiloh throughout the period when it was acquiring the Properties. I doubt that she ever did formally resign as its director, but even if she did she continued to act as if she were a director, which is what matters for the purposes of this application.

Summary of the tracing analysis

There is no evidence showing the origin of the payments made to the auctioneers in the case of either Water Lane or Vulcan Street. Accordingly, it is not possible to trace those payments to the assets of Umbrella and unless and until it can establish such a link Umbrella has no claim in respect of them. Otherwise, all of the payments made to acquire the Properties can be traced back to Umbrella's assets.

What that means in practical terms is that Umbrella has shown that its assets funded the purchase of the Properties in the following proportions:

- i) Unit E: 100%
- ii) Water Lane: 90.66%
- iii) Vulcan Street: 90.36%

Knowing Receipt

As Lord Millett made clear in

Foskett

, tracing and claiming are different things. It is not sufficient for Umbrella simply to trace its assets into the acquisition of the Properties; it must also establish a claim to them. It asserts two bases, knowing receipt and dishonest assistance.

For the elements of a claim in knowing receipt Mr Brockman directed me to the decisions in

El Ajou v Dollar Land Holdings plc

[1994] 2 All ER 685

and

Bank of Credit and Commerce International (Overseas) Ltd v Akindele

[2001] Ch 437

.

El Ajou

dealt with the elements for a claim in knowing receipt at 700: "

For this purpose the plaintiff must show, first, a disposal of his assets in breach of a fiduciary duty; secondly the beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and thirdly, knowledge on the part of the defendant that the assets he received are traceable to a breach of fiduciary duty.

" Nourse LJ in

Akindele

at page 448C expressly adopted the

El Ajou

test before emphasising at 448H that: "

While a knowing recipient will often be found to have acted dishonestly, it has never been a prerequisite of the liability that he should.

"

At page 455 Nourse LJ turned to address the question of what was required to show knowledge:

"The recipient's state of knowledge must be such as to make it unconscionable for him to retain the benefit of the receipt. A test in that form, though it cannot, any more than any other, avoid difficulties of application, ought to avoid those of definition and allocation to which the previous categorisations have led. Moreover, it should better enable the courts to give commonsense decisions in the commercial context in which claims in knowing receipt are now frequently made..."

Nourse LJ was addressing the knowledge of an individual. Attribution of an individual's knowledge to a company was dealt with at some length in

El Ajou

starting at page 695. At pages 695j-696b Hoffmann LJ, as he then was, set out the general approach:

"The doctrine attributes to the company the mind and will of the natural person or persons who manage and control its actions. At that point, in the words of Millett J ([1993] 3 All E R 717 at 740):
"

Their minds are its mind; their intention its intention; their knowledge its knowledge.

" It is important to emphasise that management and control is not something to be considered generally or in the round. It is necessary to identify the natural person or persons having management and control in relation to the act or omission in point."

He then emphasised, at page 696c:

"Decided cases show that, in regard to the requisite status and authority, the formal position, as regulated by the company's articles of association, service contracts and so forth, though highly relevant, may not be decisive. Here Millett J adopted a pragmatic approach. In my view he was right to do so..."

Hoffmann LJ recognised at pages 697h-698a that a company could lose its corporate memory where the directing mind and will had themselves forgotten that the sums in question resulted from a misapplication of trust moneys, although on the facts of

El Ajou

he considered that not to have been the case.

Finally, Hoffmann LJ stressed that this ground of attribution was separate to agency. He set out the approach there at page 698g:

It is established on the authorities that the knowledge of a person who acquires it as a director of one company will not be imputed to another company of which he is also a director, unless he owes, not only a duty to the second company to receive it, but also a duty to the first to communicate it: see

Re Hampshire Land Co

[1896] 2 Ch 743

and

Re Fenwick Stobart & Co Ltd, Deep Sea Fishery Co's Claim

[1902] 1 Ch 507

.

The first aspect of the

El Ajou

test is to show a breach of fiduciary duty. In the case of those payments that can be traced to the payment away of £2 million on 24 May 2019 to the First Oronsaye Lloyds Account, it was found by HHJ Hodge at paragraph [84] of the 2024 Judgment that this represented a breach of duty by Mr and Mrs Oronsaye. For the reasons I have given I consider that Shiloh is equally bound by that finding.

As I have explained above, it seems to me that the Properties were part funded by other payments out of the Umbrella Lloyds Account. Shiloh's case is that Mr and Mrs Oronsaye paid for the Properties themselves with funds that they had properly earned. I disagree. All the evidence is that they did not earn any such sums.

Mrs Oronsaye exhibited to her Second Witness Statement, in support of the failed application to discharge the proprietary injunction, statements from the Umbrella Lloyds Account for January 2018. She identified certain payments that she said were not connected with Umbrella. The entries identified total £3,775.50, which obviously does not come close to the purchase price of the Properties.

Mrs Oronsaye also exhibited what she said were invoices purporting to show Mr and Mrs Oronsaye were charging L&S Accounting for services they provided. Mr Brockman invited me to reject these invoices as fabricated evidence. I agree that they must be for at least four reasons.

First, in paragraph [79] of the 2024 Judgment HHJ Hodge noted that Mr Oronsaye's tax returns showed no income for the period from 2017/18 until at least the 2024 Judgment. It is impossible to reconcile Mr Oronsaye invoicing for his time when he was telling HMRC in his tax returns that he had no income.

Secondly, the invoices charged VAT but neither Mr nor Mrs Oronsaye were individually VAT registered, so either the invoices were falsified or VAT was being charged that was not due.

Thirdly, the invoice numbers do not reconcile with the dates on the face of the invoices. Specifically, Mr Oronsaye's invoice for 1 November 2021 is numbered 505587 but his later invoice for 2 May 2022 is numbered 505583. Similarly, Mrs Oronsaye's invoice for October 2021 has a lower number than that for September 2021. If the invoices were generated in the ordinary course of business, one would expect later invoices to have a higher number. The fact that is not the case is consistent with Mr Brockman's submission that they are fabricated. No honest explanation is suggested by Shiloh.

Fourthly, as Mr McTear explains in his Second Witness Statement there is no evidence that payment was ever made on these invoices. The issue of payment is wholly unaddressed in Mrs Oronsaye's Third Witness Statement, but if the invoices were genuine and related to legitimate charges one would expect payment to have been received or at least pursued.

What is in some ways most remarkable is that this tracks almost identically the reliance placed on similarly unsatisfactory invoices before HHJ Hodge. He concluded at paragraph [54] of the 2024 Judgment:

There is no real prospect of any court reaching any conclusion other than that Mr and Mrs Oronsaye have fabricated these invoices. The inescapable inference is that they have done so for the purposes of seeking to mislead the claimant, and the court, by passing them off as genuine invoices, and in the hope of asserting some defence to the present summary judgment application and the underlying claim.

Precisely the same is true here.

In any event, the amount invoiced totals significantly less than the purchase price of the Properties, so even if I accepted those invoices as genuine and legitimate, which I do not, they would not account for the purchases.

Ultimately, Mr Abebrese was reduced to referring to a schedule summarising receipts into the Lloyds Umbrella Account that had been prepared by the liquidators of Umbrella and suggesting that the numbers totalled enough that there might be honestly earned income in there. With respect to Mr Abebrese, that was pure speculation and there is no realistic prospect of such a speculative argument succeeding. Both Mr and Mrs Oronsaye have given evidence in this application, and neither of them suggested the source of the alleged income other than by reference to invoices that are in my view falsified and on any analysis insufficient to fund the purchase of the Properties.

It follows that the further payments out of the Umbrella Lloyds Account were not earned by Mr and Mrs Oronsaye; they were wrongly appropriated in breach of fiduciary duty.

The second aspect of knowing receipt – tracing – is dealt with above. Umbrella has largely shown that the Properties were acquired with the traceable proceeds of its assets. The exception is the auctioneers' premia, the source (or sources) of which have not been identified at this stage.

That leaves knowledge. Plainly Mr and Mrs Oronsaye knew of their respective breaches of fiduciary duty to Umbrella. It seems to me an unavoidable conclusion that their knowledge must be imputed to Shiloh:

- i) For the reasons given above, I consider that Mr and Mrs Oronsaye were managing Umbrella at the time that funds were paid away, in breach of fiduciary duty, to accounts controlled by them and were controlling Mimshach and Shiloh both generally and in respect of the purchases of the Properties. The control of Mr and Mrs Oronsaye is reflected in the case of Unit E by Mrs Oronsaye's email of 19 August 2022 substituting Shiloh for Mimshach as the purchaser. She made clear in that email that the decision was taken jointly with Mr Oronsaye. It is hard to imagine a more blatant demonstration of control. Similarly, in the context of Vulcan Street, Mr and Mrs Oronsaye signed the TR1 on behalf of Shiloh. I have already noted the oddity of Mrs Oronsaye doing so as a director where Shiloh has filed documents at Companies House purporting to show that she had resigned as a director at this time. Even assuming the documents filed with Companies House are accurate, however, as

El Ajou

makes clear her formal role is irrelevant. She, along with Mr Oronsaye, were the people directing and executing the transaction for Shiloh.

- ii) Mr Oronsaye manages the Properties. Far from doing so on the instructions of someone at Shiloh, it seems that Ms Irabor is wholly unaware of what is going on. For these purposes, he is Shiloh.

- iii) Even on Shiloh's case, Mr Oronsaye was its only director throughout the relevant period. Again I note what is said in

El Ajou

both to the effect that the formal status of an individual not being decisive and what is required for attribution of knowledge via the separate route of the knowledge of a director. However, the fact is that on Shiloh's case the only manager of its affairs while the Properties were being acquired was Mr Oronsaye. The only purpose of Shiloh is said to have been acquiring the Properties as part of the Oronsaye family's estate planning strategy. Given that nobody else is suggested by Shiloh as managing that process, and legally the company cannot be "mindless" for these purposes, it is hard to see how Mr Oronsaye was not its directing mind and will in acquiring the Properties, making his knowledge also the knowledge of Shiloh.

For each of these reasons individually, and all the more so taken as a whole, I consider that the requirement of knowledge is satisfied on the facts of this case. Moreover, it seems to me unarguable that such knowledge rendered it unconscionable for Shiloh to retain the assets it received. Any other conclusion would mean that it would be, in at least some circumstances, legitimate for a recipient to retain what it knew at the point of receipt were the proceeds of fraud and the fruits of multiple breaches of fiduciary duty; it goes without saying that such conclusions would be absurd.

Accordingly, in my view the elements of knowing receipt are made out. I did not understand it to be controversial that knowing receipt supports the imposition of a constructive trust where the recipient retains the proprietary interest, but to the extent that is disputed by Shiloh it seems to me a basic proposition of law (see

Byers v Saudi National Bank

[2023] UKSC 51

at [30] and the authorities referred to therein).

Shiloh's Defence

Shiloh's Defence takes a variety of forms.

First, it is said that the Properties were acquired by Shiloh but with funds earned by Mr and Mrs Oronsaye. I have addressed that above. To the extent that Shiloh can run the point at all, given the findings in the 2024 Judgment, it wholly fails. There is no credible evidence to support such a contention; the proffered evidence is, in my view, falsified.

Secondly it is asserted that Shiloh was a good faith purchaser for value without notice. Both aspects of that defence fail. Shiloh was not in good faith, nor was it lacking notice. The knowledge at least of Mr Oronsaye is attributed to Shiloh and he was not simply aware of the labour supply fraud and subsequent diversion of Umbrella's assets, he perpetrated both. Equally, Shiloh was not a purchaser for value. The repeated evidence of Mrs Oronsaye and Ms Irabor was that this was some form of estate planning scheme. Taking that at face value, it seems that it involved voluntarily transferring assets into a vehicle, Shiloh, held by or for the benefit of Mr and Mrs Oronsaye's children. There is no suggestion that anything was received in return.

Thirdly it is said that Shiloh has changed its position. The alleged qualifying detriment is said to be that (emphasis in original): "

Any receipt was

applied irreversibly

(e.g., supplier wages / services, overheads, taxes) such that restoration would be inequitable.

" Shiloh's accounts record no such expenditure and Shiloh has so far as I am aware paid no taxes. On that ground alone this defence is wholly unsupported by evidence and fails. Even were there a qualifying detriment, Shiloh did not act in good faith for the reasons I have repeatedly given. The defence would equally, and separately, fail on that ground.

Fourthly there are arguments that either the 2024 Judgment does not bind Shiloh or, even if it does, it was wrong. For the reasons I have given the 2024 Judgment does bind Shiloh as a privy to both Mr and Mrs Oronsaye and Mimshach. It would separately be an abuse of process for Mr and Mrs Oronsaye to use Shiloh as a vehicle to relitigate issues already decided against them. The criticisms of the 2024 Judgment and HHJ Hodge's order are both baseless and, in any event, an illegitimate collateral attack on a final judgment of this court.

Fifthly, tracing is contested. I have addressed that above. On the basis of the approach in

Shalson

, which Mr Abebrese accepted was a correct statement of the law, Umbrella was entitled to trace in the way that it did.

Sixthly it is said that Umbrella is required to give credit for lawful expenditure. The point is put in the broadest possible terms, but I take it to be a reference to paragraph [85] of the 2024 Judgment. There HHJ Hodge was dealing with receipts by L&S Financials from agency clients directly into a Barclays account that it held. The claim before me involves payments out of the Lloyds Umbrella Account. As HHJ Hodge found at paragraphs [36]-[37] of the 2024 Judgment, the L&S Financials Barclays account was used by Mr and Mrs Oronsaye after the HMRC freezing injunction to escape (wholly illegitimately) the effects of that injunction. Agency clients were told to stop paying into the Lloyds Umbrella Account and start paying into the new account. Any amounts standing to the credit of that account therefore have nothing to do with the sums traced by Umbrella in this case.

Seventhly, Shiloh asserts that Umbrella ceased trading in October 2022. That is not accurate – October 2022 was when HMRC obtained its freezing injunction and when Mr and Mrs Oronsaye sought to have clients of Umbrella make payment to different accounts. More to the point it is irrelevant. As I set out above, all of the payments to be traced had left the Umbrella Lloyds Account by that point.

Finally Shiloh asserts that it has been deprived of its books and records and so has been disadvantaged in preparing a defence. There is nothing to suggest that Umbrella went beyond the scope of the orders permitting it to seize those records, nor is there any reason to believe that

anything about which Mr and Mrs Oronsaye now complain would in any way affect the knowing receipt claim. Ultimately, my decision is based on the findings in the 2024 Judgment, the bank statements of Mr and Mrs Oronsaye or their various vehicles, exchanges between Mrs Oronsaye and the lawyers instructed on the purchases of the Properties and transaction documents from those purchases. Shiloh has had access to all that material. As Mr Brockman observed, no specific documents have been identified by them as being missing and nor is any of the evidence before me said to be inaccurate or incomplete. Mr and Mrs Oronsaye have proven able to adduce further financial information when they have considered it necessary. This point seems to me baseless.

In saying that I have in mind that standard that Umbrella must reach in seeking summary judgment. Returning to the principles summarised in

EasyAir

, in my view Umbrella has successfully shown that there is no reasonable defence to its claim, and that nothing is likely to emerge that might alter the position at trial.

The question of whether the 2024 Judgment is binding on Shiloh is largely a legal one. To the extent that it does depend on factual findings, those findings are based on contemporaneous exchanges between, in particular, Mr and Mrs Oronsaye and the solicitors acting on the purchase of the Properties or on the transaction documents themselves. Applying

EasyAir

, weight is to be given to such contemporaneous documents.

The process for establishing the flow of funds was explained by Mr McTear in the McTear Affidavit and his First through Third Witness Statements. In each case he or members of his team have worked through contemporaneous bank statements and the completion statements of the firms of solicitors used by Shiloh. Those statements or extracts from them are exhibited to the various witness statements, as are the relevant completions statements. Again, that use of contemporaneous documents seems to me both reliable and unlikely seriously to be contradicted at trial.

By contrast, Mrs Oronsaye's assertions that she had no management role at Shiloh were plainly wrong and impossible to reconcile with the documentary evidence to which I have referred. It was precisely the type of factual issue that

EasyAir

found could be determined at this stage.

The broader case theory that these were honestly earned funds was, in my view, a fabrication. It was apparent from the face of the invoices themselves that they are wrong, at least in charging VAT in respect of individuals who are not VAT registered. Mr Oronsaye's invoices could not be reconciled with the finding of HHJ Hodge that he had declared no income for tax purposes. No explanation is offered for the discrepancy between the dates and invoice numbers. All of that indicates strongly that the invoices are not accurate contemporaneous records. On the basis of

King v Stiefel

, that is a conclusion I am entitled to reach on the evidence before me.

The argument that the evidence must be tested at trial was central to Mr Abebrese's submissions, but it was unclear what that testing might involve or how it could undermine the contemporaneous documents on which Umbrella bases its case. It was an argument that something might turn up; as Cockerill J in

King

made clear, that is not enough.

None of the grounds in the Defence seem to me to have any prospect, less still any real prospect, of succeeding. Waiting for a full trial will not change that.

Dishonest Assistance

In light of what I have found it is not necessary to address the question of dishonest assistance.

Conclusion

Shiloh has no real prospect of defending Umbrella's claim in knowing receipt for the reasons I have given. No other reason, less still a compelling reason, was advanced for why there needed to be a trial of this claim or any aspect of it. I therefore grant summary judgment on the terms set out above.

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Prepared on 22 October 2026 · Esheria