Neutral Citation Number: [2021] EWHC 49 (Comm)

Case No: CC-2020-MAN-000061

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
CIRCUIT COURT COMMERCIAL COURT (QB)

Manchester Civil Justice Centre
Bridge Street, Manchester M60 9DJ
Date: 13 January 2021

Before :

His Honour Judge Stephen Davies sitting as a High Court Judge

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Between :

SOLITAIR LIMITED	**Claimant**
- and -	
(1) MR ANISH NAMBIAR **(2) GO SINGLES LIMITED**	**Defendants**

- -

Mr Changez Khan (instructed by **Curzon Green Solicitors, London EC3M**) for the **claimant**
Mr Warren Bank (instructed direct by public access) for the **defendants**

Hearing dates: 7-9 December 2020
Circulated in draft on 8 January 2021

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APPROVED JUDGMENT

This judgment was handed down remotely to the parties and by publication on Bailii on 13 January 2021. I direct that pursuant to CPR PD 39A paragraph 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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His Honour Judge Stephen Davies

His Honour Judge Stephen Davies:

Summary

1. This is my judgment on: (a) the trial of the substantive claim brought by the claimant, Solitair Limited, against the first defendant, Mr Anish Nambiar, and his company Go Singles Limited ("GSL"); and (b) the claimant's application for the committal of Mr Nambiar.

2. Mr Nambiar was married to Ms Sian Jones and together they owned and ran Solitair as a successful travel agency business, operating mostly online and targeting the single holidaymaker market. They also owned and ran another business and a number of buy to let properties. They separated and subsequently divorced but, despite that relationship breakdown, had been able to continue running their businesses together for a number of years. However, in April 2019 Mr Nambiar resigned as director of Solitair, removing monies from its bank account without consulting Ms Jones and taking control of a hotel in Turkey, the Olympos Hotel, which Solitair had previously used on an exclusive basis. He later formed GSL to operate in competition with Solitair under the trade name Go Singles.

3. Solitair's case is that from April 2019 onwards Mr Nambiar breached his duties as director by launching a campaign to take away its business, customers and employees, involving or including the misuse of its confidential customer database, the misappropriation for himself of the opportunity to take a lease of the Olympos Hotel and of the hotel's database, the misappropriation of its funds, the soliciting of some employees to resign and others to advance his interests whilst still working for Solitair, the sabotage of its website whilst at the same time using a domain name (www.gosingles.co.uk), which was its property, and setting up the Go Singles website.

4. Solitair, having survived this alleged onslaught, launched this claim against the defendants and obtained an interim injunction in the London Circuit Commercial Court on 27 November 2019 with the judge, Mr Philip Marshall QC sitting as a deputy High Court Judge, transferring the case to Manchester and giving directions for a speedy trial.

5. The defendants failed to comply with the directions for disclosure and exchange of witness statements. Solitair contended that the defendants had breached the interim injunction by continuing to market to its customers using its database and/or that of the Olympos Hotel. It brought a hybrid application for committal against Mr Nambiar and strike out against both defendants. After some procedural delays the strike out application, together with the defendants' application for relief from sanctions, came before me in September 2020. By this time the defendants, having previously been represented by solicitors and counsel, were now only represented by counsel through public access. I refused to strike out the defence but also refused the application for relief from sanctions. Concerned about the existing delay I

also directed that the trial together with the committal application should proceed in December 2020.

6. At trial Solitair was represented, as it has been throughout, by Mr Khan instructed by Curzon Green solicitors. The defendants were represented by Mr Bank through public access, initially only for the first day but eventually for the whole trial save for a half day when he had another professional commitment.

7. Although the Particulars of Claim were widely drafted, in his written opening Mr Khan made it clear that Solitair was not seeking such wide relief in the form of an unlimited inquiry as to damages or account of profits and instead was limiting its claim for relief to four key categories, namely: (a) misappropriation of the Olympos Hotel corporate opportunity; (b) misuse of the claimant's confidential information, specifically its customer database; (c) misappropriation of its funds in certain specified respects; (d) misappropriation of its domain name.

8. At the hearing in September 2020 the claimant had limited its application for committal, which had previously been widely drawn, to the allegation of breach of the obligation not to use its customer database. At my direction it subsequently provided a schedule setting out the alleged breaches relied upon. As served the allegations referred to marketing emails sent by Go Singles to three specific customers on three separate occasions and an assertion that it could be inferred that the emails had been sent to the whole customer database on each such occasion. By closing submissions the case had become limited to one marketing email sent to one customer on one occasion (19 December 2020), albeit on the basis that the court should still infer that this had been a bulk emailing to the whole customer database.

9. I am extremely grateful to the claimant's solicitors for the production of the electronic bundle in well organised form and to both counsel for their presentation of their respective clients' cases. The defendants were fortunate to have Mr Bank for the majority of the hearing instead of having to act in person.

10. I was conscious of the disadvantages inherent in conducting the committal application at the same time as the substantive trial. However, I was also conscious of the disadvantages, particularly to Mr Nambiar, of having to attend at and fund two separate hearings on two separate occasions with concomitant delay either to the substantive trial or the committal application. By September 2020 Mr Nambiar had already filed evidence in relation to the committal application and there was no suggestion that he would be prejudiced by the need to give evidence in relation to the substantive issues and his right to decline to do so in relation to the committal application. Moreover, although there was some overlap between the substantive claim and the committal application, it was not an extensive overlap.

11. At the hearing Mr Nambiar was reminded by me and advised by Mr Bank as to his right not to give evidence in relation to the subject matter of the committal application. Mr Nambiar elected to give evidence. I have borne in mind the need to make findings to the civil standard of the balance of probabilities on the substantive issues and to make findings to the criminal standard of being satisfied so that I am sure on the committal application and that it is perfectly possible for me to find the allegation the subject of the committal application proved to the civil standard insofar as relevant to the substantive issues and not proved to the criminal standard in relation to the committal application.

12. Having heard the evidence and having considered the submissions made my conclusions are as follows:

(1) The claimant has substantially succeeded in showing that Mr Nambiar acted in breach of fiduciary duty in the respects alleged by the claimant and that he used GSL as a corporate vehicle for certain of those breaches.

(2) The claimant is entitled to a money judgment against Mr Nambiar in the total sum of £85,651.50, comprising £16,039 [paragraph 63], £22,512.50 [paragraph 69], £47,000 [paragraph 98] and £100 [paragraph 104].

(3) Non-monetary injunctive and other orders should be made in the terms indicated in paragraphs 63, 83, 86 and 104.

(4) The claimant has succeeded on its committal application in the specified respect identified in paragraph 129 and Mr Nambiar falls to be sentenced on that basis.

13. I will attempt to give my reasons as follows as concisely as is consistent with the need to make sufficiently clear the basis for my findings.

The relevant legal principles

14. I can address the relevant general legal principles briefly.

15. The claim is pleaded and advanced on the basis that Mr Nambiar acted in breach of his fiduciary duties owed to Solitair as director prior to his resignation, such duties now being largely codified in the Companies Act 2006. As relevant to this case these include the duties to promote the success of the company (s.172), to avoid conflicts of interest (s.175), not to accept benefits from third parties (s.176) and to declare an interest in a proposed transaction or arrangement (s.177). It is common ground that these duties only continue for so long as the status of director continues, other than in relation to the duty to preserve the confidentiality of confidential information imparted during the subsistence of the relationship, but it is also well-established that a fiduciary such as a director: (a) may be liable for the wrongful post-termination exploitation of company property, information or opportunities; and (b) may be liable for profits earned post termination deriving from pre-termination breaches. The claim is made against GSL in the basis that it is wholly owned and controlled by Mr Nambiar and that insofar as its acts are complained of it has a joint liability with Mr Nambiar on the basis that his knowledge is to be imputed to it as his company.

16. Contrary to Mr Bank's submission, I am satisfied that a company is entitled to claim against a resigning director for breaches of fiduciary duty without having to undertake a general investigation or account as to what may be or is due to him from the company. If the resigning director considers that he has any relevant defences (for example, that his taking of corporate monies or opportunities was lawfully sanctioned by his fellow directors or shareholders) or counterclaims (for example, that he is owed dividend lawfully declared by the company) then he must raise them in the proceedings against him. Moreover, whilst it would in certain cases be a good defence that conduct which would otherwise amount to a breach of directors' duty had been lawfully sanctioned by his fellow directors or shareholders, it would not be a good defence to rely on the fact that his fellow directors or shareholders had also engaged in such conduct unless it was said that this amounted by implication to a lawful sanction of his own conduct.

17. One issue raised by Mr Bank on behalf of Mr Nambiar which requires some further consideration is the mental element necessary to found a finding of contempt in a case such as the present, involving an allegation of disobedience to a court order.

18. Mr Bank submitted in paragraph 72 of his written submissions that: "C must prove intention or *mens rea* on AN's part, which includes proving a positive intention to interfere with the

administration of justice. In particular, to establish that AN is in contempt of the interim injunction, C must prove that AN: a. knew the terms of the order; b. acted in a manner that involved a breach of the order; and c. knew of the facts that made their conduct a breach: *Marketmaker Technology (Beijing) Co Ltd v CMC Group Plc* [2009] EWHC 1445 (QB).

19. That submission at first blush might appear to suggest that it was necessary to prove that Mr Nambiar had a positive intention to act in a manner which he knew involved a breach of the court order. If so, that is clearly incorrect. What Teare J said in that case was as follows:

> 14. …. For a contempt to be established it has to be shown that the conduct which breached the undertaking was intentional or deliberate and that the alleged contemnor had knowledge of the facts which made his conduct a breach. It is unnecessary to establish that the alleged contemnor appreciated that his conduct was a breach of the undertaking. The law on this point was summarised by Warrington J in *Stancomb v Trowbridge Urban District Council* [1910] 2 Ch. 190 at p.194:
>
> "In my judgment, if a person or a corporation is restrained by injunction from doing a particular act, that person or corporation commits a breach of the injunction, and is liable for process for contempt, if he or it in fact does the act, and it is no answer to say that the act was not contumacious in the sense that, in doing it, there was no direct intention to disobey the order."

20. That is consistent with the decision of the Court of Appeal in *Varma v Atkinson & another* [2020] EWCA Civ 1602, where it was held that the trial judge was right to hold that it was settled law that it is not a necessary ingredient of contempt that the contemnor knows that he is breaching the order or that he intends to breach the order: see paragraphs 50 to 55. Such factors are only relevant as to sentence. See also the recent observations of Snowden J in *Minstrell Recruitment v Lockett* [2020] EWHC 3537 (Ch) at [12].

21. It follows that it is not necessary for the claimant to prove a positive intention on the part of Mr Nambiar to interfere with the administration of justice.

The witnesses

22. There were three witnesses for the claimant. First to give evidence was Ms Jones. My overall impression of Ms Jones was that she was an honest witness who gave evidence in a moderate fashion without personal vindictiveness, even though on her case she had only just managed to defeat an existential threat to the business from a planned attack by her former husband acting with at least one employee who she had previously trusted. Her evidence was not completely reliable in every respect and it is clear that she did not have personal knowledge of every aspect of her evidence; she was however prepared to accept errors in her evidence when they were drawn to her attention.

23. Mr Bank emphasised one key respect in which her evidence was, he submitted, most unsatisfactory. It was the defendants' case that in autumn 2019 Solitair had ceased trading and transferred its business to a newly incorporated company known as Singles Horizons Limited ("SHL") and that she had not only failed to disclose such fact when applying for and obtaining interim injunctive relief but had continued to deny that this was the case without providing any documentary evidence in support.

24. Ms Jones admitted that she had set up SHL as a new company and also admitted that she had changed the trading name of Solitair to Singles Horizons but denied that the business had been transferred to SHL. Her case was that SHL had been set up "just in case" but that it had

not in fact been needed because Solitair had been able to survive as a trading entity despite the defendants' attacks.

25. Whilst the defendants have been unable in my view to put forward clear and compelling evidence that the business had been transferred to SHL, Mr Bank pointed to the claimant's failure to disclose evidence such as management accounts for y/e 30 April 2020 or current bank statements which would have demonstrated conclusively that the business was still being undertaken by Solitair as a trading company. I am concerned that such documents have not been produced without any convincing explanation having been given why not. However, I do not consider that I can or should draw the inference that the reason is that the business has been transferred to SHL and that Ms Jones is lying to the court when she says that it has not. I did not find her explanation for founding SHL as a fallback incredible and nor does the evidence already adduced point strongly to Solitair having ceased trading. The defendants have not made an application for specific disclosure and, since the claimant is not seeking an award of compensatory damages based on a loss of profits from April 2019 and continuing, the question as to whether or not Solitair is still trading is not, strictly speaking, an issue which arises for determination in this case. It was raised by the defendants as a complaint against Solitair in failing to disclose such fact when applying for interim injunctive relief and in support as an application for security for costs, but since: (a) the application for interim relief was made on notice and no application to discharge for non-disclosure was made; and (b) I directed that the application for security for costs, having been made late and after the defendants were already in serious breach of the speedy trial directions, should not proceed until the trial and committal application had taken place, it was not a relevant issue for this trial and committal application.

26. I should also say for completeness that even if I had found that Ms Jones was lying about this point it would not have changed my decisions in this case, whether on the substantive issues or the committal application, since my conclusions are not dependent on my accepting the evidence as Ms Jones as true in relation to any critical aspect of the case.

27. Ms Alison Blyth also came across as honest and again without obvious rancour against Mr Nambiar, even though both she and Ms Jones contended that he had forced her out of her previous employment with Solitair some years before he left and she was re-employed.

28. Ms Amanda Wiseman was called as a witness who had no connection with either party and no axe to grind against Mr Nambiar or his company. She readily agreed that she had met Ms Jones when the latter was the leader of the one holiday she had booked and taken with Solitair in 2018. She got on with Ms Jones sufficiently well for the latter to contact her as someone who might reply if she had received marketing material from Go Singles. However both denied that they had become friends and there is no evidence to indicate that they had. Moreover, although she was, not surprisingly, concerned that she had been contacted by Go Singles when she had not so far as she was concerned given it her email address nor opted in to receiving marketing materials, there was no indication whatsoever in her evidence that she had in any way sided with the claimant or would have been willing to lie or mislead and I am satisfied that her evidence was completely truthful and reliable.

29. Mr Nambiar was the only witness for the defendants. In closing submissions Mr Khan submitted that the court should view his evidence with a high degree of scepticism and afford it little if any weight. He made two broad observations: (a) Mr Nambiar had a tendency to say whatever he felt best suited him at any given moment – regardless of whether it was actually true or whether it contradicted his own previous evidence; (b) Mr Nambiar's

evidence must be assessed against the backdrop of the defendants' failure to make disclosure which might have enabled the veracity of the evidence given by him to be tested.

30. As regards the first point, it is not just that Mr Nambiar was - as Mr Bank realistically conceded - a poor witness in that he was inconsistent, evasive and argumentative. I am prepared to accept that someone who is involved in an ongoing acrimonious dispute with his ex-wife and ex-business partner and who is facing a committal application may not come across well due to the pressure of being in that position, without that making his evidence on key issues necessarily unreliable. I am more influenced by the fact that his evidence in certain key respects was wholly inconsistent with contemporaneous evidence which - despite his protestations to the contrary - was clearly genuine.

31. It is worth noting at this point the most significant evidence which pointed to his having planned in advance his departure and that of other key employees and having planned to attack the claimant and its business because it demonstrates that his protestations of innocence are wholly incredible and also supports the key allegations made by the claimant in this case.

32. First, although it is obvious that his resignation was planned, he gave no advance notice warning of it and the tone of his emails of 4 April 2019 betrayed that he knew full well the serious impact that his immediate departure would have, as would his unilateral withdrawal of £42,000 at a time when he knew that the bank would soon be expecting the overdraft facility to be reduced from £60,000 to £25,000. Nor did he explain that he would be taking over control of the Olympos Hotel and that Solitair would need to make arrangements to pay his new business for its customers who had already booked to stay there that summer.

33. I am satisfied that what happened, as he effectively admitted in cross-examination and consistent with his email of 8 April 2019, is that he decided to walk away from Solitair because he was not prepared to pay what Ms Jones was asking to sell her 50% shareholding in the company to him. What he was not prepared to admit, but what is clear in my judgment, is that he decided that because she would not sell the company at what he believed was a reasonable price he would take control of the Olympos Hotel as Solitair's best-selling hotel, set up a competing company and use its customer database to target its customers and seek to drive it out of business.

34. Second, despite his denials that he knew in advance, it is apparent from the email resignations of two key employees on the same day that these resignations were orchestrated. Even if one was a coincidence, two could not be, especially since the second made a deliberately vague reference to "unforeseen health difficulties".

35. Third, I am satisfied on the balance of probabilities that Mr Nambiar was behind Solitair's websites and that of the other jointly owned company going down on 10 April 2019. Whilst the email from the website hosting company of the next day is not completely clear to a non IT specialist precisely what happened and how it happened, and it would have been better had a statement been provided from its proprietor or employee, it is unlikely to be a coincidence in my judgment that all three websites went down on the same day and that the databases on the main Solitair website had been emptied. That conclusion is supported by the evidence of Mr Nambiar skype messaging one of the employees who had resigned but been persuaded to stay on the same day, a Ms Thareja, to tell her to say if asked: "pretend everything is done by dev guy".

36. Indeed, the whole tenor of that skype exchange, when read with other messages between them, shows that Ms Thareja, who Ms Jones trusted and who had "administrator" access to

many of the systems used by Solitair, was feeding inside information to Mr Nambiar. At one point Mr Nambiar, who clearly still had access to the systems and who could see that Ms Jones was trying to remove his access to the ePDQ secure customer payment system, said "now Olympos Hotel is the only trump card", which clearly demonstrates in my judgment that he was engaged in a campaign against Solitair.

37. A subsequent skype exchange between the two on 26 April 2019 records that Mr Nambiar had decided to "start our company" - this message was written in the context of the two of them discussing how Ms Jones was trying to keep Solitair and its business afloat, contrary to Mr Nambiar's expectation that it would already have failed by now.

38. The true picture is also revealed by an email sent by another employee, Ms Gupta, to Ms Thareja on 31 May 2019, from which it is apparent that the three of them had engaged in a campaign to damage Solitair's business and assist Mr Nambiar's business and that this was causing Solitair to experience a financial crisis.

39. As regards Mr Khan's second point about the defendants' failure to disclosure relevant documents, it cannot be disputed that they did not do so and that at the hearing in September 2020 I was unimpressed by the defendants' attempt to blame that failure on their previous solicitors notwithstanding their continued failure to make disclosure over the months from January to September 2020. Whilst Mr Nambiar continually protested that the trial was unfair because the claimant had not produced documents which he said would have proved his case, I bear in mind that: (a) the defendants had never asked for specific disclosure, even though the claimant had provided disclosure as ordered in January 2020; (b) any limited non-disclosure by the claimant must be set against the defendants' repeated failure to provide any disclosure; (c) Mr Nambiar was able to produce individual documents during the course of the trial which supported his case, whereas when he had been asked by the claimant in July 2020 to allow Mailchimp to release information and documentation to the claimant to enable it to investigate his evidence that he had not breached the interim injunction he refused and did not himself take any steps to produce such information.

Findings on the substantive claims

40. I will begin with the Olympos Hotel claim, then the confidential information claim, then the funds misappropriation claim before concluding with the domain name claim.

The Olympos Hotel claim

41. Although Mr Nambiar sought to backtrack a little in cross-examination, it had been common ground and I am satisfied that in previous seasons the Olympos Hotel had been Solitair's best-selling hotel destination and that Solitair had secured an exclusivity arrangement with the hotel whereby it was allowed exclusive use of the hotel over the summer season in return for guaranteed payments.

42. It is also common ground that in 2018 Mr Nambiar had been negotiating with the owner, a Mr Erdogan, who wished to retire, an arrangement whereby he would grant Solitair the right to run the hotel in return for fixed rental payments, which would avoid the risk of the existing arrangement being upset by a change of control. By 12 October 2018 a draft five year lease had been finalised which showed Solitair as the prospective tenant.

43. According to Mr Nambiar it was at this point that Ms Jones who, according to him, had already lost interest in the Solitair business anyway, informed him that she was not interested in the venture and agreed to his undertaking it in his own name for his own benefit. He says that on that basis the lease was revised to show him personally as the tenant with an address in Turkey and the lease was signed on 31 October 2018. According to Mr Nambiar he formed a company in Turkey with the hotel manager, a Mr Unat, to run the hotel. Although his evidence is a little confused as to the precise details, he says that under Turkish law the lessee and/or the operator had to be resident in Turkey which explains why the lease was in his name with an address in Turkey and why the Turkish company was involved.

44. Ms Jones disputes that there was any such agreement and contends that so far as she was concerned the project was proceeding on the basis that, whatever the precise arrangements necessary to comply with Turkish law, the hotel was going to be run by Solitair.

45. There is a complete absence of documentary evidence from either side from October 2018 to April 2019 in relation to the Olympos Hotel. Mr Nambiar is unable to point to any corroboratory evidence that shows that it had been agreed that the Olympos Hotel was to be his sole venture. In contrast, the claimant is able to point to a schedule of expenditure which records that from April 2018 to November 2018 around £65,000 was paid by Solitair to the Olympos Hotel and also to an email from Solitair's bank manager from August 2019 which records his recollection that:

> "Last year, Anish advised that the brochures still needed to be funded along with some improvements/refurbishments to the Olympos Hotel in Turkey following an agreement to take on a 5 year lease of the hotel. I understand he was looking to make improvements to the communal areas-bar/restaurant/etc. Overdraft was increased to £60k to assist, with the understanding that it would reduce to £25,000 on 20.05.2019".

46. This is clear evidence, which Mr Nambiar did not dispute, that it was envisaged that around £20,000 was secured from the company bank account to fund improvements.

47. However, Mr Nambiar contended in cross-examination that the payments made, which comprised primarily regular monthly payments of £10,000, were simply the guaranteed payments made to the Olympos Hotel for the 2018 summer season and that in fact no improvements works as contemplated were undertaken. It is fair to say that in cross-examination Ms Jones was unable to say whether or not this was right save only to suggest that she believed that such payments were not made on a monthly basis. Whilst recognising that this defence was advanced late, the timing and amount of these payments seems consistent to me with their being the guaranteed monthly payments as Mr Nambiar suggests, especially when they far exceed the amount which the bank manger records being told was needed for the improvements. I note that the claimant has not disclosed any invoices relating to these payments or indeed any evidence as to the other payments which, on its case, must have been made to the Olympos Hotel over the 2018 season for customer accommodation. However, the last two payments of £1,039 and £15,000 in early November 2018 do seem out of kilter with the others and are also more consistent both with the overdraft requested and the timeline of the lease being entered into, so that on balance and notwithstanding the

absence of invoices and the other points made by Mr Nambiar I am satisfied that these amounts totalling £16,039 were made for such purpose.

48. After April 2019 it appears that customers booked through Solitair stayed at the Olympos Hotel. However, in an email sent on 6 April 2019 Mr Nambiar said that due to non-payment by Solitair he was not prepared to accept bookings from 10 June 2019 unless £15,000 was paid immediately. It appears that Ms Jones was not prepared to do so, according to her evidence taking the view that this was an unjustified request since there was no obligation to make payment as the Olympos Hotel was now leased to Solitair under the new arrangement. An impasse resulted and Solitair had to arrange for guests who had flown out under existing bookings to be accommodated at other hotels.

49. It is also common ground that the Olympos Hotel maintained a database of customers who had visited the hotel and who had given their details to the hotel on registration. By the terms of the interim injunction the defendants were restrained from using this database and it was included in the category of document which the defendants were required to deliver up to their then solicitors pending trial. In his affidavit of compliance Mr Nambiar stated that he had delivered up an electronic version of the Olympos Hotel database of email addresses amounting to 19,059 email addresses.

50. There is nothing in the lease agreement which gave Mr Nambiar any express rights in relation to the Olympos Hotel customer database, which is not mentioned. It appears that he was provided with a copy of it on an informal basis and allowed to use it as the lessee of the hotel. According to his evidence initially the Turkish company which runs the hotel had been using the database throughout although subsequently he claimed, unconvincingly in my view, that it had not used it after the interim injunction was granted. Although his evidence was initially to the effect that Go Singles had never used the Olympos Hotel database eventually he accepted that Go Singles had been using the Olympos Hotel customer database before the interim injunction had been made but not afterwards.

51. Although strictly falling under the ambit of the funds misappropriation claim, since it is so closely connected with the Olympos Hotel claim I will also address at this stage the ePDQ misappropriation claim. The claimant's case is that Mr Nambiar, or Ms Thareja or Ms Gupta working on his behalf, accessed the ePDQ customer payment system and refunded payments made to customers who had booked holidays with Solitair. The claimant's pleaded case was that Mr Nambiar had "refunded" money to Solitair's existing customers and then asked them to re-pay the sum, diverting the new payment to his own account. The claimant asserted that Mr Nambiar had diverted a total of £64,950.82 using this technique. A breakdown was provided in Appendix B to the Particulars of Claim. That appendix, which was produced by Ms Blyth, contains details of a number of customers including the amount of the payment deleted and, under the column heading "notes", either states "payment deleted" or "paid Olympos Hotel" or "cash payment". It does not state when payment was made nor does it provide details as to the alleged repayments made to Mr Nambiar or otherwise why it is alleged that the repayment was not justified. This is particularly important because the entries are not limited to Olympos Hotel holidays and appear to include holidays departing as early as January and February 2019 as well as some where no details are given and some which refer to "cash entry only".

52. In her first witness statement Ms Jones gave two examples of what are referred to as "flipped" payments but also said that she was aware that a forensic accountant would need to be instructed in these proceedings to establish the sum of the loss in due course. Neither she nor Ms Blyth provided further details in their witness statements for the substantive claim and

no forensic accountant has been instructed. It was pleaded in the Particulars of Claim that the claimant sought an inquiry and an account in respect of the misappropriated funds.

53. The pleaded defence and the evidence of Mr Nambiar was to the effect that: (a) there was nothing sinister about bookings being cancelled and payments returned which happened frequently where, for example, the minimum number of holidaymakers did not book for a particular holiday; (b) as regards the Olympos Hotel the booking was cancelled where the claimant could not offer the hotel because Mr Nambiar was not prepared to do so without payment and where the customer was not prepared to accept an alternative.

54. In opening the claimant indicated that it had recently disclosed further documents relating to the ePDQ claim on the basis that it would prefer the court to assess the claim now rather than defer to an inquiry if that was possible. Mr Bank said that the defendants reserved their position and would decide whether or not after the evidence had been considered to make any objection. He did cross-examine on the documents and did not formally object to their admission nor to my assessing the claim on the basis of the evidence provided if I considered that I could do so.

55. In evidence Ms Blyth took the court through one of the cases from which it could be seen that an order which had been placed and a payment made on 3 June 2019 was cancelled and repaid respectively on the next day by someone using Mr Nambiar's account and on that same day the customer, a Mr Ellis, paid Mr Nambiar's Turkish company instead. Whilst Mr Nambiar denied that these repayments had been instigated by his accessing the ePDQ account after he had left Solitair I am satisfied from all of the evidence, particularly the emails involving Mr Nambiar, Ms Thareja, Ms Gupta and Mr Unat referred to above, that even if he did not do so personally he clearly instigated them. In relation to the customer Mr Ellis there is also evidence in the form of an email to confirm the claimant's case that, notwithstanding his paying the Turkish company direct, in fact he was accommodated by the claimant at another hotel at its own expense. Mr Nambiar contended that if this had happened then the customer would have been refunded the customer. However, there was no proof of this and, in any event, Solitair had clearly had to bear the cost without receiving payment from anyone. I was not however referred to any evidence that this happened in other cases and, if so, in which or how many; there was no evidence of it happening in relation to the other examples to which Mr Nambiar was taken in cross-examination.

56. Having regard to all of this evidence my findings are as follows:

57. The Olympos Hotel lease was intended to be entered into by Mr Nambiar on behalf of Solitair, which explains the fact that Solitair was named as tenant in the first draft and also why the overdraft facility was increased to cover the anticipated refurbishment costs. Although it was entered into by Mr Nambiar in his own name, I am satisfied that this was only to comply with Turkish legal restrictions and did not reflect an agreement whereby Ms Jones and Mr Nambiar as co-directors and shareholders agreed that Mr Nambiar could take the lease and run the hotel on his own behalf because Ms Jones did not agree that Solitair should do so.

58. At some later stage, when negotiations between the two for Ms Jones to sell her share in the company to Mr Nambiar failed, Mr Nambiar decided that he would proceed with the project on his own account without informing Ms Jones or obtaining her informed consent, so that she did not discover that this was what had happened until after he had resigned and at the point when he began demanding that unless Solitair paid for its customers to stay there the hotel would not accommodate them.

59. In the circumstances I accept the claimant's case that this is a classic case of a director diverting a corporate opportunity to himself without authorisation. It is also clear from the evidence referred to above that this decision was part and parcel of Mr Nambiar's overall decision to seek to force Solitair into ceasing to trade and to take its existing business for himself, including the existing relationship under which Solitair would have exclusive use of the Olympos Hotel for its customers, by forcing Solitair to pay Mr Nambiar or his Turkish company to allow its customers to stay at the hotel and, if it would not, to persuade the customers to cancel their existing bookings and obtain full refunds and to deal direct with Mr Nambiar or his company.

60. Moreover, it is also clear that Mr Nambiar and Go Singles were only able to obtain and to make use of the Olympos Hotel database by reason of his breach of director's duty.

61. In the Particulars of Claim the claimant claimed: (a) at 31(d) an account of profits generated by exploiting the Olympos Hotel and/or restitution of the sums of at least £65,000 invested in the Olympos Hotel; (b) at 31(e) a declaration that it had a proprietary right to trace those profits; and (c) at 31(g) an unspecified "legal and equitable interest".

62. On well-established principles it would clearly be open to the claimant to argue that Mr Nambiar should hold the lease of the Olympos Hotel on trust for itself and/or to account for the profits made from the exploitation of the lease or to claim equitable compensation for breach of duty. When I asked Mr Khan in closing submissions what relief the claimant sought, after taking instructions he confirmed that, taking a realistic approach as to the fact that Solitair was no longer sending customers to the Olympos Hotel and to the likely consequences in terms of future investment of time and cost of electing for the former, the claimant did not wish to pursue a trust claim or an account of profits and sought equitable compensation instead to be assessed on the evidence before the court.

63. On that basis, and in the absence of any evidence as to the value to the claimant of the lease of the Olympos Hotel, I am satisfied that this claim is limited to £16,039 as against Mr Nambiar alone. In such circumstances it would also be inappropriate to grant a permanent injunction in relation to the use of the Olympos Hotel database and instead I should order that the defendants' former solicitors should give back the copy in their possession to Mr Nambiar. However, it is important to make clear that this concession by the claimant as to the relief claimed at trial in no way undermines my very clear conclusion that the claimant was justified in seeking, and was entitled to, the interim injunctive relief obtained as regards the Olympos Hotel including as against both defendants the restriction on the use of its database. This conclusion is of relevance in relation to the eventual incidence of costs.

64. So far as the ePDQ claim is concerned, I am satisfied that I can and should determine on the evidence before the court what is properly due from Mr Nambiar on the basis that I am satisfied that he is liable to the claimant in relation to the course of conduct in which he instigated and procured, as part and parcel of his wholesale breach of director's duty in relation to the Olympos Hotel, the unauthorised cancellation of booked holidays to the Olympos Hotel and procured the customers to book direct with his Turkish company instead.

65. Mr Bank's primary submission was that it is necessary for the claimant to plead and prove what losses it has suffered as a result of Mr Nambiar's breach, specifically loss of profit on the cancelled holidays and other direct losses, and that it has failed to do so, claiming only the amount refunded to the customers and sundry unparticularised cash payments.

66. Mr Khan's primary response was to submit that it was not necessary to limit the company's recovery against a defaulting director to such losses and it is entitled to recover the full

amount of the amounts which Mr Nambiar procured to be credited to the customers. Mr Khan also submitted that the court was entitled to take a round view, that there was evidence that the claimant had to pay for its customers to obtain accommodation in other hotels when Mr Nambiar had refused to accommodate them in the Olympos Hotel as well as reimbursing the customers for services provided by the Olympos Hotel which they had to pay personally, and that it was quite likely that the claimant had also had to pay for flights and other transport costs.

67. The question which I posed in submissions was whether a claim for breach of fiduciary duty was subject to the same rules as a claim for damages at common law. The answer, as appears from the decision of the Court of Appeal in *Parr v Keystone Healthcare & others* [2019] EWCA Civ 1246 is that where the claim is one for an account of profits it is sufficient that there is a sufficient connection between the breach of fiduciary duty and the receipt of the profit: see the judgment of Lewison LJ at paragraph 18, after considering the cases referred to at paragraphs 10 to 17. See also the recent discussion by the Court of Appeal in *Gray v Global Energy Horizons Corporation* [2020] EWCA Civ 1668 at paragraphs 123 to 128. Whilst it appears that the defaulting fiduciary is entitled to deduct allowable costs from profits received, the onus lies on the defaulting fiduciary to identify those costs and establish why they should be allowed. Here, Mr Nambiar has not even attempted to do so. Nor has he produced evidence to establish these costs.

68. By reference to the schedule relied upon by the claimant it seems to me that the only cases where recovery is justified on this basis is in relation to those marked "paid Olympos Hotel" where I am satisfied that the evidence shows that the customer did indeed pay Mr Nambiar's Turkish company direct after being refunded the money paid to the claimant. The claimant has not satisfied me by clear evidence in relation to the others or in relation to the basis for recovering in relation to cash payments.

69. Having undertaken this calculation it appears that there are 26 cases and a total value of £22,512.50 and, if correct, that is the sum I award against Mr Nambiar.

70. I am satisfied that this outcome achieves substantial justice as between the parties, where otherwise the parties would have needed to devote substantial effort, time and cost to ascertaining the precise losses suffered by the claimant and/or the precise profits made by Mr Nambiar. It also achieves substantial justice in circumstances where it is clear that Mr Nambiar has derived very substantial profits from his wrongful diversion of the Olympos Hotel lease but the claimant has, for sensible pragmatic reasons, decided not to expend substantial further effort, time and cost in seeking an account of those profits.

The confidential information claim

71. I have already held that Mr Nambiar was behind Solitair's websites going down on 10 April 2019. The reference to the databases having been emptied is cogent evidence that Mr Nambiar was able to copy the details of those actual or potential customers who had visited the website and provided email addresses and confirmed they were willing to "opt in" to be contacted for promotional purposes. Whilst hearsay, this is confirmed by the evidence of Ms Jones in her first witness statement as to what she had been told by the website hosting company.

72. I am also satisfied that on 6 July 2019 Mr Nambiar, or someone acting at his instigation, was able to use Solitair's email address and payment details to place an order and pay for regular mailings to the Solitair customer database held by a company known as Mailchimp, which provided automated email mailshot services for Solitair. In response to a query from Ms

Blyth, with which she sent over an email shot sent on 11 July 2019 from a Go Singles email address regarding the Olympos Hotel, Mailchimp replied to confirm that the mailshot was sent through a newly created account where the original account (i.e. Solitair's) had not been used for mailing recently, and that "this indicates that this list was exported from the original account and used in a new account".

73. As with the evidence from the website hosting company, whilst it would have been better had this information been contained in a witness statement from someone with knowledge at Mailchimp, nonetheless it is reliable evidence which in my judgment provides a reasonably clear explanation what had happened, which was that Solitair's customer database was obtained by someone who had access to its emails and payment details and was able to use that information to obtain a copy of the database to send an email mailshot from Go Singles regarding the Olympos Hotel. It is an inevitable inference in my judgment that, notwithstanding his denials in cross-examination, that was either Mr Nambiar or someone acting at his instigation.

74. That inference is supported by the defendants' disclosure of and reliance upon a screenshot of Go Singles' own Mailchimp account which, in relation to Ms Wiseman, records that her email address was added via "list import from copy/pasted file on 18 July 2019". The defendants have failed to produce any evidence to explain how and in what circumstances Mailchimp was able to import customer details from a copy pasted file on that date into its Go Singles account details. If it was not obtained from Ms Wiseman providing her email address direct to Go Singles or from importing the Olympos Hotel database, then the only sensible inference is that it came from the claimant's customer database held by Mailchimp. In cross-examination the only answer which Mr Nambiar was able to give was that it could not have been imported from the Solitair database because that would have been recorded as the source. Whilst that appeared to be speculation on his part, even if true that would be entirely consistent with Mr Nambiar or someone else operating on his behalf having saved the Solitair database to a local file before providing it to Mailchimp in an attempt to cover over the tracks.

75. As I have said, the defendants chose not to allow the claimant to take this up with Mailchimp and have not provided any evidence from Mailchimp to counter or explain the evidence before the court from the claimant.

76. As I have also already said, Ms Wiseman was a transparently honest and reliable witness. There is no basis for contesting her evidence that: (a) she had booked a holiday with Solitair in summer 2018, which would explain why she was on its customer database; and (b) she had never visited the Olympos Hotel, whether through Solitair or anyone else, so the notion that she could have been included in the Olympos Hotel database can be discounted, and indeed the defendants have never suggested as such.

77. The screenshot also contains a section headed "Other" under the section headed "Profile information" which, as well as (correctly) stating that Ms Wiseman uses an iPhone, also records "last updated" as 1:18pm 5 December 2019 and "location" as Wandsworth. As Ms Wiseman said and I accept, not only had she never accessed the Go Singles website (apart from anything else because she was not interested in any singles holiday in 2019), but also she was in Bristol all day that day and engaged in work related matters so that she simply could not have been browsing its website at 1:18pm. Moreover, whatever the relevance of this section to the committal application, which involve a consideration of events in November and December 2019, on any view it is completely irrelevant to an understanding of what happened in July 2019 when her email address was imported.

78. In addition to the marketing email mailshot Ms Wiseman has produced dated 19 December 2019 which is the subject of the committal application she also produced similar email mailshots from Go Singles to her dated 22 September 2019 and 6 October 2019 which I am satisfied are plainly genuine. There may have been other earlier such mailshots. It is a curiosity that the screenshot records three mailshots as having been sent in November 2019, when Ms Wiseman has searched for, but been unable to find, these mailshots but does not record those sent in September, October or December 2019. Nonetheless if I accept, as I do, her evidence that she did receive these emails in September and October 2019, that is consistent with her details having being exported from the Solitair database to the Go Singles database in July 2019.

79. Whilst the defendants might argue that this evidence of this limited mailing is not evidence of wholesale copying and misuse of the Solitair customer database, which it appears consists of circa 60,000 entries, it is not surprising that in a case such as the present evidence of widespread mailshotting is unlikely to emerge. The only reason Ms Jones was able to contact Ms Wiseman and ask her if she had received mailshots from Go Singles was because she had met Ms Wiseman whilst leading the holiday which Ms Wiseman took through Solitair in 2018 and had got on with her sufficiently well that she felt able to include her in the request for information which she had made to a number of Solitair customers. It is clear to me that the only reason why Ms Wiseman responded, unlike the majority who did not, is that she objected to her personal email address being used for marketing purposes by a company which she had not authorised to do so.

80. Furthermore, it is also important when determining this issue to have regard to the defendants' failure to make disclosure. They did not say that they objected to doing so on the basis that they regarded the Go Singles customer database as commercially sensitive. Even if they had given this as a reason for objecting there are ways and means of comparing databases in a way which does not involve divulging sensitive information to the claimant as a competitor. The fact is that the defendants have chosen not to comply with their disclosure obligations at all nor to provide witness evidence in relation to the substantive claim - save for Mr Nambiar's witness statement in response to the application for an interim injunction, which denies the allegation but does not provide any detailed explanation, so the court is largely deprived of evidence to suggest or support an innocent explanation.

81. Finally, when one has regard to the evidence referred to above about how Mr Nambiar planned his co-ordinated resignation and planned to target Solitair to drive it out of, and take over, its business, using employees working from the inside, in my judgment the claimant has amply made out its case in this regard.

82. I should say that although the defendant did not admit that the customer database contained confidential information, I have no doubt that it did. It is true that it will doubtless have contained a number of contact details which were either out of date (for e.g. customers who had travelled with Solitair only once in the distant past) or speculative (for e.g. someone who had accessed the website and provided an email address but never taken matters further) or even inaccurate (a made-up or no longer used email address). It is also true that online travel agents are not just dependent on email marketing. However, it is clear from the evidence that a customer database of this kind is regarded, unsurprisingly, as valuable for marketing purposes, hence the use of Mailchimp both by Solitair and Go Singles, and properly regarded as confidential by Solitair as I am satisfied that Mr Nambiar was fully aware.

83. It follows, I am satisfied, that the claimant has made out its case as to the misuse of its confidential information by both defendants and that it is entitled to a permanent injunction in similar terms to paragraph 1(2)(a) of the interim injunction.

84. Separately the claimant had sought and obtained an interim injunction restraining the use of "any confidential information regarding the Claimant's business whether derived from the Claimant's documents (including electronic documents) or obtained by the First Defendant during his directorship of the Claimant (such as pricing, costing and profit information), save insofar as the same is now in the public domain or has been published by the trade press ("the Confidential Information")".

85. Now that the claim has come to trial I am satisfied that the claimant has not made out a case for the inclusion of specific categories of confidential information above and beyond its customer database such as would justify the grant of a permanent injunction in the same or similar terms. Whilst I am prepared to accept that in April 2019 Mr Nambiar would have had knowledge of confidential information such as the claimant's pricings, costing, profits and details of its arrangements with specific hotels or other suppliers, the claimant has failed to provide evidence of specific categories of confidential information held in specific sources of which there is specific evidence of misuse either pre or post termination. I am satisfied that it would be inappropriate and unjust to grant a permanent injunction in such wide and non-specific terms over 18 months after Mr Nambiar's departure from the claimant company when much if not all of the information was either public information, or contained in his head, or now out of date.

86. I have also been asked by the claimant to make a further order that the defendants must delete irretrievably all electronic and hard copies of the documents the subject of the permanent injunction in their control or possession and that would seem to me to be appropriate.

87. The claimant also pressed me to make a further order that the defendants should permit an independent expert to have access to (1) the defendants' devices and (2) Go Singles' Mailchimp account and other marketing account, to ensure that all documents the subject of the permanent injunction have indeed been deleted. I am not persuaded that this is an appropriate order to make. It seems to me that making orders in the terms set out above, which can of course be enforced by committal where breach is proven, is sufficient. Although Mr Khan submitted that the claimant is unable, for good reason he submits, to trust the defendants to comply with any order, that is not uncommon in cases such as this. Moreover, as canvassed in closing submissions, if the defendants really are determined to hold onto such information, the ease with which existing devices could simply not be disclosed or such information could be exported to some new non-disclosed device and then re-imported once the expert had inspected would render the order ineffective anyway. It is of the essence of a search and seizure order that it is made without notice, so that the respondent does not have the opportunity to take such steps, which is of course why it is so intrusive and made only in the most deserving cases. The order sought by the claimant is the equivalent of a post judgment on notice search and seizure application and I am not persuaded that it is appropriate.

The funds misappropriation claim

88. The principal remaining allegation concerns amounts which Mr Nambiar admittedly withdrew from the claimant's bank account on 4 and 5 April 2019, which I address as follows.

89. On 4 April 2019 Mr Nambiar paid himself £42,000 (under the reference "shares"). The claimant's case is that this was done without discussion, agreement or authorisation from Ms Jones as his co-director and shareholder or from the company accountant and the claimant is entitled to its return.

90. Mr Nambiar contends that it was justified because in summer 2018 - at a time of some tension between the two - Ms Jones withdrew £42,000 from the company account and he, fearing she would withdraw more, withdrew £50,000 to keep it safe but, even after he repaid that amount when matters normalised, she did not repay the £42,000. He contends that in such circumstances he was entitled to draw the same amount in April 2019 as an advance payment against dividend in accordance with the previous practice of Ms Jones and himself and endorsed by the company accountant.

91. In cross-examination he was taken to the company bank account statement which shows that although he did indeed repay the £50,000 he later withdrew it again in November 2018. His explanation that he repaid the same amount later on as well was made for the first time in cross-examination and is unsupported by any documentary or other evidence, and I do not accept it. Moreover, this is not a game of tit for tat. Unless there is evidence of some agreement between the directors and shareholders for withdrawals which are either genuine payments of dividend (as to which there is no evidence here) or sanctioned drawings on director's loan account (in which case they must be repaid anyway) or repayments of monies advanced by the director to the company (which is not suggested to be the case here and nor is there any evidence to support it) it is irrelevant that the other director might also have wrongfully withdrawn monies from the company. The company is a proper claimant to recover monies from the defaulting director without having first to undertake a general accounting exercise and a defendant in such circumstances would be entitled to counterclaim for example for unpaid dividend or outstanding loans and also has remedies available to him in proper cases where such conduct would amount to oppression against a minority shareholder.

92. Whilst Mr Bank pointed to the absence of evidence from the company accountant as to the financial position as between the claimant and Mr Nambiar it was always open to the defendant to seek further disclosure from the claimant to support his case or to issue a witness summons against the company accountant. The accounts for y/e 30 April 2019, which the defendants did obtain from Companies House, whilst brief do not afford any basis for a defence and to the contrary record that Ms Jones has fully repaid the overdrawn balance on her director's loan account with Solitair.

93. I also cannot ignore the circumstances in which this amount was withdrawn, without prior notice let alone agreement, at a time when Mr Nambiar had unilaterally decided to resign and (as I have already found) to seek to take away the claimant's business and also when he knew that the company would shortly have to reduce its overdraft facility from £60,000 back down to £25,000.

94. In the circumstances I am satisfied that he did indeed unlawfully withdrawn this £42,000 from the claimant and must return it.

95. On 5 April 2019 Mr Nambiar paid himself a further £5,000 under the reference "Flight Refund". The claimant submits, and I agree, that his defence, that this is a refund for flights paid for by him personally, is unspecified and unevidenced, in circumstances where Mr Nambiar ought to have been able to provide details, and I reject it and am satisfied that he must return this £5,000.

96. On 5 April 2019 the claimant contends that Mr Nambiar withdrew £2,500 which has failed adequately to explain. In cross-examination Mr Nambiar denied that this payment was to an account owned or controlled by him. This was consistent with his evidence in his first witness statement at paragraph 67 and has not been contradicted by the claimant in its evidence in response, so that I am satisfied that on the balance of probabilities this claim has not been made out. He also provided an explanation of the Western Union payment of £1,547.66 which has not been contradicted and I reach the same conclusion.

97. Finally, there is a claim for the repayment of £1,250 per month from May 2018 onwards for what was describe as "office rent". Again however his explanation in cross-examination was consistent with his evidence in his first witness statement at paragraph 67 and has not been contradicted by the claimant in its evidence in response, so that I am satisfied that on the balance of probabilities this claim has not been made out.

98. The end result therefore is that this claim succeeds as to £47,000.

The domain name claim

99. This claim is advanced on the basis that in 2010 the "www.gosingles.co.uk" domain name was acquired by Mr Nambiar with the registration details showing himself as the "registrant" but also the "organisation" as Solitair, with Mr Nambiar giving his Solitair email address and Solitair's business address as the contact details. The claimant contends that this supports the inference that Mr Nambiar acquired this domain name, as he did others which he does not contest are Solitair property, for and on its behalf, on the basis that it was a name which Solitair might wish to exploit as part of its business. However, on 16 May 2019 he re-registered it with no company details and giving his personal email and home address. This is consistent with the incorporation of Go Singles and with that company proceeding to use this domain as its website.

100. Mr Nambiar contended that he acquired the domain name in 2010 for his own personal use as an investment and, thus, was entitled to acquire it in his own name for his own use and that his giving Solitair's details was irrelevant.

101. Although there is no hard evidence as to who paid for this domain name or how much was paid I have no doubt that, consistent with the entries he made at the time, it was regarded by him as an acquisition on behalf of Solitair and was paid for by Solitair. In 2010 there was no reason for him to acquire the domain name in his own name for his own benefit and with his own funds. I am satisfied that in May 2019 he decided to use that name for his new business and to appropriate that domain name without permission or consent.

102. In the circumstances I am satisfied that it is, as pleaded, the property of the claimant. It appears that legally the domain name is the property of the provider, a business known as 123 Reg, which licenses its use on an annual basis. As explained in more detail below, in November 2019 123 Reg accepted the claimant as domain owner on the basis that it was its property but subsequently, in May 2020, accepted that Mr Nambiar was the registered owner whilst stating that if there was any further dispute it would not adjudicate further and would abide by the decision of the court.

103. When she was asked about this in cross-examination Ms Jones accepted that Solitair had no use for the domain name and that she would be happy for Solitair to transfer it to the defendants for its market value. I have little doubt that, although she disclaimed any intention to harm the defendants, she would either refuse to transfer it or would insist on payment of a hefty premium to do so.

104. Although the precise legal status of the right to use the domain name was not in evidence or debated, by analogy with the position in relation to personal property I am satisfied that I have a discretion as to whether or not to order Mr Nambiar to procure its transfer to the claimant or to permit him to retain it on payment of its fair price. There is no direct evidence of the market value of the domain name although there is some evidence on documentation emanating from 123 Reg of the price now being asked for similar but less obviously attractive domain names. Adopting a broad brush approach, and declining to accept that I should apply a "ransom" uplift to reflect its particular value to Go Singles, I assess its value at £100 and will order that upon payment of such sum the right to the domain name shall remain with Mr Nambiar but in default of such payment it shall be re-transferred to the claimant.

Findings on the committal application

105. I have already referred in some detail in the section above relating to the confidential information claim to the fact that Go Singles sent an email mailshot to Ms Wiseman on 19 December 2019.

106. It is clear that if Mr Nambiar caused the email mailshot to be sent by Mailchimp on behalf of Go Singles to Ms Wiseman's email address that would amount to a breach of the interim injunction made on 24 November 2019 if the email address had been obtained by the defendants from Solitair's database as it existed as at 4 April 2019, as opposed to being obtained by Go Singles independently of Solitair.

107. On the evidence adduced by the claimant Ms Wiseman's email address was included within its customer database due to her having previously purchased and taken a holiday through Solitair and there was no possible means through which it could have been obtained by the defendants independently of Solitair given that, according to the evidence of Ms Wiseman, she had not had any dealings with Go Singles and, specifically, had not visited its website and, through that visit or otherwise, provided her email address to Go Singles or given her permission for it to use her email address for marketing purposes.

108. I have already stated that I found Ms Wiseman to be a compellingly honest and reliable witness. I do not lose sight of the fact that an ostensibly honest and reliable independent third party may appear a convincing witness only for it subsequently to emerge that such is not the case. Two examples of this appear in this case, although in my judgment the circumstances are sufficiently different as not to cause me to alter my opinion.

109. In her 5th witness statement Ms Jones alleged that the defendants had breached the order by sending an email mailshot to a Ms Musgrave, saying that Ms Musgrave had confirmed to her that she had never been a Go Singles customer and had not opted in to its mailing list. However, in his evidence in response Mr Nambiar had obtained a copy of Mailchimp's details for Ms Musgrave as held in its Go Singles members list, which recorded that she had been added via a popup form on 9 January 2020 as a subscribed contact. Ms Jones did not address this in her evidence in response and the claimant adduced no evidence to suggest that what was said was untrue. On the face of it, therefore, Ms Musgrave had simply been mistaken when she had claimed that she had never visited the Go Singles website or signed up to receive mailings.

110. Moreover, although in her 7th witness statement Ms Jones had also alleged that the defendants had breached the order by sending an email mailshot to a Mr Burnside, who had stated in his email enclosing the mailshot that he had never used Go Singles or contacted them to his knowledge, at trial the defendants produced - and I allowed them to rely upon - an email booking seemingly made by Mr Burnside with Go Singles in October 2019 for a holiday in January 2020. That appeared to show Mr Burnside's evidence to be completely unreliable.

111. Neither Ms Musgrave nor Mr Burnside had made witness statements and there is no basis for thinking that the claimant could have known that their evidence was seemingly unreliable before Ms Jones referred to it in her respective witness statements. It is however unimpressive in my view that the claimant did not abandon the allegation in relation to Ms Musgrave once it saw the documentation produced by Mr Nambiar and had appreciated that it was not in a position to adduce evidence to show that it was incorrect.

112. By contrast, however, Mr Nambiar has been unable to produce any evidence to show that Ms Wiseman had ever taken a holiday with Go Singles or had ever accessed their website or opted in to receive mailshots. As I have noted, the Mailchimp form produced in her case records that her email address was added by a list import process and there is no explanation offered by Mr Nambiar, directly or from Mailchimp, as to how this did or could have happened other than through the obvious explanation that it was imported from Solitair's customer database.

113. Moreover, since the email mailshot was not addressed specifically to Ms Wiseman (in that the transmission details did not show her as a named recipient, so that it bore the appearance of being an email sent to an undisclosed number of undisclosed recipients) it is a reasonable inference that she was not the only recipient and, if her details had been obtained by the defendants from the claimant's customer database, then it would also have been sent to other customers of the claimant whose details had been obtained from its database.

114. More generally, although the claimant has been unable, unsurprisingly, to adduce any evidence as to the precise circumstances in which the particular email came to be sent on 19 December 2019, it is a fair inference, given that Mr Nambiar is the sole director and shareholder of Go Singles and given that this was the third such email to have been sent by Go Singles to Ms Wiseman from September 2019 onwards, and given the absence of some alternative explanation from Mr Nambiar, that he had indeed caused the email to be sent.

115. In the circumstances, and by reference to the authorities discussed above, if that was the only evidence put before the court it would clearly have established beyond any reasonable doubt that Mr Nambiar had indeed breached the interim injunction. It would have been sufficient if he had failed to take steps to ensure that Mailchimp did not send any further email mailshots after the interim injunction had been made unless and until he had ensured that the email mailshot list did not include any customers of the claimant whose details had been obtained from its database. There was no suggestion that Mr Nambiar was unaware of the terms of the injunction or that he had not been personally served with a copy of the injunction.

116. It is not surprising that in those circumstances Mr Nambiar was, realistically, compelled to provide evidence to explain why what appeared on the face of the evidence adduced by the claimant to amount to a breach of the injunction was not in fact a breach.

117. He adduced evidence of two explanations which, Mr Bank submitted, were at the very least possible and, if accepted as such, would afford him a defence to the committal application.

118. The first explanation is that Ms Wiseman had indeed opted in to receive email mailshots from Go Singles. However, as I have said, the only evidence for that comes from the entry relating to her produced from the Go Singles section of the Mailchimp members list and I am satisfied that this does not on proper analysis provide any support for a suggestion that she had opted in. As I have also said, the plain and obvious inference from what the document actually says is that her email address was taken from another source and the obvious other source, when taken together with all of the evidence submitted by the claimant, including that of Ms Wiseman, is its customer database. There is no evidence from any source which explains how it could have happened that the Mailchimp document could have recorded that her email address had been copied from another list if in fact she had opted in by visiting the Go Singles website, whereas in contrast that is precisely what is recorded in the case of Ms Musgrave.

119. The second explanation concerns the circumstances in which Solitair was able to obtain control of the gosingles.co.uk website domain on 11 November 2019. In his second witness statement made 25 June 2020 Mr Nambiar stated that he had only recently discovered that Ms Jones had taken control of the Go Singles domain. In his third witness statement he produced evidence which showed that in April 2020, having become aware that he no longer had control of the control panel (or "back end") of the website, his then solicitors wrote to 123 Reg as the domain hosting company asking why and, having discovered that a third party with knowledge of the ownership verification details had obtained control, requested 123 Reg to restore control to him which - as I have already said - they did in May 2020. He was then able to access the back end which showed that on 11 November 2019 the relevant customer details were changed from Mr Nambiar to Singles Horizons with Ms Jones' name and Ms Blyth's email address being entered. He asserted at [38] that this showed that the mailshot received by Ms Wiseman "emanated or was controlled directly by Sian and not by myself".

120. In her 6th witness statement in response Ms Jones did not deal directly with the allegation that she had taken control of the Go Singles domain on 11 November 2019. Whilst asserting that the domain "is and always has been an asset of the claimant" she limited herself to denying that this enabled her to send emails from Go Singles' Mailchimp account or that she had ever tampered with or sent emails from that domain or otherwise orchestrated the emails to Ms Wiseman to set up a committal application.

121. Under cross-examination she admitted that she had indeed, with the assistance of Ms Blyth and an IT expert, been able to access and take control of the Go Singles domain on 11 November 2019 as an exercise in self-help, but repeated her evidence that this did not enable her to have access to the website itself or to send marketing information from that website or by reference to the customer information within it and she did not do so.

122. It is a matter of some concern that although Ms Jones made a number of references to the Go Singles website in her witness statement made 17 October 2019 in support of Solitair's application for an interim injunction she did not, whether prior to the hearing of that application or at any time subsequently until asked under cross-examination at trial, make reference to what had happened on 11 November 2019. However, it is also true that she did not at any time positively deny having done so, as opposed to denying that she had been able to or had used the Go Singles website to send email mailshots ostensibly from Go Singles to Ms Wiseman or anyone else.

123. However, I have to consider whether or not this evidence is sufficient to indicate that there is a reasonable doubt as to whether or not Ms Jones or someone acting under her control did indeed use the access to the Go Singles domain obtained from 11 November 2019 to procure

the sending of the email mailshot to Ms Wiseman in December 2019. In my judgment the suggestion is fanciful, with no evidence to support it, and can confidently be disregarded, for the following reasons.

124. On Ms Wiseman's evidence, which I accept and which even Mr Nambiar did not dispute in this respect, she received email mailshots from Go Singles in September and October 2019 to the same email address as the December email and, thus, at a time when even on Mr Nambiar's case Solitair did not have access to the Go Singles domain. It follows that Ms Wiseman must have been on the Go Singles contact database which Mailchimp used to send email mailshots on its behalf at that point. It follows that she would naturally have been sent an email mailshot if Mailchimp had been instructed to (or, at least, not been instructed not to) send a further email mailshot to the contacts on that database post the injunction in December 2019.

125. On Mr Nambiar's version of events, Solitair gained access to the Go Singles domain on 11 November 2019 and Ms Wiseman was sent 3 email mailshots in quick succession on 14, 17 and 24 November 2019 and then the further one on 19 December 2019. If, as Mr Nambiar infers, this was part of a dishonest plot to frame him as having misused the Solitair database, it makes no sense for the evidence in relation to the November 2019 mailshots not to have been deployed for use at the interim injunction hearing. On Mr Nambiar's case Ms Jones, having obtained access for this dishonest purpose, chose not to use it to support Solitair's claim for an interim injunction but, instead, chose to wait until after the injunction had been obtained before, a few weeks later, causing a further fake email mailshot to be sent and then waiting for a few months before including it in the committal application. Whilst it is true that people can and do sometimes act in ways which are not entirely logical, in my view such a theory takes illogicality to a completely different order.

126. Although there is a danger of over-speculating, it is also fair to observe that if this was a deliberate attempt by Solitair to frame Mr Nambiar in order to pursue a committal application then it might reasonably have been expected that the claimant would have ensured that Mailchimp sent the email mailshots to other Solitair customers with whom Ms Jones had a sufficiently good relationship to approach or at least to have sent further email mailshots to Ms Wiseman on more than one occasion post the injunction. Instead, it appears to have done neither yet later, on this hypothesis, went on to complain of further email mailshots having been sent to Ms Musgrave on 24 June 2020 and Mr Burnside on 20 August 2020, both after Mr Nambiar had regained control of the Go Singles domain and both of which have transpired, on evidence which Mr Nambiar has been able to produce, to have been seemingly legitimate targets by Go Singles anyway. If the claimant had decided to rely solely on Ms Wiseman as its target then Ms Jones would presumably have needed to contact her in advance to be confident that she would be sufficiently annoyed to confirm to Solitair that she had received the mailshot and to testify if necessary. However, I am absolutely confident that Ms Wiseman has given evidence as stooge for no-one.

127. Moreover, in order for the scheme as postulated by Mr Nambiar to work, Solitair would have needed to secure not only control of the Go Singles domain name but also control of the Go Singles website and, in addition, control of its contact details with Mailchimp so as to be able to direct Mailchimp to send an email mailshot to Ms Wiseman in December 2019. There is no evidence, nor evidential basis for an assertion, that the access to the domain name obtained on 11 November 2019 would have allowed this further access.

128. For these principal reasons I have no hesitation in rejecting this hypothesis.

129. It follows that I am satisfied that the claimant has proved its sole pursued allegation of breach of the interim injunction, which is that Mr Nambiar caused to be sent an email mailshot on behalf of GSL on 19 December 2019 to Ms Wiseman and to other unidentified persons, using customer details used in the claimant's business prior to 4 April 2019, namely the email addresses of Ms Wiseman and other unidentified persons, and not obtained independently of the claimant by other means.

130. I am not satisfied that the claimant has proved that Mr Nambiar has breached the interim injunction on any other basis or on any other occasion.

131. It follows that on the evidence before me Mr Nambiar falls to be punished on the basis that this was one isolated occasion of breach, committed around 3 weeks after the injunction was made, and not repeated subsequently. I have no information at this stage as to the circumstances in which Mr Nambiar was responsible for this email mailshot having been sent by Mailchimp and thus as to the level of Mr Nambiar's culpability for that having happened. I must assume in the absence of evidence to the contrary that he did instruct Mailchimp to send a mailshot to the previous mailing list without taking steps to remove those contacts covered by the injunction. He is of course entitled to adduce evidence prior to sentence to explain in full and proper detail the circumstances in which the mailshot was sent and the steps he took to seek to ensure compliance with the terms of the interim injunction, which will be relevant to mitigation and, hence, to sentence.

132. Without anticipating the outcome of the further hearing which will have to be held to deal with sentence, I have already considered the relevant principles so far as sentencing for contempt of court are concerned which have recently been set out in helpful detail in the judgment of Snowden J in the *Minstrel Recruitment* case referred to above, at [238] to [246]. However, it may be of some benefit to Mr Nambiar if I indicate that on the basis of the evidence I have heard and the findings I have made thus far and, thus, without taking into account any matters which may mitigate the apparent seriousness of the breach, my provisional conclusion is that the breach is so serious as to pass the custodial threshold and that a short custodial sentence of 2 months, which may properly be suspended for 12 months, would be justified.