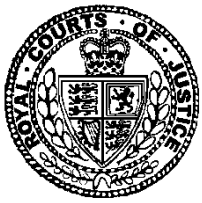

Neutral Citation Number: [2024] EWHC 1682 (Comm)

IN THE HIGH COURT OF JUSTICE **Case No: CL-2020-000211**
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: Wednesday 3 July 2024

Before :

MR RICHARD SALTER KC
Sitting as a Deputy Judge of the High Court

- -

Between :

(1) NJORD PARTNERS SMA-SEAL LP **(2) NPSSF DEBT CO. S.A. R.L.** **(3) AIE III INVESTMENTS, L.P** **(4) NORDIC TRUSTEE A/S**	**Claimants**
- and -	
(1) ASTIR MARITIME LTD **(2) MUHAMMAD TAHIR LAKHANI** **(3) MUHAMMAD ALI LAKHANI**	**Defendants**

- -

Mr Simon Salzedo KC and Ms Laura Newton (instructed by *Milbank LLP*)
appeared for the **Claimants**
The **Second Defendant** appeared in person
Ms Laura John KC and Ms Rachael Earle (instructed by *Peters & Peters Solicitors LLP*)
appeared for the **Third Defendant**

Hearing dates: 4, 5, 6 and 7 March 2024
Draft judgment provided to the parties on 28 June 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 3 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR SALTER KC

(A) Introduction

(A.1) The background

1. The matters which remain for determination in this action are claims in the torts of deceit and conspiracy.

2. The first to third claimants are the successors in title to the lenders under a written agreement dated 28 March 2017 as amended and restated on 14 September 2017 and on 20 December 2017 ("**the Facility Agreement**"). For simplicity, I will refer in this Judgment to the first to third claimants and their predecessors in title, without differentiation, as "**the Lenders**". Under the Facility Agreement, the Lenders ultimately made a facility of approximately USD 45m available to Astir Maritime Ltd ("**Astir**"), the first defendant.

3. Astir was incorporated in the Marshall Islands specifically for the purposes of acting as borrower for this transaction. Astir was a wholly-owned subsidiary of North Star Maritime Holdings Limited ("**North Star**"), a St Kitts & Nevis limited company set up in 2015 by the second defendant, Muhammad Tahir Lakhani. His two sons, Muhammad Hasan Lakhani and the third defendant, Muhammad Ali Lakhani, were the shareholders. Each of the sons owned 50% and the third defendant was a director.

4. Because of the similarity between the full names of these three members of the Lakhani family, I shall refer to them in this judgment (without intending any disrespect) simply as "**Tahir**" (the second defendant), "**Ali**" (the third defendant), and "**Hasan**". For consistency (and, again, without intending any disrespect) I shall adopt the same "first name only" style of referring to the other persons who feature in the history of this matter.

5. The lending under the Facility Agreement was secured by a parent company guarantee given by North Star, by guarantees given by various subsidiary companies, and by a personal guarantee given by Tahir ("**the Tahir Guarantee**"). These guarantees were given in favour of Nordic Trustee A/S, the fourth claimant, as security agent for the Lenders.

6. During the negotiations which led up to the Facility Agreement, Tahir provided to the Lenders a Statement of Net Worth ("**the Statement of Net Worth**"). The Statement of Net Worth purported to show that Tahir's personal assets were worth more than USD 46 million. As I shall explain in more detail later in this judgment, it is now common ground that this was an overstatement, because Tahir himself did not own several of the assets referred to and the realistic value of certain of those assets was materially lower than that stated.

7. The business of North Star and of Astir and its subsidiaries was ship recycling. Clause 3.1 of the Facility Agreement required Astir to "apply all amounts borrowed by it under the Facility only for the purpose of financing the Debt Funded Amount of a Permitted Transaction". "**Permitted Transactions**" were of two kinds: "**As Is Transactions**" under which Astir would buy the vessel from its owner and, as owner, would then transport the vessel to the scrapyard for recycling; and "**Delivery Transactions**", under which Astir would act as broker to arrange for the purchase and on sale of a vessel to be scrapped, but would not take ownership prior to delivery.

8. Under clause 4.3 of the Facility Agreement, amounts drawn down under the facility were to be paid in the first instance into a Funding Account from which they could only be withdrawn upon compliance with the conditions precedent set out in clause 4.4.

9. By clause 4.4(g) and Schedule 2 Part III, those conditions precedent included the delivery of "an original of the **Approved Borrower Statement** duly executed by [the] chief financial officer of [Astir]". The Approved Borrower Statement was required to be in the form set out in Schedule 11, which included a confirmation that "all transactions are Permitted Transactions" and that "no Default is continuing".

10. The facility provided under the Facility Agreement was a revolving one, which allowed Astir (upon compliance with the conditions precedent in clause 4.4) to make withdrawals from the funding account from time to time for the purpose of financing Permitted Transactions. Condition 6.2(a) nevertheless required Astir to repay the amount withdrawn in respect of any particular transaction ("**the Funding Amount**") five Business Days after the receipt of the sale proceeds of the vessel. Failure to do so was expressly made a Default by clause 26.2.

11. Between about 4 March 2019 and about 5 February 2020, Tahir gave a variety of excuses to the Lenders as to why there had been delays in the completion of various transactions, and therefore as to why the Funding Amount in relation to those transactions had not yet been repaid. In paragraph 29 of the Amended Defence, Tahir and Ali admit that these excuses were false and that the relevant vessels had already been beached and/or broken up. In paragraph 34(a) of the Amended Defence, Tahir and Ali also admit that there was a continuing Default from 30 November 2018, five Business Days after the vessel "Equator Peace" had been broken up and its sale proceeds had been received.

12. Between 26 November 2018 and 3 July 2019, Astir delivered Approved Borrower Statements to the Lenders to support drawdown requests in respect of transactions involving 16 vessels. These purported to be signed by Ali as CFO of Astir. It is common ground that, in consequence of the matters which I have just described, the confirmations in those Approved Borrower Statements that the relevant transactions were Permitted Transactions and that no Default was continuing were both untrue.

(A.2) The claims and defences, in outline

13. The Lenders say that:

    13.1. The description of Tahir's assets in the Statement of Net Worth ("**the Asset Representations**");

    13.2. The excuses given by Tahir for the delay in repaying the Funding Amounts ("**the Delay Representations**"); and

    13.3. The confirmations in the Approved Borrower Statements ("**the ABS Representations**");

    were each and all false when made, and were made fraudulently. It is the Lenders' case that Tahir and Ali each knew of the falsity of these representations when they were made and intended thereby to deceive the Lenders.

14. The Asset Representations and the Delay Representations were made by Tahir. On the face of the statements of case, Tahir denies both the making of the Asset Representations and their falsity. Tahir does, however, admit the making of the Delay Representations and also admits their falsity. In relation to the Asset Representations, Tahir denies any intention to deceive the Lenders and puts the Lenders to proof as to their reliance on them. In relation to the Delay Representations, Tahir puts the Lenders to proof as to their reliance. In both cases he denies that the Lenders suffered any loss as a result.

15. The Lenders assert that Ali also was a party to the Asset Representations and assumed responsibility for them, knowing them to be untrue. Ali disputes this. His case in relation to the Asset Representations is that he played no part in making them and, in any event, did not know them to be untrue. In relation to the ABS Representations, Ali's case is that his signature was appended electronically to the Approved Borrower Statements without his knowledge or authority. He also says that, in any event, he did not know that what was said in the Approved Borrower Statements was untrue. Ali also disputes the Lenders' assertions of reliance, causation and loss in relation to each of these sets of representations.

16. The Lenders' further claim in conspiracy asserts that Tahir and Ali conspired to cause harm to the Lenders by the unlawful means of each and all of these deceits. This is denied by both Tahir and Ali.

(A.3) The procedural history

17. In September 2019, the Lenders informed Astir that they would not permit any further transactions until the outstanding Funding Amounts were repaid. On 17 February 2020, liquidators were appointed to North Star in the Island of Nevis. This constituted an Event of Default under the Facility Agreement. When the Lenders learnt of this, they began to investigate the status of the outstanding transactions. An acceleration notice was served on Astir on 9 March 2020, and a demand was served on Tahir under the Tahir Guarantee on 20 March 2020.

18. On 15 April 2020 Foxton J granted a worldwide freezing order against Tahir and Ali. The Claim Form in this action was issued that same day. That worldwide freezing order, as amended and re-granted from time to time, remains in force.

19. On 27 April 2020 the Lenders made a recovery from enforcement action against an account in the name of Astir at UniCredit Bank AG. This recovery was applied to reduce the amounts outstanding under the Facility Agreement.

20. On 3 July 2020 Foxton J gave summary judgment in favour of Nordic Trustee A/S, the fourth claimant, against Tahir under the Tahir Guarantee in the sum of USD 47,297,812.73. Subject to a set-off of USD 71,496.70 under a costs order made by Teare J on 24 July 2020 and to a recovery of USD 175,562.90 from the proceeds of sale of a property in Mill Hill in which Tahir had a beneficial interest (in relation to which the fourth claimant obtained a charging order and an order for sale), that judgment sum and the interest accruing thereon remain outstanding and unpaid. Having obtained judgment, the fourth claimant no longer has any interest in the proceedings other than the satisfaction of its judgment.

21. Until 28 January 2021, Greenberg Traurig LLP ("**GT**") were the solicitors on the record for each of Astir, Tahir and Ali. After that date, Tahir and Ali acted in person. GT ceased to act for Astir on 8 September 2021. Astir was annulled on 6 April 2022 and no longer exists. It has therefore been removed as a party to the proceedings.

22. A Pre-Trial Review was held by video conference on 12 February 2024. At that point, Tahir and Ali were both acting in person and neither was represented at that hearing. Despite an email from me urging them to take part by video-link from Dubai, neither of them took the opportunity to participate in person in that hearing other than by making submissions in writing. At that hearing, I gave Tahir and Ali permission to participate in the trial and to give evidence by video link from Dubai, on the basis that they were prevented from leaving the UAE to come to London.

23. The reason why Tahir and Ali were unable to travel, as confirmed by Tahir and Ali in their witness statements dated 16 February 2024, is that a summary judgment given against them by Jacobs J on 5 October 2020 has been registered in Dubai and has resulted in a travel ban being imposed on them. That judgment was given in proceedings ("**the Yield Street Proceedings**") brought under claim number CL 2020 -

000192 by a group of lenders managed by Yield Street Management LLC against Tahir, Ali and Hasan under personal guarantees given by them as security for lending of approximately USD 74.6m to other subsidiaries of North Star.

24. On 19 February 2024, Peters & Peters Solicitors LLP served and filed notice that they had now been instructed to act on behalf of Ali. No solicitors have come on the record as acting for Tahir. However, on 28 February 2024, Ms Sophie Eyre, a partner in Bird & Bird LLP, sought and obtained permission to observe the trial on the basis that her firm was "providing assistance and handholding" to Tahir.

25. Trial took place between 4 and 7 March 2024. At the trial, the Lenders were represented by Mr Simon Salzedo KC and Ms Laura Newton. Tahir represented himself, with assistance in Dubai from Ms Eyre. Ali was represented by Ms Laura John KC and Ms Rachael Earle. I am very grateful to all counsel and to the teams behind them for their assistance and for the clarity and succinctness of their submissions.

(B) The parties

(B.1) The Lenders

26. The identity of the Lenders has changed from time to time following the original lending. The original lender under the Facility Agreement was SMA-Seal Orion Ltd ("**SMA Orion**"), a Guernsey limited company and a wholly-owned subsidiary of the first claimant. On 21 June 2019, SMA Orion transferred (i) its rights and obligations as lender in respect of the first USD 15m tranche of the USD 45m total lending to the first claimant, (ii) its rights and obligations as lender in respect of the second USD 15m tranche to the third claimant, and (iii) its rights and obligations as lender in respect of the third USD 15m tranche to Njord Partners Luxco 2 Sàrl ("**Njord Luxco 2**"). On 30 July 2019, Njord Luxco 2 transferred all of its rights and obligations in relation to the third tranche to Njord Partners Special Situations Fund II SLP (SCSP), which on the same day transferred those rights and obligations to the second claimant.

27. The first claimant, Njord Partners SMA-SEAL LP, is a Guernsey limited partnership. The second claimant, NPSSF Debt Co SARL, is a private limited company incorporated in Luxembourg. The investment manager of the first and second claimants (and of their predecessors as Lenders) was Njord Partners LLP ("**Njord**"). Njord describes itself as "a special situations capital partner to mid-market companies". Its areas of interest are said to include "quirky industries or businesses". AIE III Investments LLP, the third claimant, is a Delaware limited partnership, ultimately managed by Apollo Investment Management.

(B.2) Tahir

28. Tahir's evidence was that he has been involved in the ship recycling business for approximately 40 years. The corporate structure of the business built up by him and his wife Uneza, whom he married in 1985, is complicated. However, in very broad terms, Tahir began with a company called Five Star General Trading, registered in Ajman, which he ran from Dubai.

29. Uneza had inherited from her father a shareholding in a company which bore her family name, Aziz. In the late 1980s, the shares in Aziz formerly held by Uneza's mother were transferred to Tahir, so that the company was thereafter owned as to 24% by Tahir, as to 25% by Uneza, and as to 51% by the local sponsor, Abdul Rahman Ali Abdul Rahman al-Naqbi. Uneza and Tahir changed the name of the company from Aziz to Dubai Trading Agency LLC ("**DTA**"). Uneza continued to trade general commodities through DTA. Tahir became the Managing Director and Chairman. DTA was not itself involved in the ship recycling business. Tahir, however, began to develop that and other shipping-related businesses under the general brand name of "Dubai Trading Agency" or "DTA".

30. In about 2000, Tahir moved his family to London and he became a UK citizen in 2009. He moved back to Dubai with his family in 2012, and while there began to diversify even further the businesses carried on under the brand "Dubai Trading Agency".

31. In 2015, Tahir set up North Star. His evidence was that this was to "provide a more simple company structure", and that "the business of Dubai Trading Agency was transitioned to it". The shares in North Star were owned in equal shares by Ali and Hasan, not by Tahir. Tahir's evidence was that this was because he "wanted to ensure that they had something to inherit and when the time was right to take over his legacy".

(B.3) Ali

32. Ali was born in Dubai on 16 May 1987, and so was just under 30 years old at the time the Facility Agreement was entered into on 28 March 2017. He went to primary and secondary school in Dubai, before moving to London at the age of 14. From 2004 to 2005, he did the first year of a Media Studies degree at London Metropolitan University but left (he says at Tahir's insistence) to study for a degree in Maritime Business and Maritime Law at the University of Plymouth, from which he graduated in 2009.

33. After university, he completed three short "work experience" internships (with Braemar, SSY Shipbrokers, and Stephenson Harwood) before beginning to work at a company in London owned by Tahir, United Eastern Trading ("**UET**"), where he shadowed UET's Chief Financial Officer. When the family moved back to Dubai in 2012, Ali went with them and began to work in the Dubai Trading Agency business,

and for a company owned by Uneza, DTA Maritime Services, which provided services to the ship recycling business.

34. Ali became a 50% shareholder in North Star when it was set up in 2015. Ali's evidence was that the name "North Star" was chosen by him. When Astir was formed in February 2017, Ali was recorded as a director and the "President" of the company.

35. I shall have to return in greater detail later in this judgment to the issue of the relationship between Tahir and Ali, and to the extent (if any) of Ali's involvement in the management of Astir and in the general ship recycling business.

(C) The witnesses

(C.1) Arvid Trolle

36. The Lenders called two witnesses, the first of whom was Mr Arvid Trolle ("**Arvid**"). Arvid is a partner in Njord, a business which he co-founded. Njord's primary business is investment management, and Arvid is one of the two Portfolio Managers and members of the Investment Committee at Njord. Arvid was the person principally responsible for negotiating and approving the original Facility Agreement.

37. Since more than six years have elapsed since the relevant events, it is unsurprising that Arvid was sometimes unable to recollect the detail of the negotiations. He was, in consequence, sometimes rather defensive in the way that he gave his evidence. Although he sometimes attempted to re-construct his recollection by reference to the contemporary documents and what (in his view) must have happened, it did not seem to me that he was ever guilty of conscious exaggeration. In my judgment, he was genuinely doing his best to assist the court.

(C.2) Anna Fletcher

38. The second witness for the Lenders was Ms Anna Fletcher ("**Anna**"). Anna was formerly a member of the investment team at Njord and was the person who led the due diligence process for Njord prior to the signing of the Facility Agreement.

39. Like Arvid, Anna sometimes had difficulty in recalling the detail of events more than six years ago. She nevertheless gave her evidence calmly and carefully. In my judgment she, like Arvid, was genuinely doing her best to assist the court.

(C.3) Tahir Lakhani

40. Both Tahir and Ali gave evidence by video link from Dubai and were cross-examined by Mr Salzedo.

41. Tahir gave his evidence in a measured and respectful way. He was, at times, disarmingly frank in the way that he admitted deceiving Njord (and, through Njord, the Lenders) by making the Delay Representations in order to use the Lenders' funds to repay other borrowing, and thereby to help the business through a downturn in trade and the market which he hoped would be temporary. At other times, however, his answers seemed to be calculated ones.

42. There is already a judgment against Tahir effectively for the full amount claimed. There was therefore no downside for Tahir in taking full responsibility himself and seeking to exonerate his son, Ali. Tahir clearly realised this, and equally clearly wished to shield his son. His answers often seemed carefully prepared and formulated to minimise Ali's responsibility for any wrongdoing, even in the face of contemporary documents apparently indicating the contrary.

43. Tahir is plainly an astute businessman, and that intelligence showed in the way that he gave his evidence. He was also plainly a man used to getting his own way, and one prepared on his own admission to lie in order to achieve his ends. It of course does not follow from the fact that a witness has lied out of court about one matter that that witness's evidence in court about other matters must similarly be untrue. Nevertheless, it seems to me that it is necessary for me to treat Tahir's evidence, particularly in relation to the extent of his son's involvement in the business, with care and (when uncorroborated by the contemporary documents) with a significant degree of scepticism. Indeed, in some instances, I am satisfied that the evidence given by Tahir was untruthful.

(C.4) Ali Lakhani

44. Ali's evidence, like that of his father Tahir, seemed to have been very well prepared. He displayed a surprisingly good recollection of the contemporary documents in the trial bundle. He was nevertheless unable to offer any convincing explanation for some of the crucial documents in the case, for example in relation to his involvement in producing his father's Statement of Net Assets.

45. Ali, unlike his father, was not disarmingly frank, but was guarded and defensive in the way that he gave his evidence, always seeking to minimise his own role in the relevant events. Later in this judgment I will make detailed findings about the extent of Ali's involvement. At this stage, it is sufficient to say that I have formed the view that I must treat Ali's evidence, like that of his father, with care and (when uncorroborated by the contemporary documents) with a significant degree of scepticism. I am also satisfied that, in some instances, Ali's evidence (like that of his father) was untruthful.

(C.5) My approach to the evidence

46. The limits of memory and the importance of the contemporary documents as an aid to fact-finding are both well known[1]. This does not mean that oral testimony serves no useful purpose: and it is clear that a proper awareness of the fallibility of human memory cannot relieve the court from the judicial task of making findings of fact based upon *all* of the evidence[2]. However, in a case such as the present, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities will, in my judgment, usually be a better guide to the truth than even the most confident recollections of the witnesses[3].

47. This is a fraud claim. It was nevertheless common ground (at least between the represented parties) that I should make my findings on the balance of probabilities. That is the standard of proof required in all civil claims[4]. Even so, to the extent that the Lenders are inviting the court to draw inferences of fraud from the primary facts, it is not open to the court to find or infer fraud where the facts are consistent with innocence Rather there must be some fact which tilts the balance and justifies an inference of dishonesty[5]. The test is whether, on the basis of the primary facts, an inference of dishonesty is more likely than one of innocence[6]. That, too, was common ground between the represented parties.

48. Although the hearing only lasted four days, I have heard and read quite an extensive amount of evidence. I have carefully considered all of it, but propose to refer in this judgment only to those parts of that evidence which I regard as most important to the issues that I have to determine.

(D) The evidence

49. The events which are directly relevant to the claims which I have to decide begin in the summer of 2016. North Star was financing its business with facilities from four lenders, Fourwood Capital Partners LLC ("**Fourwood**"), Unicredit Bank AG, BCP and a company in the Chenavari financial group ("**Chenavari**"). These facilities had largely been procured for North Star by George Giannakis ("**George**") of StormHarbour Securities LP ("**StormHarbour**").

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1 See eg *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [2020] 1 CLC 428 at [22]; and *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413, [2019] 4 WLR 112 at [48], per Males LJ.

2 See eg *Kogan v Martin* [2019] EWCA Civ 1645, [2020] FSR 3 at [88], per Floyd LJ; and *Natwest Markets Plc v Bilta (UK) Ltd* [2021] EWCA Civ 680 at [50]-[51].

3 Cf the classic statement of Robert Goff LJ in *The Ocean Frost* [1985] 1 Lloyd's Rep 1 at [57].

4 See eg *Re H (Minors)* [1996] AC 563 at 586, per Lord Nicholls of Birkenhead; and *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, [2003] 1 AC 153 at [55], per Lord Hoffmann.

5 See *Three Rivers DC v The Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1 at [55] and [186].

6 See *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [20]; *Libyan Investment Authority and ors v King and ors* [2023] EWHC 265 (Ch) at [69], per Miles J.

50. By June 2016, disputes had arisen between North Star and Chenavari about the non- or late delivery of vessels which Chenavari had financed. On 13 and 14 June 2016, Chenavari sent emails to North Star (which were copied to Ali), complaining about North Star's conduct of the facility and declining to approve any more vessel transactions until certain overdue repayments have been made. George drafted an apologetic response which Tahir then sent on 14 June 2016. Ali's evidence in cross-examination was that these emails did not concern him, because his father was dealing with the matter, and would not discuss these sorts of matters with him.

51. According to Tahir, he was at this stage in discussions with George about borrowing a further USD 20m to grow the business. George explored the market and approached a number of potential sources of finance, including Och Ziff. The potential financers asked for information about North Star's business and finances, most of which was provided to George by Tahir, Ajay Goyal (the Chief Financial Officer) ("**Ajay**") or Tariq Feroze Sheikh (the Finance Manager or Chief Accountant) ("**Tariq**"). Ali was, however, copied in to most of the emails and on 5 July 2016 responded himself by email to an accounting query from George.

52. On 31 August 2016, George sent an email to Ali (copied to Tahir) recording that Tahir had "mentioned that [Ali had] updated the group presentations recently", and asking Ali to send him in PowerPoint format the latest material that Ali had, so that George could produce a whole group presentation which could be used for future pitching.

53. On 5 September 2016 at about 8.21 am Tariq sent to Tahir, copied to Ali and to the North Star accounts email address, an email headed "Net worth statement draft for comments/addition/deletions". The body of the email was headed "Statement of Net Worth of [Tahir] as on dated 01 Sept 2016" and listed assets with a total value of USD 46,609,192.70. Ali's evidence when cross-examined about this was that he was not sure why Tariq had copied him into this email, and that he did not remember receiving it.

54. Just under an hour later, at 9.13 am on 5 September 2016, Tariq sent a further email, this time to Ali alone. The subject line of that email read "Net worth Statement of [Tahir] as on April 2016.xls". The email had no text, but attached an Excel spreadsheet. The first tab of the spreadsheet was titled "Net worth 2015" and contained a table headed "Statement of Net Worth of [Tahir] as on dated 05 January 2015". Unlike the table in the earlier email, this had a column identifying the person in whose name each asset was held (which in many cases was not Tahir), and a column giving the value of the asset in AED as well as the USD column. The total stated was USD 29,726,058.82.

55. The second tab of the attached spreadsheet was titled "Net Worth revised 15 June 2016", and contained two tables. The first contained a list of assets very similar to that in the earlier email, but a further column for values in AED and totalling the very

slightly different figure of USD 46,619,506.06. The second listed "Vehicles" which were described as worth USD 1,469,482.29.

56. Careful examination of this spreadsheet reveals that one of the columns, column C, is hidden. It also reveals, when the formulae in the spreadsheet are expanded, that the USD figures do not simply represent a conversion of the AED figures, but have had further substantial lump-sum USD amounts varying from USD 200,000 to USD 1m added by way of increase, in order to reach the total of USD 46.6m.

57. Ali's evidence, in cross-examination, was that he remembered receiving this spreadsheet but, again, did not know why Tariq had sent it to him and did not think that he would have opened the enclosure at the time. According to Ali "I did not use Excel. I'm not a finance person .. I didn't prepare, comment or see this document or have anything to do with this". Ali also denied speaking to Tariq about the matter at the time.

58. The first relevant contact between StormHarbour and Njord appears to have happened in late September 2016. On 23 September 2016, Arvid sent an email referring to a conversation the previous day and asking for an organisation chart. This was provided to him, together with some financial information, under cover of an email dated 27 September 2016.

59. While StormHarbour was beginning its approach to Njord, George was also negotiating for increased funding from Bain Capital, Fourwood, and Chenavari. It seems as if Chenavari's terms were thought to be excessively onerous, because on 16 October 2016, George sent an email saying that:

> **.. I believe it is time to run a quick reality check about this transaction, your expectations and the risk which the financing facility of North Star entails. North Star's business is a fairly low risk business .. I am sure that we both agree that Tahir is extremely strong in this sector, through his relationships with the shipping community, the yards and government officials. However it is evident that the organisation of NSMH is far from perfect in terms of communication and operational smoothness. That is a fact and all of us asking repeatedly for immediate changes is an unrealistic request. NSMH is run as a family business in terms of corporate governance, where Tahir takes most of the decisions. Asking him to suddenly change the way he does business is not going to happen so easily ..**

60. Meanwhile, negotiations with Njord had been continuing and, on 7 October 2016, Arvid sent an email to StormHarbour with indicative terms for potential financing of North Star. These offered a USD 20m facility against security including "personal guarantee from Mr Lakhani (per presentation)". George sent a counter-proposal by email dated 17 October 2016, which included the following reference to guarantors:

> **Guarantors: SPV, NSSM Group Parent Company plus personal guarantee from [Tahir] (per presentation). (NSMH is owned by Ali and [Hasan], the two sons of Tahir. That is the only asset in their name, hence having the parent guarantee covers you. Tahir provides his personal guarantee as he has other assets to support his high level of net worth and since he is not NSMH shareholder.**

61. George explained these terms in the email which he sent to Ajay on 19 October 2016, saying that "We have reached an in principle agreement and Tahir is happy with the below, but I wanted to run it also by you to take your views on it". That email was copied to Tahir but not to Ali. A further email dated 11 November 2016 about the proposed Term Sheet with Njord was also sent by George to Tahir and Ajay, but was not copied to Ali.

62. Ali, not Tahir, was a director of and the Chief Executive of North Star. So, when the Term Sheet and the Exclusivity Letter needed to be signed, Ajay sent them to Ali under cover of an email dated 16 November 2016, asking him to "kindly fill the date and sign on page 4 document". Ali responded the following day in an email to George which began "long time since we have spoken". That email queried whether the exclusivity arrangements might interfere with talks with Bain and other potential sources of finance and concluded "in the meantime I will review the term sheet that you are sent to me". Ali's evidence in cross-examination was that this meant that he "would have the term sheet reviewed. I did not review term sheets". He could not remember whether he was aware that the term sheet which he signed included terms requiring a personal guarantee from Tahir and an "Annual update .. in respect of [Tahir's] net worth and details of any significant liabilities incurred".

63. George responded to Ali's email by saying "I have discussed that point with your father" and explaining that the proposed exclusivity arrangements would not prevent North Star from taking money from anyone else. Ali then signed the term sheet on behalf of North Star.

64. The Term Sheet was headed "USD 20M Senior Secured Term Loan Facility" and provided for a 5-year term loan of USD 20m to be made by Njord "and/or one or more funds managed or advised by [Njord] and potential co-investors" to a "New Holdco .. a single purpose limited liability entity, being the 100% subsidiary of [North Star]". It provided for the facility to be made available under a Facility Agreement "based on the current recommended form of multicurrency, syndicated facility agreement of the LMA", to be governed by English law.

65. In the Term Sheet, the list of security required for the facility, to be provided on the Signing Date, included a personal guarantee from Tahir. The last item in the box for "Representations" stated that Tahir "will provide a representation that he has no material indebtedness outstanding and has no significant liabilities other than as disclosed to the Lenders prior to the Signing Date". The box for "Company

Information Undertakings" included a requirement for the provision of an "annual update of [Tahir] in respect of his net worth and details of any significant liabilities incurred". The Term Sheet also contained a description of how the facility would operate, with definitions (inter alia) of "Eligible Vessels", "Eligible Transactions", and the "Funding Account". It explained that it would be a term of the facility that "Within five business days from the date of completion of an Eligible Transaction, an amount equal to the Withdrawn Funds used for such transaction must be repaid into the Funding Account".

66. Ali also offered, by email dated 24 November 2016, to help Ajay assemble the documents required by George in order to respond to due diligence requests from Njord. That email noted that "we have done all of this and uploaded to Bain data room anyway so believe everything can be easily produced".

67. On 19 November 2016 George sent an email to Ajay and Brian Nolan ("**Brian**") (the Chief Administrative Officer), copied to Tahir and Ali, indicating that the negotiations with Njord had moved into the due diligence phase, intended to lead to a presentation meeting in December in Dubai. That email attached an Excel spreadsheet entitled "Project Orion - Information Request List". Item 9 on that list was "Personal net worth statement from Mr. Lakhani including a breakdown of main assets & liabilities". An updated version of this list, including this item, was forwarded by George to Ajay, copied to Tahir and Ali, under cover of an email dated 25 November 2016.

68. On 24 November 2016 Ajay sent an email to George, enclosing an organisation chart for North Star. That email was copied to Tahir and to Ali. The attached organisation chart showed Ali as Chairman and Chief Executive Officer. That was also how Ali was shown in the North Star Investor Presentation dated June 2016 which at some point was sent to Njord and which was forwarded by Njord to Deloitte (the accountancy firm appointed by Njord to assist with due diligence) under cover of an email dated 28 November 2016.

69. Ali's evidence in cross-examination was that, so far as he recollected, he had never been presented to Njord "as CEO, Chief Executive or Chairman". His evidence was that "I was presented as 50% shareholder, along with my brother Hasan, and a director. I was recorded as a director but my father was effectively the chairman. This is something commonly known". Ali had given similar evidence in his Trial Witness Statement, saying that:

> **.. In reality .. I wasn't given much work to do. I was not given any authority to make decisions about the business. Often, I would spend my time on YouTube or waiting around for instructions from my father ..**
>
> **.. It is for these reasons that I do not consider that I was a director of North Star in any real sense. I was put into this role by my father because**

> **I was his son and with a view to me (and my brother) taking over the business one day - but that day did not come. I had no authority at North Star. I did not have a specific role (something which upset me a great deal). I was not permitted to take the lead on areas which interested me or where I had good ideas, such as on environmental policies. I had no managerial responsibilities. I could not hire or fire anyone, or negotiate contracts on behalf of the company. I couldn't even decide my own salary ..**

70. Tahir similarly gave evidence in his Trial Witness Statement that:

> **.. I .. gave Ali a job title of managing director but he did not carry out that role. I did, and I was the general manager and the decision-maker. I know that Njord has claimed that Ali is an experienced businessman in the industry but without being rude about my sons, they were not experienced or market leaders and at the time of entering the Njord facility they had very limited experience and involvement ..**

71. Ajay, Tariq and Brian were listed in the Investor Presentation as "Chief Financial Officer", "Chief Accountant" and "Chief Administrative Officer" respectively. Also mentioned was Richard France ("**Richard**"), described as "Head of Sale & Purchase".

72. In cross-examination, Tahir accepted that he "may have" introduced Ali to Njord as someone who was active in the business at that time, and that Ali "may have been" presented to Njord as fully active.

73. On 7 December 2016, George sent an email to Ali, Tariq and Brian Nolan, listing four "priority requests" from Njord. The first three of these were copies of other facility agreements, data by key vessel types, and breakdown of top customers. The fourth of these was "Updated Personal net worth statement of Mr Lakhani – VERY IMPORTANT".

74. Tahir's evidence in cross-examination about this email was that he "may have read it and .. may have passed it on to my people to answer the question, and whatever he needs .. to write". He also accepted that he had agreed to provide a statement of net worth to Njord because it was "fairly certain" that, if he refused, it would be less likely that they would agree to lend the money. As to how the statement was to be prepared, Tahir's evidence in cross-examination was that "my communication mainly was with Ajay and Ajay was instructing Tariq".

75. Ali's evidence in cross-examination about this email was that "I think I would have opened it but, as soon as I saw Ajay, Tariq and I expected that it's to them and not to me and nothing for me to do". That does not, however, seem to be right, because Ajay then emailed Ali saying "Please can you send George the first 3 requirements and Tariq can send the last one". Brian then sent an email to Ali, raising confidentiality

issues, to which Ali responded "I think it's best to discuss this tomorrow between ourselves. I can then reach out to George and let him know what we can and cannot provide". Ali then emailed Ajay, saying "sure, will look into this tomorrow and get the data sent to George RIC".

76. The meeting with Njord was eventually scheduled for 13 December 2016. On 10 December 2016, George sent to Tahir, Ali, Ajay, Brian and Richard a preparatory email, including an agenda prepared Njord. The last paragraph of that email stated:

> **.. As I understand from my discussions with Tahir, Ali will be joining us throughout as well, taking a good part of the commercial and market questions together with Richard (on Sellers & Yards et cetera) ..**

Richard responded to this by sending an email dated 11 December 2016 to Ali, saying "please can you give me some background to this". On 12 December 2016, George sent an email to Ajay commenting on the draft facility agreement with Njord commenting that "I spoke to Ali/Tahir and they seem quite ready for tomorrow's meetings, in terms of the questions on Yards and Sellers".

77. The meeting between StormHarbour, North Star and Njord took place in Dubai on 13 December 2016, as scheduled. Tahir's evidence was that:

> **The meeting was held in the meeting room in our office and George attended with Arvid, Anna and Andy from Penwyn. George very much took the lead. Ali was what I would describe as the master of ceremonies. He introduced people, but the detail was left to Brian .., Richard .., and Ajay to talk to the detail. I recall that I gave an overall picture and explained my connections in the market, how to secure buyers, my relations with owners and breakers and how I bridge the gap. Ajay spoke to the financials, Richard on the business and how it worked and the transactions in terms, and Brian handled principally compliance. Ali provided some input with Richard on green recycling policies ..**

Ali's evidence was that his role in the meetings was limited to the specific areas where he had an interest. Those areas "did not require my input on any decision-making. It was about sharing public information and analysis on the market and the environment".

78. By contrast, the evidence of Arvid and Anna was that Ali actively participated in the discussions, and that Ali was very involved in, and knowledgeable about, North Star's business. Tahir's evidence in cross-examination was that this was a "description from their side. My side, it was not the same description".

79. Following the meetings in Dubai, George sent an email that same evening to Ali, saying "Really great meetings and performance by you. Conveyed that to your father loud and clear too". On 15 December 2016, Ali sent an email to Njord and StormHarbour, expressing pleasure at having met them in North Star's offices and

saying "we are working on the outstanding items and hope to get the data over to very soon. Please feel free to keep in touch on all matters and I look forward to hearing from you soon". That email was signed "Ali Lakhani, Director", below the North Star logo.

80. At 1:43 PM on 13 December 2016 (that is, during the meetings that day) George had sent to Anna and Arvid an email attaching the Statement of Net Worth (the document relied upon by the Lenders as containing the Asset Representations). That email, headed "Additional Information", was copied to Tahir, Ali and Ajay. The attached pdf document showed a list of assets with values in USD totalling USD 46,619,506.06. The identified assets and their values were identical (save for the omission of the AED column and the formulae) to those in the first table in the second tab of the spreadsheet sent by Tariq to Ali at 9.13 am on 5 September 2016.

STATEMENT OF NET WORTH OF MR.MUHAMMAD TAHIR LAKHANI
AS ON DATED 01st Sept. - 2016

	USD
Villa in Karachi Phase 6 DHA	4,405,994.55
Open plot in Phase 6 DHA Karachi 2000 yards	4,887,193.46
Two apartments at Dubai (investment)	969,754.22
Hydra Properties - Al Reem Island, Abu Dhabi (investment)	708,446.87
Investment in Apple Computers dealership in Karachi	226,315.00
House in UK 612 Watfordway Handon London GBP 2.5 M	3,375,000.00
Investment in Creststar Marine Pvt Ltd KHI (Ship brokering)	34,059.95
Investment in Al Salam Insurance (Dubai + Sharjah)	839,052.32
Investment in Adu Dhabi (Joint Venture)	1,738,122.39
Auto Mobiles	1,469,482.29
Cash & Bank (UK,Karachi & Dubai)	800,000.00
Personal liquid assets (UK, Karachi & Dubai)	2,000,000.00
Apartment in Palm Jumeirah Dubai	2,366,085.01
Pleasure boat Princess Ayesha berthed in Dubai	800,000.00
Dubai Trading Agency net Assets	20,000,000.00
DNA Hospitality Venture (50% Shares)	2,000,000.00
TOTAL IN USD	46,619,506.06

81. As I have already mentioned, Tahir accepted in cross-examination that he understood that Njord required him to give a statement of net worth to support his guarantee. When asked whether he had authorised the sending of this particular version of the Statement of Net Worth to Njord, his answer was that "I don't recall". "I am the only one who could authorise this. And I don't recall authorising this. So maybe I may have done it, I don't know .."

82. Tahir accepted in cross-examination that 9 of the 16 items itemised in the Statement of Worth sent to Njord did not in fact belong to him. According to Tahir, that was because George had said that it should include all family assets because Tahir was the patriarch:

> **.. Tariq included the assets of the family (and not just my own) as he had done previously because I took a patriarchal approach. This was not designed to mislead or deceive as Njord has suggested. I am an old-fashioned person who is head of his family and I wrongly in hindsight believed all of the assets came under my umbrella and therefore ultimately belonged to me. I did not give much thought to what was actually mine ..**

83. Tahir's evidence was that the Statement of Net Worth was prepared by Tariq, and that

> **.. I was not involved in the preparation of the Statement of Net Worth ..**

In cross-examination, however, he accepted that he was aware that the statement was being prepared, saying "when this was being prepared, I mentioned to George and George said "go ahead and send it .. It doesn't matter". These were his words". "Whatever was being done was sent .. to George before. George was then saying, okay, and then it was sent. So I don't recall all that because it was being done between George, Ajay, Tariq and these people".

84. It was Tahir's evidence that Ali could not have known whether the Statement of Net Worth was accurate, because Tahir did not discuss finance with his children and they therefore did not know the detail of the family's financial circumstances. According to Tahir, "had they asked I would not have told them". He nevertheless accepted that he "told Tariq to basically keep Ali in copy [because] I wanted him to learn things".

85. When asked in cross-examination whether he realised that the Statement of Net Worth had been sent to Njord by George, Ali replied "I think so. I can't remember".

86. Ali was asked in cross-examination about some of the specific items in the Statement of Net Worth.

86.1. He was asked about the item in the first line "Villa in Karachi Phase 6 DHA". It was pointed out to him that, in the attachment to the email sent to him by Tariq on 5 September 2016[7], this was described (in the sheet showing Tahir's net worth as at 5 January 2015) as a "bungalow", as owned by Uneza rather than by Tahir, and as being worth USD 0.99m rather than USD 4.4m. Ali accepted that it looked as if someone had been inflating the value.

86.2. He was asked about the "House in UK 612 Watfordway Handon London GBP 2.5m" and accepted that he had lived in that house before he came to Dubai in 2013. He accepted that he knew that there was a mortgage on it. When asked whether he had any reason to believe it was worth as much as GBP 2.5m, he responded "I never said anything about the house and what it's worth".

[7] See paragraph 54. above.

86.3. He was asked about the line "Dubai Trading Agency net Assets USD 20,000,000". When asked whether he knew that his father's share in DTA was only either 24% or 25%, he said that he did not know his father's exact shareholding but saw him as the owner. He accepted, however, that he knew that the main business of DTA had been transferred to North Star. It was suggested to him that he had no reason to believe that Tahir's share of the net assets of DTA was worth USD 20m at that time, he replied "I don't know about this. I am not part of finance".

86.4. He was asked about the "Apartment in Palm Jumeirah Dubai", and accepted that this was an incorrectly described reference to his own apartment, which was in Dubai Marina. He accepted that the (lower) value of USD 1.5m shown for that apartment in the version of the statement sent to him by Tariq on 21 December[8] was probably "about right" so far as he was aware.

87. Tahir was similarly cross-examined about some of these items.

87.1. In relation to the house in Watford Way he denied that the value of GBP 2.5m was an exaggeration, and said that it had come from "a few of my friends in the property business" whom he had asked about value. He nevertheless accepted that there was a mortgage on the property of about GBP 900,000 or GBP 1m, but asserted that "they asked me for the value and I gave them the value".

87.2. In relation to the worth of DTA, he accepted that his share was only 24% and, when asked about the net assets of DTA, also accepted that its business was in the process of being transferred to North Star. When asked whether it was his recollection that DTA itself had net assets of USD 20m in September 2016, he answered "no, I don't recall that".

88. The documentary evidence suggests that the Statement of Net Worth sent by George on 13 December 2016 did not, at least initially, satisfy Njord. On the evening of 13 December 2016, George sent an email with "the final list of deliverables". On 14 December 2016, Anna added an irrelevant item to that list, and George then recirculated the list to Anna, Arvid, Tahir, Ali, Ajay, and Brian. Item 8 on that list was "Certified Personal Worth Statement of [Tahir]". The "NSMH Responsible Team" for that item was stated to be "Tahir/Tariq". On 20 December 2016, George sent an email to Ali (copied to Ajay, Brian and Tahir) giving a list of the "last deliverables" still required by Njord. Item 5 in that list was "Certified Personal Worth Statement of [Tahir]".

[8] See para 100. below.

89. These emails indicate that, even after receiving the Statement of Net Worth, Njord was still expecting North Star to produce something further by way of net worth statement for Tahir. In cross-examination, Ali said "I guess so" in answer to a question whether he knew that George thought there was a requirement for the statement required by Njord to be a certified statement.

90. In his trial witness statement, Arvid gave evidence that:

> **.. Once we did eventually receive the Statement of Net Worth via StormHarbour, I read through it on a line-by-line basis. I felt that the provision of the Statement of Net Worth satisfied our request and it was clear that Tahir had sufficient net assets (over USD 46m) to meet a claim under the Personal Guarantee so I thought we had decent coverage if things subsequently went wrong ..**

91. Unsurprisingly, Arvid was cross-examined about the lack of specificity in the descriptions of the assets recorded in the Statement of Net Worth, about the fact that there was no indication of what (if anything) had been netted off to produce the various "net" figures, about the round numbers given as the value for items such as "Dubai Trading Agency net Assets" and about the different between that figure and the information produced to Njord from DTA's accounts. It was put to him that this was "to use the colloquial term, a back of the fag packet list", to which he replied "I disagree":

> **.. What we needed -- I repeat myself -- was Mr Tahir Lakhani's representation on what he -- his assets were outside the ship recycling business. That's what we needed. We didn't -- what you are saying is that we needed a lot more details than what you presented earlier. I disagree with that ..**

92. Arvid was also cross-examined about why, if he was satisfied with the Statement of Net Worth in the form provided on 13 April 2016, a certified statement continued thereafter to appear in the list of deliverables. His answer was as follows:

> **.. In the end, we were satisfied that we had got the personal net worth statement. I can see on the screen here that, yes, it should have been certified, and if you ask me if we should have had it certified, yes, that might have been an oversight, but I can't recall right now whether there has been -- if I understand you correctly, you are saying -- you are alluding to the fact that there should have been discussions whether this was certified or not between these time stamps, which are very hard to follow frankly ..**

93. Anna did not deal with this point in her witness statements and, when cross-examined about it, said that she had no memory of any discussions that may have taken place about the matter.

94. On about 15 December 2016, Anna produced a presentation entitled "Project Orion – Investment Committee Memo". According to Arvid, this was "prepared based on all information provided to Njord by the target". This referred in two places to the intended personal guarantee from Tahir. The first reference said that he had "a net worth of c.$47m". The second said that he had "c.$47m of net assets separate of the Orion group".

95. Emails dated 20 December 2016 from Ali to George show Ali providing some of the further information required by Njord, including information about recycling yards and copies of facility agreements. Ali also sent to George a copy of an internal purchase process sheet and an operations checklist, causing George to reply "Really top work Ali".

96. Also on 20 December 2016, Tariq sent to Ali (copied to Ajay) an email timed at 11.01am. The subject of that email was "New Worth statement new Format". Attached to the email was an Excel spreadsheet. This had columns for "Category of Assets", "Nature of the Property (Freehold/Leasehold)", "Legal and Beneficial title in the name of", "Subject to Security/Mortgage", and "Value in USD". The "Category of Assets" column broadly followed the list of assets in the Statement of Net Worth, though with minor changes (e.g. "bungalow" for "villa" in the first line and "flats" instead of "apartments" in the third). The column for "Legal and Beneficial title" stated that Tahir was the beneficial owner of each asset. The values given for each asset followed those in the Statement of Net Worth and the total value shown was (as in the Statement of Net Worth) USD 46,619,506.06.

97. Tariq followed this with a further email timed at 11:55 am, again sent to Ali and copied to Ajay. The subject of that email was stated to be "Statement of Personal Net worth of [Tahir] new format", and it attached a further Excel spreadsheet with the same title. The text of the email read "Dear Ali Bhai, Please find net worth statement as per their for format". The attached Excel spreadsheet was divided into categories of assets, and gave much more detail in relation to each asset. Significantly the individual values given in the column headed "Appraised value & supporting evidence" were significantly lower than those given in the Statement of Net Worth, leading to a total of only USD 26,615,364.54.

98. This was followed by a third email from Tariq to Ali, attaching a further version of the same spreadsheet, but this time with the column "subject to security/mortgage" completed with the words "mortgage" against most of the listed assets and the word "Mortgage" against two of them. This time, the email was not copied to Ajay.

99. Ali's evidence was that he had had no conversation with Tariq and that he did not know why Tariq had sent these emails to him. He could not remember whether he had

read the emails or opened the attachments. "I had nothing to do with the net worth statement, to comment or prepare. I didn't prepare it, I didn't send it to anyone".

100. The following day, 21 December 2016, Tariq sent a further email to Ali, copied to Ajay, enclosing a spreadsheet purporting to show Tahir's net worth. This was a much more detailed and structured schedule, with a total of 12 columns. In this spreadsheet, Tahir was not shown as the beneficial owner of some of the assets. The total assets were shown as amounting to USD 43,965,354. Liabilities totalling USD 8,665,241 were listed, giving a net worth of USD 35,300,113. Three cells, each coloured in red, contained the words "Ali to input".

101. Ali's evidence in cross-examination was that (unlike the previous versions) he remembered this spreadsheet. He said, however, that he again did not know why it had been sent to him, and did not remember if he had replied to Tariq.

102. On 3 January 2017, Ali sent an email to himself attaching an updated version of this detailed and structured spreadsheet. The contents of this differed from that sent to him by Tariq in two respects. First, there were now entries in the three places marked in the earlier version for Ali's input; and secondly, as a result, the liabilities had increased to USD 9,505,241, giving a very slightly lower net worth of USD 34,460,113. It was, however, a PDF rather than an Excel spreadsheet and Ali accepted that it was likely (as the metadata suggested) that he had input the data in the relevant cells and then saved the document as a PDF.

103. It was put to Ali in cross-examination that, having seen this document, he should have checked what Njord had previously been sent and realised that it was incorrect. His response was that "I probably should have, but I didn't .. Also I didn't send this net worth statement anywhere to anyone. I don't think I've sent it back to anyone or sent it out to anyone". He also reiterated that he did not open the attachment to George's email enclosing the Statement of Net Worth at the time and was "quite sure" that he "didn't open it up again to check after seeing this a few months or a month later. It didn't occur to me".

104. By this time, the attention of both sides to this transaction had been diverted by some adverse information which Njord had received about the reputation in the market of Tahir and DTA. As a result, Njord sent a new list of questions to George, intended to discover whether the adverse information that they had received was correct. On 22 December 2016 George sent an email to Tahir and Ali, attaching the list of questions. That email stated:

> **.. As per our discussion, please find attached the questions from Njord. As explained, I am also annoyed with all of this. We will tackle and find out who has been spreading false rumours about you and DTA. First thing though, before we push Arvid, is to answer the questions so we show we have nothing to hide and we are crystal clean and [North Star's**

> **solicitors, Mishcon de Reya] can actually confirm that too. Then we push him to reveal his sources ..**

105. Ali himself provided some of the answers to these questions in an email sent later that day to George, including a draft paragraph explaining why DTA had been replaced by North Star. That email confirmed that he had spoken to Mishcons, and had "organised for [them] to have a discussion with Boss [i.e. Tahir] today prior to his 8 pm call with Arvid so he will be fully prepped". Ali then sent an email to George the following day with "Njord's queries filled in with their respective answers". George responded saying "Thank you Ali. Responses do seem very good and complete .. I believe it is better for you to send this with the cover email. I will prepare it for you and you can simply forward it to Njord". Ali then sent that email enclosing the answers to Anna and Arvid later on 23 December 2016. As Arvid confirmed in his email sent on 9 January 2017, he subsequently followed up the references given by Ali so as to "let .. people talk about their view in general based on their experiences interacting with Tahir and the companies".

106. Those responses appear to have satisfied Njord. Deloitte sent a list of remaining due diligence questions on 9 January which was exclusively concerned with accounting matters and included no reference to any statement of net worth. Further email correspondence about accounting and other matters, but with no reference to any statement of net worth, continued throughout January and into February. The Facility Agreement covering a 5-year term loan of USD 15m to Astir was eventually executed on 1 March 2017.

107. The Facility Agreement, which was governed by English law, contained the following terms relevant to the claims made in the present action:

    107.1. By clause 3.1 of the Facility Agreement, Astir was obliged to apply all amounts borrowed for the purpose of funding the "Debt Funded Amount" of a "Permitted Transaction" (defined as either a "Permitted As-Is Transaction" or a "Permitted Delivery Transaction".

    107.2. By clause 4.3 of the Facility Agreement, the proceeds of the Facilities were to be paid directly to the designated "Funding Account", from which they could then be withdrawn only on compliance with the conditions set out in clause 4.4.

    107.3. Clause 4.4 of the Facility Agreement set out the conditions precedent to any withdrawal from the "Funding Account". These included that:

        107.3.1. The withdrawal is for the purpose of financing a Permitted Transaction.

107.3.2. At the relevant withdrawal date:

107.3.2.1. No "Default" is continuing or would result from the proposed withdrawal.

107.3.2.2. The "Repeating Representations" set out in clauses 18.1 to 18.37 of the Facility Agreement are true and accurate as at that date with reference to the facts and circumstances then existing.

107.3.2.3. The Agent has received (or waived the requirement for) the documents and other evidence listed in Part III of Schedule 2. These documents included (at paragraph 7) an original of an "Approved Borrower Statement", duly executed by the chief financial officer of Astir.

107.4. Schedule 11 to the Facility Agreement contained a specimen of the required "Approved Borrower Statement". This included a series of confirmations to be given by the chief financial officer of Astir, including that all transactions were "Permitted Transactions" and no "Default" was continuing.

107.5. Clause 4.5 of the Facility Agreement required the proceeds of any withdrawal from the Funding Account to be paid directly to the specified "Transaction Account" from which they could then be withdrawn only on compliance with the conditions set out in clause 4.6.

107.6. Clause 4.6 of the Facility Agreement set out the conditions precedent to any withdrawal from the "Funding Account". These included that:

107.6.1. The withdrawal is for the purpose of financing a "Permitted Transaction".

107.6.2. At the relevant withdrawal date:

107.6.2.1. No "Default" is continuing or would result from the proposed withdrawal.

107.6.2.2. The "Repeating Representations" are true and accurate as at that date with reference to the facts and circumstances then existing.

107.7. Clause 6 of the Facility Agreement provided for repayment of the facilities. Clause 6.2 provided for the circumstances in which Astir was obliged to refund the Funding Account and (relevantly) provided in substance that Astir

was obliged to refund to the Funding Account the amount of any withdrawal for a particular transaction within five Business Days of the relevant vessel being delivered to the scrapyard.

107.8. Clause 8.1 of the Facility Agreement provided for the cancellation and mandatory repayment of the loan upon Tahir (as Personal Guarantor) dying or becoming incapable of managing his own affairs, unless he should be replaced by a successor guarantor approved by the Security Agent and the Agent.

107.9. Clause 19.1(b) of the Facility Agreement required Astir to supply to the Agent, on each anniversary of the date of the Facility Agreement, "a statement setting out the net worth of the Personal Guarantor (including details of any significant liabilities incurred) certified by the Personal Guarantor as being true and correct as at the date of such statement".

107.10. Clause 26 provided for "Events of Default", which included non-payment of any amounts due, any failure to refund the Funding Account, and the insolvency (or the taking of insolvency proceedings) against any member of the Astir group. Clause 26.23 provided that, upon the occurrence of any Event of Default, the facilities could be accelerated and would become immediately repayable.

108. By clause 4.1 and Schedule 2 Part 1 para 2(c) of the Facility Agreement, a duly executed original of the Tahir Guarantee was an "Initial Condition Precedent" to the right of Astir to deliver a Utilisation Request. Tahir executed the Tahir Guarantee on 28 March 2017, by which he personally guaranteed the performance of Astir's, North Star's and each Astir Subsidiary's obligations under the Finance Documents and undertook to pay on demand any amounts outstanding but unpaid under the Finance Documents as if he were the principal debtor and to indemnify the Finance Parties against certain losses and liabilities.

109. Among the relevant terms of the Tahir Guarantee, which was governed by English law, were:

109.1. Clause 11.2, which provided that "All financial and other information which is provided in writing by or on behalf of [Tahir] under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration".

109.2. Clause 11.5, which provided that "[Tahir] will not transfer, lease or otherwise dispose of all or a substantial part of its assets whether by one transaction or a number of transactions, whether related or not".

109.3. Clause 11.6, which provided that "[Tahir] shall not create or permit to subsist any Security overall or a substantial part of its assets, except for Security subsisting with the prior written approval of the Security Agent [Nordic Trustee A/S]".

110. On 10 March 2017, Ali went to a lunch with Arvid and George, at which Tahir was not present.

111. The investment under the Facility Agreement began as a USD 15m investment made through SMA Orion by one of the funds managed by Njord. In the middle of 2017, Njord approached Apollo to participate in "upsizing" the current facility by making a further lending of USD 15m. In that connection, the Apollo "Deal Team" put together a "Project Orion" presentation, which referred to Tahir's guarantee (though not to any statement of net worth). On 5 September 2017, however, Njord provided to Apollo an updated copy of Njord's Investment Committee Memo from December 2016 which referred, as in the original, to Tahir's personal guarantee and to the fact that he has "c. $47m of net assets separate of the Orion group".

112. An Amended and Restated Facility Agreement, recording the additional USD 15m financed indirectly by Apollo's fund and thus taking the total facility to USD 30M, was executed on 14 September 2017. A further Amended and Restated Facility Agreement was executed on 28 December 2017, recording a further investment made (again indirectly) by another Njord fund, taking the total facility to USD 45m.

113. By clause 3.4 of that further Amended and Restated Facility Agreement, Tahir as personal guarantor confirmed that he had taken appropriate independent advice (including legal advice) and understood the commercial and legal implications.

114. It is convenient to this point in the chronology to mention the evidence which both Tahir and Ali gave about the nature of the relationship between them. Tahir's evidence was that, in his culture:

> **.. the father of the family is the king and sons and daughters have to listen to him and be subservient: decisions are not challenged, there is no talking back and there is no discussion on financial matters. I was no different. To this end I would not have allowed any challenge by my children to any aspect of the business or indeed in the family life and home. I was the patriarch and I would decide where my children would live and what they should be paid ..**

115. It was the evidence of both Tahir and Ali that the relationship between them was "going downhill" from about 2016 onwards, because of Ali's desire to marry his then girlfriend, Charlotte, a white British girl and not a Muslim. According to Tahir, he:

> **.. was appalled and .. tried everything to stop the relationship. I refused to allow Ali to marry Charlotte. I refused to allow him to have involvement in the business and in effect cut him off ..**
>
> **.. Our relationship .. was very poor between 2017 and 2019. Ali had planned a wedding to Charlotte in London in 2017. I refused to go to the wedding. Ali ultimately cancelled that event at the last minute to respect my wishes. My mother however intervened and allowed the marriage and told me to accept it ..**
>
> **.. Our relationship was still very bad however, when I saw Ali in the office, I would not speak with him and would not involve him in anything I was doing with North Star ..**

116. According to Ali, during this period he tried to stay out of his father's way and certainly did not feel able to challenge any of his father's decisions. Ali still came into the office, because his father expected him to, and did what he was told by way of attending meetings or acting as a "go-between" in terms of collating information. Otherwise, he said, he tried to avoid his father.

117. By way of corroboration of this evidence, Ali produced a copy of a letter dated 8 August 2017 addressed to him by Tahir, in which Tahir informed Ali that he was dis-inheriting him. Ali said that he was required to countersign this letter to acknowledge that he would make no claims against the family.

118. Ali eventually married Charlotte in Dubai in 2019.

119. According to Tahir, this is the context in which the Approved Borrower Statements were prepared and provided to Njord.

> **.. As the patriarch, I would negotiate the acquisition of the vessel and then instruct the team to prepare the relevant paperwork. I was not involved personally in the paperwork. I would not discuss these beforehand with Ali and I do not believe that any of the North Star staff did either. Ali had no part to play. Ali's electronic signature was held in our computer system and it would be applied to the documents that needed to be sent to Njord. Ali did not know which vessels we were looking to acquire, whether they were on an "As Is" or "Delivered" basis or which financing facility would be used for the deposit ..**

120. Ali's evidence was to similar effect. According to Ali, he did not have any understanding of what was required for making withdrawals from the Funding and Transaction accounts. Nor did he have any recollection of reading various emails that were sent to him or of opening the attached Approved Borrower Statements. In his witness statement, Ali said:

> **.. I accept that it appears to be my electronic signature on the Approved Borrower Statements. However, I do not remember ever signing these or being asked to apply my electronic signature to them ..**
>
> **.. I also do not recall being aware, during my time at North Star, that the vessels listed at paragraph 69 of the Amended Particulars of Claim were in fact broken up or beached. Even if I had known the status of the vessels, I would not have realised the significance of them being broken up or beached in respect of the Facility Agreement ..**

121. On 23 March 2017 Brian sent to George and Ajay the first Utilisation Request under the facility. That email was copied to Ali. Ali's evidence in cross-examination was that he was not sure whether he opened the attachment. George replied to Brian and Ajay on the same day, again copied to Ali, asking Brian to send the Utilisation Request direct to Njord "as it needs officially to come from the company". Ali's evidence in cross-examination was that he was not sure if he saw this email. However, the disclosed documents contained a read receipt, demonstrating that the email had been seen by Ali. When that was put to him, Ali accepted that he must have seen the email. When it was put to him that he must have realised that the Utilisation Request would contain his signature, because he was the only person who was signing documents officially from the company, his answer was that:

> **.. I don't think I would have realised and also it was an exchange between Brian and George. It doesn't also say anything in this email here about having my signature attached or not ..**

122. The first Approved Borrower Statement signed electronically by Ali was dated 3 April 2017, relating to the MV Arethusa, and the first drawdown took place on about 11 April 2017. Ali was copied in to emails from Brian and then from the lawyers, which attached first draft and then executed versions. He accepted that he signed personally the purchase MOA as he did all other MOAs.

123. Other drawdowns using similar documentation, with the MOA personally signed by Ali and the Approved Borrower Statement bearing his electronic signature, followed shortly thereafter. Over the relevant period, Ali's electronic signature was appended to the following Approved Borrower Statements:

Vessel	Date of Purchase MoA	Date Approved Borrower Statement electronically signed
ATAKA	10 Sep 2018	17 Sep 2018
EQUATOR PEACE	12 Sep 2018	19 Sep 2018
NEW DISCOVERY	20 Sep 2018	24 Sep 2018
OAKTREE	24 Oct 2018	28 Oct 2018
CHAITEN	31 Oct 2018	1 Nov 2018

BELLA J	5 Nov 2018	6 Nov 2018
SAFFRON	08 Nov 2018	12 Nov 2018
SPIRIT	22 Nov 2018	26 Nov 2018
NORDIC AURORA	30 Nov 2018	5 Dec 2018
NORDIC SPRITE	30 Nov 2018	5 Dec 2018
ATLA STAR	15 Dec 2018	17 Dec 2018
SENTOS STAR	22 Oct 2018	27 Dec 2018
PATH STAR	22 Oct 2018	27 Dec 2018
ASPAM	03 Jan 2019	9 Jan 2019
LATEEF	27 Jan 2019	29 Jan 2019
LOGOS	24 Jan 2019	6 Feb 2019
XIAN DE	19 Mar 2019	20 Mar 2019
MSC RONIT	20 Mar 2019	25 Mar 2019
LEY	21 Mar 2019	26 Mar 2019
KUWAIT ANA	24 Mar 2019	26 Mar 2019
WAN HAI	09 May 2019	14 May 2019
PUFFIN	20 Jun 2019	24 Jun 2019
NCC JUBAIL	01 Jul 2019	3 Jul 2019

124. Ali's evidence in cross-examination was nevertheless that "I wasn't part of the drawdown process this was not my area. This was something that Brian handled and took care of. It was his sort of department, that's what he did".

125. When the facility was increased in September 2017, a further Utilisation Request was required. On 14 September 2017, Ali sent an email to the "North Star Finance" email address, copied to Brian, which said "Further to our discussion please find attached the signed utilisation request. I have left the dates blank as requested which can be filled in as required. Please let me know if anything else is needed". This was followed on 2 October 2017 by a further email from Ali to Brian enclosing the "Execution Version" of the Utilisation Request. This bore Ali's electronic signature and was complete except for the date of the request and for the Proposed Utilisation Date.

126. When Ali was asked about this in cross-examination he accepted that he had put his electronic signature on this document. He had no explanation for why he had said, in his witness statement dated 18 June 2020, that "I do not recall ever having been asked to provide an electronic signature to be used on documents and I understand that an image of a signature of this kind can be obtained by scanning an original signature". He did, however, go on to say that he did not expect other people to use his electronic signature and did not know that they were doing so. "I would expect, if someone uses my signature, they should come and at least speak to me, explain why and for what, and talk to me about it".

127. In connection with the third and final increase to the facility, on 16 December 2017 solicitors wrote to Brian (copying George and others) saying that they understood that "there are a few technical breaches continuing under the facility agreement relating to delayed vessels .. As you are aware the Borrower has to confirm that there are no breaches under the Second Amendment and Restatement Agreement. In order to finalise the upsides, attached is a short waiver letter we prepared ..". On 17 December 2017 Brian forwarded this email and its attachment to Ali and the North Star Finance team, copied to George, saying "Ali needs to sign this letter and forward executed version.. ". George responded saying "Ali/Ajay, as we are looking to fund the transaction tomorrow, can you please look into signing this and return it to the group by tomorrow London a.m.".

128. That must have happened, because on 28 December George wrote to the North Star Finance team, Arvid, Anna, Tahir, Brian and others, saying "It is good to finally having resolved the issue of the breaches through the signed waiver".

129. When Ali was asked about this in cross-examination, he said "I wasn't aware at the time .. This wasn't discussed with me, delays or breaches. It was something my father was talking about, and Brian was mainly handling the facility agreement or these kinds of issues". When questioned about this and other emails relating to financing Ali did, however, accept that he was aware that, as against the outside world, he had an authority to act for North Star and Astir in a way that Brian and other employees did not.

130. Towards the end of 2018, Astir began (unknown to Njord) to default on its obligations (set out in paragraph 107.7. above) to refund to the Funding Account the amount withdrawn in respect of vessels which had been delivered and broken up for scrap.

131. The relevant vessels and the relevant dates are listed in the table below:

Vessel	Date beached or broken up
EQUATOR PEACE	23 Nov 2018
SAFFRON	6 Jan 2019
PATH STAR	24 Jan 2019
SENTOS STAR	24 Jan 2019
NORDIC SPRITE	25 Jan 2019
NORDIC AURORA	25 Jan 2019
LOGOS	6 Mar 2019
KUWAIT ANA	23-27 Apr 2019
WAN HAI	22 Jun 2019

132. A series of untrue excuses for these defaults was given to Njord, asserting various causes of delay. For example:

132.1. On 4 March 2019, Anna emailed to Tahir asking for a status update regarding (amongst others) the vessels *Equator Peace* and *Saffron*. Tahir responded saying "as discussed couple of vessels are being paid this week, and the others, I send you a schedule tomorrow". That schedule was sent on 5 March 2019. In relation to the *Equator Peace*, it stated that "this will be delivered by first week of April 2019". In relation to the *Saffron*, it said "this will be delivered by the end of April. Those statements were untrue, because (as the table in paragraph 131. above shows) both the *Equator Peace* and the *Saffron* had already been beached and/or broken up.

132.2. On 30 May 2019, Tahir sent an email to Anna, which stated that 7 vessels including the *Saffron* were "already in a position to be delivered", and that a further list of 7 vessels including the *Nordic Aurora* and the *Nordic Sprite* were "scheduled to be delivered starting second week of July". In response to an email from Arvid indicating that this was unsatisfactory, Tahir stated *"*As you have seen in my email sent to Anna today, 7 vessels will be delivered this month and another 7 vessels will be delivered next month. All the vessels delivery are ready, and on schedule. I will make sure now on, that delays are brought down significantly." Each of those statements was untrue, because (as the table in paragraph 131. above shows) Saffron, Nordic Aurora and Nordic Sprite had already been beached and/or broken up.

133. On 5 September 2019, Arvid sent an email to Tahir, Brian and George, in which he forwarded a list prepared by Anna of delayed repayments of sums advanced on particular vessels. That email stated:

> **.. Unfortunately, the delays keep causing a lot of concern on our end and this has to change immediately, or we will need to make significant adjustments to the facility or cancel it in full. Below is a summary both of the days outstanding (some of which are coming up to a year!!) and also a track of your comments at different points in time on when these would be delivered. It is not a pretty reading and it has made for some unpleasant discussions here. The facility agreement is set for 90 days for Delivered transactions and 150 days for As-is. As you can see below (and as I know you know) these transactions are way overdue, with the average being 239 days. I am tired of hearing of extended monsoons etc and refuse to believe that an average delay of close to 240 days has anything to do with these or other isolated matters.**
>
> **For now the facility is put on hold and no more transactions allowed and I am hesitant to accept any addendums without any compensation/penalties paid for it. Some deviations over time are**

> **acceptable but it's clear this is systematic, and very worrying. The reason why I have a hard time understanding it is as a faster turnover earns you more profit so I don't like very much that I can't understand what's going on behind this. Even the four As-is transactions .. where you should have full control are around 250 days ..**

134. Arvid's email was not sent to Ali, but Brian copied it to him, simply saying "received early this morning". When asked in cross-examination about this email, Ali said that he was not sure if he saw it and that Tahir did not discuss the delays with him. Nevertheless, Tahir did copy to Ali and Brian his response on the same day to Arvid, in which he acknowledged breaches of the facility agreement, but blamed the weather, and promised to start clearing the sums due on the delayed vessels and getting back on track.

135. Tahir's email to Arvid stated (inter alia) that "within September around 9 vessels will be paid and delayed ships will be out of the list". Implicit in that email was a representation that none of the ships in the list sent to him by Arvid had been beached and/or broken up. Since that list included the vessels *Equator Peace*, *Saffron*, *Nordic Aurora*, *Nordic Sprite*, *Sentos Star*, *Path Star* and *Logos* (all of which, as the table in paragraph 131. above shows, had already been beached and/or broken up), that representation was untrue.

136. In addition to these emails sent personally by Tahir to Njord, staff at North Star:

136.1. Sent to Njord a series of 21 emails between 25 June and 16 December 2019 which purported to give status updates regarding the relevant vessels, and which untruthfully represented that delivery was delayed and/or had not taken place; and

136.2. Provided to Njord between 3 March 2019 and 5 February 2020 a series of documents which falsely purported to be copies of Addenda to the Memoranda of Agreement between the relevant Astir subsidiary and the buyer of the Relevant Delivered Vessel and which purported to extend the date of delivery under the MOA, thus falsely representing that delivery of the relevant vessel was delayed and/or had not taken place.

Tahir accepts that these emails and documents were sent on his instructions, and that the representations made in them were untrue.

137. Ali accepted that he was aware of delays from what he heard was going on with the business. He said in cross-examination:

> **.. There were delays. There were delays. My father always had problems with delays in the business. I remember ships would be delayed. There would be problems with vessels, he would be screaming ..**

138. As I have already mentioned Tahir and Ali admit that there was a continuing Default under the Facility Agreement from 30 November 2018, five Business Days after the vessel "Equator Peace" had been broken up and its sale proceeds had been received. As listed in the table at paragraph 123. above, between 26 November 2018 and 3 July 2019, Astir delivered Approved Borrower Statements to the Lenders to support drawdown requests in respect of transactions involving 16 vessels. These purported to be signed by Ali as CFO of Astir. It is common ground that the confirmations in those Approved Borrower Statements that the relevant transactions were Permitted Transactions and that no Default was continuing were both untrue.

(E) The Law

(E.1) Deceit

139. Fortunately, there was little dispute between the parties as to the law relating to the tort of deceit. The essential elements of a claim in deceit are well-established[9].

139.1. First, it is necessary to establish that the relevant defendant has made a representation – that is a statement of fact on which the representee is intended and entitled to rely as a positive assertion that the fact is true – to the representee[10].

139.1.1. The question whether a representation has been made and, if so, in what terms, is determined objectively, according to the impact that whatever was said may be expected to have on a reasonable representee in the position and with the known characteristics of the

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[9] See eg in recent years *AIC Ltd v ITS Testing Services (UK) Ltd (The Kriti Palm)* [2006] EWCA Civ 1601, [2007] 1 All ER (Comm) 667 at [251]-[258] (overruled in relation to the standard of proof in *In Re B* [2008] UKHL 35, [2009] 1 AC 11 (re-affirmed *Re S-B* [2009] UKSC 17, [2010] 1 AC 678) and in relation to concealment in *Canada Square Operations Ltd v Potter* [2023] UKSC 41, [2023] 3 WLR 963, without affecting these issues); *Eco3 Capital Ltd v Ludsin Overseas Ltd* [2013] EWCA Civ 413 at [77]-[78], per Jackson LJ; *Vald Nielsen Holding A/S v Baldorino* [2019] EWHC 1296 (Comm) at [130]-[159], per Jacobs J; *SK Shipping v Capital VLCC* [2020] EWHC 3448 (Comm), [2021] 2 Lloyd's Rep 109, at [112]-[117] per Foxton J (affmd [2022] EWCA Civ 231, [2022] 1 CLC 552); *European Real Estate Debt Fund (Cayman) Limited v Treon* [2021] EWHC 2866 (Ch) at [340]-[375].per Miles J; *Ivy Technology Ltd v Martin* [2022] EWHC 1218 (Comm) at [338]-[350], per Henshaw J; *Libyan Investment Authority & others v King & others* [2023] EWHC 265 (Ch) at [521], per Miles J; and *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* [2024] EWHC 593 (Ch) at [206]-[225], per Zacaroli J.

[10] *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [132]; *SK Shipping v Capital VLCC* (fn 9 above) at [113(i)]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [342]; *Ivy Technology Ltd v Martin* (fn 9 above) at [339]; *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* (fn 9 above) at [207].

actual representee[11]. It is essential in any case of fraud for the dishonest representation to be clearly identified[12].

139.1.2. In the case of an express representation, the court must consider what a reasonable person would have understood from the words used in the context in which they were used. In relation to implied representations the court has to consider what a reasonable person would have inferred was being implicitly represented by the representor's words and conduct in their context[13].

139.1.3. In order to be actionable:

139.1.3.1. The statement must be as to a matter of fact. A statement of opinion is therefore not in itself actionable[14].

139.1.3.2. Statements about value (unless linked to some external reference point) are usually regarded as statements of opinion[15]. However, a statement of opinion is invariably regarded as incorporating a statement of the fact that the maker does actually hold that opinion[16].

139.1.3.3. At least where the facts are not equally well known to both sides, a statement of opinion by one who knows the facts best may also carry with it a further implication of fact, namely that the representor, by expressing that opinion, impliedly states that he believes that facts exist which reasonably justify it[17].

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11 *Raiffeisen Zentralbank Osterreich AG v Royal Bank of Scotland PLC* [2010] EWHC 1392 (Comm); [2011] 1 Lloyds Rep 123, at [81]; *SK Shipping v Capital VLCC* (fn 9 above) at [113(ii)]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [342]; *Ivy Technology Ltd v Martin* (fn 9 above) at [340]-[344]; *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* (fn 9 above) at [208].

12 *AIC Ltd v ITS Testing Services (UK) Ltd (The Kriti Palm)* (fn 9 above) at [254]; *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [132]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [342].

13 *IFE Fund SA v Goldman Sachs International* [2006] EWHC 2887 (Comm); [2007] 1 Lloyd's Rep 264, at [50]; *Property Alliance Group Ltd v Royal Bank of Scotland Plc* [2018] EWCA Civ 355, [2018] 1 WLR 3259 at [122] to [132]; *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [132]-[136].

14 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [133]; *SK Shipping v Capital VLCC* (fn 9 above) at [113(iii)]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [343]; *Ivy Technology Ltd v Martin* (fn 9 above) at [345]

15 See eg *Eagle Star Insurance Co Ltd v Games Video Co (GVC) SA* [2004] EWHC 15 (Comm), [2004] 1 All ER (Comm) 560 at [118], per Simon J; and *Libyan Investment Authority & others v King & others* (fn 9 above) at [556].

16 *AIC Ltd v ITS Testing Services (UK) Ltd (The Kriti Palm)* (fn 9 above) at [255]; *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [133]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [343]; *Ivy Technology Ltd v Martin* (fn 9 above) at [345].

17 *AIC Ltd v ITS Testing Services (UK) Ltd (The Kriti Palm)* (fn 9 above) at [255]; *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [134]; *Ivy Technology Ltd v Martin* (fn 9 above) at [345]

139.1.3.4. The statement must have the character of a statement on which the representee was intended, and entitled, to rely[18].

139.2. Second, that representation must be false[19].

139.2.1. A representation may be true without being entirely correct, provided that it is substantially correct and the difference between what is represented and what is actually correct would not have been likely to induce a reasonable person in the position of the representee to take the relevant action[20].

139.3. Third, the representor must either know that the representation is false, or be reckless, not caring whether it is true or not[21].

139.3.1. The representee must prove that the representor did not have an honest belief in the truth of the representation. The test for the representor's state of mind is subjective. If the representor has an honest belief in the truth of the representation (in the sense in which he understood it, even if erroneously, when it was made), he will not be liable[22].

139.3.2. That is so, however negligent or unreasonable the representor may have been in holding that belief[23]. In appropriate circumstances, however, the unreasonableness of the belief may be evidence from which it can be inferred that the representor did not in reality have an honest belief in the representation's truth[24].

139.3.3. Even if the representor did not positively know that the representation was false, he will still be liable if he had no belief in

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18 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [138]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [346].

19 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [144]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [357]; *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* (fn 9 above) at [211].

20 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [144], citing *Avon Insurance v Swire Fraser* [2000] 1 All ER Comm) 573 at [17], per Rix J.

21 *Eco3 Capital Ltd v Ludsin Overseas Ltd* (fn 9 above) at [77(ii)]; *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* (fn 9 above) at [212].

22 *Akerhielm v De Mare* [1969] AC 789 at 805, PC; *Libyan Investment Authority & others v King & others* (fn 9 above) at [521(vi)].

23 *AIC Ltd v ITS Testing Services (UK) Ltd (The Kriti Palm)* (fn 9 above) at [256]; *Vald Nielsen Holding SA v Baldorino* (fn 9 above) at [213].

24 *AIC Ltd v ITS Testing Services (UK) Ltd (The Kriti Palm)* (fn 9 above) at [257], citing *Angus v Clifford* [1891] 2 C 449 at 471, per Bowen LJ; *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [148].

the truth of the representation and made it not caring whether it was true or false[25].

139.4. Fourth, the representor must intend the representee to rely on the statement in the sense in which it was false[26].

139.4.1. It is only necessary that there should be an intention that the representation should be acted upon, not that the representor should intend the specific action taken by the representee[27].

139.4.2. Motive is irrelevant. If fraud is established, it is immaterial that there was no intention to cheat or to injure the person to whom the false statement was made[28].

139.5. Fifth, the representee must in fact have been induced to act – for example by entering into a contract – or to refrain from action in reliance on the representation[29].

139.5.1. The representee must show that he in fact understood the statement in the sense (so far as material) which the court ascribes to it, and that, having that understanding, he relied on it[30].

139.5.2. The representation must have played a real and substantial part in the representee's decision. The misrepresentation need not be the only reason for the representee's decision to act. The question is whether the representation was a matter of some significance in the decision to take the course of action in question[31].

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25 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [146], citing *Derry v Peek* (1889) 14 App Cas 337 at 368, per Lord Herschell.

26 *Goose v Wilson Sandford & Co* [2001] Lloyd's Rep PN 189 at [48], per Morritt LJ.

27 *Goose v Wilson Sandford & Co* (fn 26 above) at [48], per Morritt LJ; *Mead v Babington* [2007] EWCA Civ 518 at [16], per Longmore LJ; *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [150]-[151]

28 *Ivy Technology Ltd v Martin* (fn 9 above) at [359], citing *Bradford Third Equitable Benefit Building Society v Borders* [1941] 2 All ER 2015 at 211, per Viscount Maugham.

29 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [152], citing *Raiffeisen Zentralbank Osterreich v Royal Bank of Scotland* [2010] EWHC 1392 (Comm) at [87], per Christopher Clarke J; *SK Shipping v Capital VLCC* (fn 9 above) at [116]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [367]; *Ivy Technology Ltd v Martin* (fn 9 above) at [362]; *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* (fn 9 above) at [216].

30 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [152]; *SK Shipping v Capital VLCC* (fn 9 above) at [116]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [367]; *Ivy Technology Ltd v Martin* (fn 9 above) at [362].

31 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [155], citing citing *Hayward v Zurich* [2016] UKSC 48 at [33]; *SK Shipping v Capital VLCC* (fn 9 above) at [117(i)] (Foxton J) and at [61] (CA); *Ivy Technology Ltd v Martin* (fn 9 above) at [364]

139.5.3. The representee must establish, as a matter of fact, that his decision to take the action (or to refrain from taking action) which caused the loss was caused by the representation made by the defendant. The evidence required to satisfy that requirement will differ greatly depending on where on the spectrum the case lies (from "it goes without saying", at one end, to a complex representation said to be implied from conduct and statements, at the other)[32].

139.5.4. In a case of deceit, there is an evidential presumption of fact (not law) that a representee will have been induced either to act or not to act by a fraudulent misrepresentation intended to have that effect. That inference will usually be very difficult to rebut[33].

139.5.5. It is no answer to a claim in fraud that the representee could have discovered the falsity of the statement by exercising reasonable care and skill (e.g. by inspecting books or records available to him). It does not lie in the mouth of a liar to argue that the claimant was foolish to take him at his word[34].

139.6. Finally, a representee claiming damages must prove that he has suffered loss. The question of causation is a separate legal question from the issue of inducement[35].

139.6.1. It follows that the representee must prove that he either would not have acted or would not have acted in the same way, if he had not been lied to. Where the loss is said to result from entering into a contract, the representee must show that he would not have entered into the contract if the representation had not been made. That is the relevant question, not whether the representee would have acted in the same way if it had been told the true position[36].

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32 *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* (fn 9 above) at [223], *considering Leeds City Council v Barclays Bank Plc* [2021] EWHC 363 (Comm); [2021] QB 1027, *Loreley Financing (Jersey) No 30 Limited v Credit Suisse Securities (Europe) Limited* [2023] EWHC 2759 (Comm); and *Crossley v Volkswagen AG* [2021] EWHC 3444 (QB); [2023] 1 All ER (Comm) 107.

33 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [153], citing *BV Nederlandse Industrie Van Eiprodukten v Rembrandt Enterprises* [2019] EWCA Civ 596 at [43]; *SK Shipping v Capital VLCC* (fn 9 above) at [117(v) (Foxton J) and at [62] (CA); *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [369]; *Libyan Investment Authority & others v King & others* (fn 9 above) at [521(ix)]; *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* (fn 9 above) at [216].

34 *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [158]; *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [372].

35 *Vald Nielsen Holding A/S v Baldorino* (fn 7 above) at [159] and [430]; *SK Shipping v Capital VLCC* (fn 9 above) at [117(vii) (Foxton J) and at [61] (CA); *European Real Estate Debt Fund (Cayman) Limited v Treon* (fn 9 above) at [374]; *Ivy Technology Ltd v Martin* (fn 9 above) at [370].

36 *Raiffeisen Zentralbank Osterreich v Royal Bank of Scotland* (fn 29 above) at [180]; *SK Shipping v Capital VLCC* (fn 9 above) at [117(vii) (Foxton J) and at [61] (CA); *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* (fn 9 above) at [217].

139.6.2. The identification of the appropriate counterfactual if the statement had not been made, however, is a question of fact, and in some cases this may necessarily involve asking what would have happened if the truth had been told. That might be the case where, if the representation had not been made, the true position would have been revealed as a result of questions asked by the representee. Even then, however, the "truth" is that which is sufficient to correct the falsity of what was said[37].

(E.2) Accessory liability

140. The Lenders' case in relation to the Asset Representations is that the Statement of Net Worth was "provided to the Njord Lenders" by Tahir[38] and that Ali was "party to Tahir's lies" in the Statement of Net Worth, because the Asset Representations were "made with Ali's knowledge and Ali has never corrected them and has assumed responsibility for them". "As to knowledge, Ali was copied on the email dated 13 December 2016 by which [George] sent the Statement [of Net Worth] to the Lenders. As to responsibility, as a Director of Astir and 50% beneficial shareholder of Astir's parent company, North Star, Ali was responsible for statements made to his knowledge on behalf of or for the benefit of Astir in the course of the negotiations for the Facility Agreement"[39].

141. I therefore need to consider, in relation to Ali, the law relating to accessory liability for the tort of deceit.

142. In certain circumstances, it may be sufficient for liability that the defendant has simply communicated to the representee his approval of representations which he knows to be false made by someone else. As Miles J observed in *Libyan Investment Authority & others v King & others*[40]:

> **i) A party may be liable for representations made by a third party if he manifestly approves and adopts those representations, and the other elements of the tort of deceit are satisfied. If so, he will be liable as a primary tortfeasor: *Bradford Third Equitable Building Society v Borders*** [fn 28 above] **at 211A.**
>
> **ii) To have 'manifestly' approved and adopted a third party's representation, the approval and agreement of the party alleged to be liable must have been manifested or communicated to the**

37 *Raiffeisen Zentralbank Osterreich v Royal Bank of Scotland* (fn 29 above) at [182]-[185]; *SK Shipping v Capital VLCC* (fn 9 above) at [61]-[71] (CA); *Farol Holdings Ltd and ors v Clydesdale Bank Plc and ors* (fn 9 above) at [218].

38 Re-Amended Particulars of Claim para 67(A)(1).

39 Re-Amended Particulars of Claim para 67(A)(1).

40 Fn 9 above, at [521]

> **claimant in some way: *Ivy Technology Ltd v Martin*** [fn 9 above] **per Henshaw J at [351]-[354].**

143. In such circumstances, as Miles J observed in the passage which I have just quoted, the defendant is liable as a primary tortfeasor. That is because he has adopted somebody else's misrepresentation and thereby made that misrepresentation his own[41]. That was the secondary case against Ali developed by Mr Salzedo KC in his closing submissions.

144. In support of the Lenders' pleaded case that Ali was legally responsible for the statements made in the Statement of Net Worth simply because those statements had been made to Ali's knowledge as a director and shareholder of Astir on behalf of or for the benefit of Astir in the course of the negotiations for the Facility Agreement, Mr Salzedo relied upon the statement of Field J in *Erlson Precision Holdings Ltd v Hampson Industries Plc*[42] that:

> **.. if an individual in the position of .. the CEO of a listed company, knows that a forecast has been falsified by events to which he is privy but remains silent intending that the forecast should be relied on by persons to whom the forecast is directly communicated, dishonesty on the part of that individual will have been proved without it being necessary distinctly and separately to show a conscious awareness of a duty to correct the statement ..**

145. As Ms John pointed out, however, that statement was made in the context of a claim against the company rather than of a claim against the director personally, and was concerned with the issue of whether the dishonest state of mind of the director could be attributed to the company. In my judgment, Field J was not laying down any general principle that a company director who takes no steps to correct a statement which he knows to be false made by someone else on behalf of the company thereby (and without more) becomes personally liable in the tort of deceit to the representee. As Ms John submitted, it is a long-standing principle of the law that "mere silence, however morally reprehensible, will not support an action of deceit"[43]. It is generally necessary to show the existence of some legal duty to speak before mere silence can itself become actionable.

146. The primary case which Mr Salzedo advanced in his written and oral submissions, however, was that Ali was a "party to Tahir's lies" and so was liable as an accessory to

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41 See the passage cited by Miles J from *Bradford Third Equitable Building Society v Borders* [fn 28 above] at 211A, which treats the manifest adoption and approval of a representation made by a third person as included within the concept of the making by the defendant himself of a representation by words and/or conduct".

42 [2011] EWHC 1137 (Comm at [43].per Field J.

43 *Bradford Third Equitable Building Society v Borders* (fn 28 above) at 211A, citing *Peek v Gurney* (1873) LR 6 HL 377 at 390, per Lord Chelmsford, and *Arkwright v Newbold* at (1881) 17 Ch D 301 at 318. See also eg *Vald Nielsen Holding A/S v Baldorino* (fn 9 above) at [135]: "Silence by itself cannot found a claim in misrepresentation".

Tahir's primary tort. I shall return later in this judgment to the issue of whether that is a way of putting their claims against Ali which is open to the Lenders on their pleaded case. For the present, I will simply summarise the substantive law as to accessory liability.

147. The issue of accessory liability was considered by the Supreme Court in the case *of Fish & Fish Ltd v Sea Shepherd UK*[44], where Lord Toulson JSC stated that:

> **.. To establish accessory liability in tort it is not enough to show that D did acts which facilitated Ps commission of the tort. D will be jointly liable with P if they combined to do or secure the doing of acts which constituted a tort. This requires proof of two elements. D must have acted in a way which furthered the commission of the tort by P; and D must have done so in pursuance of a common design to do or secure the doing of the acts which constituted the tort. I do not consider it necessary or desirable to gloss the principle further ..**

148. Two other judges in that case, Lord Sumption JSC (who was one of the dissenters) and Lord Neuberger PSC, also made observations about joint liability in tort based on a common design and expressed their views in slightly different terms. However, as the Supreme Court has very recently noted in *Lifestyle Equities CV v Ahmed*[45], there is no substantive difference between their formulations:

> **.. In summary, to establish that a person (A) is liable as an accessory on this principle, three conditions must be satisfied: first, another person (B) must commit a tort; second, A must have done an act which assisted B to commit the tort; and, third, A's act must have been done pursuant to a common design between A and B to do the act which constitutes the tort ..**

149. In the *Lifestyle Equities* case, the Supreme Court re-stated the relevant principles as follows:

> **.. a person who assists another to commit a tort is made jointly liable for the tort committed by that person if the assistance is more than trivial and is given pursuant to a common design between the parties ..**[46]

However:

> **.. knowledge of the essential features of the tort is necessary to justify imposing joint liability on someone who has not actually committed the tort ..**[47]

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44 [2015] UKSC 10 | [2015] AC 1229 at [21]

45 [2024] UKSC 17, [2024] 2 WLR 1297 at [117], per Lord Leggatt JSC (with whom Lord Lloyd-Jones, Lord Stephens, Lord Richards JJSC Lord Kitchen agreed).

46 Ibid [136].

47 Ibid at [137]. See to similar effect *Inter Export LLC v Townley* [2017] EWHC 530 (Ch) at [40], where Proudman J, having considered *Fish & Fish*, held that the need for each defendant to be "party to a

150. It follows, as submitted by the Lenders, that a person may be liable in deceit as a joint tortfeasor if he is a knowing and active party to a scheme to defraud, even if he has not himself said anything and the actual representation has been made by someone else[48].

(E.3) Unlawful means conspiracy

151. The tort of conspiracy to injure by unlawful means is committed where two or more persons combine and take action which is unlawful in itself with the intention of causing damage to a claimant who does incur the intended damage. It is not necessary for the injured party to prove that causing him damage was the main or predominant purpose of the combination, but that purpose must be part of the combiners' intentions[49].

152. In *FM Capital Partners Ltd v Marino*[50], Cockerill J summarised the key elements of this cause of action as follows:

> **The elements of the cause of action are as follows:**
>
> **i) A combination, arrangement or understanding between two or more people. It is not necessary for the conspirators all to join the conspiracy at the same time, but the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of ..**
>
> **ii) An intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention .. Moreover:**
>
> **a. The necessary intent can be inferred, and often will need to be inferred, from the primary facts ..**
>
> **b. Where conspirators intentionally injure the claimant and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests ..**
>
> **c. Foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention ..**

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common design" meant that all "the .. elements of the tort of deceit must be shared by both parties".

48 Andrew Tettenborn (ed), *Clerk & Lindsell on Torts* (24th edn, Sweet & Maxwell 2023) at 17-11], citing *Dadourian v Simms* [2009] 1 Lloyd's Rep 601 at [72]-[94].

49 *Clerk & Lindsell on Torts* (fn 48 above) at [23-108].

50 [2018] EWHC 1768 (Comm) at [94]-[95] (citations omitted). Adopted by Butcher J in *Iranian Offshore Engineering and Construction Co v Dean Investment Holdings SA* [2019] EWHC 472 (Comm), and by Calver J in *ED&F Man Capital Markets v Come Harvest Holdings Ltd* [2022] EWHC 229 at [465].

> **iii) In some cases, there may be no specific intent but intention to injure results from the inevitability of loss ..**
>
> **iv) Concerted action (in the sense of active participation) consequent upon the combination or understanding ..**
>
> **v) Use of unlawful means as part of the concerted action. There is no requirement that the unlawful means themselves are independently actionable ..**
>
> **vi) Loss being caused to the target of the conspiracy.**
>
> **However, a person is not liable in conspiracy if the causative act is something which the party doing it believes he has a lawful right to do ..**

153. As Cockerill J noted in paragraph (iii) of her summary, a specific intention to target the defendant is not required. Rather, the harm done to the claimant must either be the end sought by the defendant or the means by which he achieved his end[51], and not merely a foreseeable consequence of its actions. As Lord Nicholls stated in *OBG Ltd v Allan*[52], there are cases where:

> **.. The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort ..**

Lord Hoffmann made the same point, saying[53]:

> **.. I do not think that the width of the concept of unlawful means can be counteracted by insisting upon a highly specific intention, which targets the plaintiff. That, as it seems to me, places too much of a strain on the concept of intention ..**
>
> **.. One intends to cause loss even though it is the means by which one achieved the end of enriching oneself. On the other hand, one is not liable for loss which is neither a desired end nor a means of attaining it but merely a foreseeable consequence of one's actions.**

(F) Analysis and conclusions

(F.1) Introduction

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51 *ED&F Man Capital Markets v Come Harvest Holdings Ltd* (fn 50 above) at [500], per Calver J.

52 [2007] UKHL 21, [2008] 1 AC 1 at [167].

53 Ibid at [60] and [62]. See also *Secretary of State v Health v Servier Laboratories Ltd* [2021] UKSC 24 [2022] AC 959 at [103], where Lord Sales JSC noted that this endorsement by Lord Hoffmann of a relatively wide concept of intention to harm was part of a deliberate balancing exercise between the elements of the tort.

154. With those legal principles in mind, I now turn to analyse the evidence which I have summarised above and to consider and to state my conclusions on the causes of action asserted by the Lenders against Tahir and against Ali.

155. I shall start by dealing with the claims in deceit in relation to the Asset Representations, first against Tahir, and then against Ali. I shall then consider the claims in deceit against Tahir in relation to the Delay Representations. Next, I shall deal with the claims in deceit against Ali in respect of the ABS Representations. Finally, I shall deal with the claims against both Tahir and Ali in conspiracy.

(F.2) The Asset Representations

(F2.1) Tahir

156. **(1) A representation.** In the Amended Defence of the Second and Third Defendants, served jointly on behalf of Tahir and Ali, the entirety of the Lenders' case in relation to the Asset Representations is denied. I am nevertheless entirely satisfied, on the basis of the evidence which I have read and heard, that Tahir authorised the sending by George to Njord on 13 December 2016 of the Statement of Net Worth[54].

157. Tahir was well aware that Njord required a statement of his net worth to support his guarantee[55]. He was sent (or was copied into) earlier drafts of the statement[56], and was copied into the email from George to Njord which enclosed the Statement of Net Worth[57]. His denials that he authorised it to be sent were half-hearted and, in my judgment, evasive[58]. Moreover, having regard to the way in which Tahir ran his business (about which I will have more to say later in this judgment) it is entirely improbable that the Statement of Net Worth would have been sent to Njord without his authorisation.

158. I am also entirely satisfied that, by the sending of the Statement of Net Worth, Tahir expressly and/or impliedly represented (1) that he personally owned each of the assets listed in the Statement of Net Worth and (2) that he honestly believed that each of those was worth the net value ascribed to it in the table.

159. It was Tahir's evidence that it was George's idea to include in the Statement of Net Worth all the assets of the family[59]. There was, however, no suggestion whatsoever in the evidence that Njord was ever told that the Statement of Net Worth had been prepared on that extended basis, much less that Njord had agreed to it. Nor did Tahir give evidence that he believed that Njord had been told about or had agreed to this.

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54 See paragraph 80. above.
55 See paragraph 74. above.
56 See paragraphs 53. and 67. above.
57 See paragraph 80. above.
58 See paragraph 81. above.
59 See paragraph 82. above.

160. The ordinary and natural meaning of a statement of a person's net worth is a statement of that person's own net worth, not a statement of the net worth of all of his extended family. Tahir is an experienced businessman who had given a number of guarantees in the past. He must have known that what was required was a statement of the assets owned by him and which would be available should the guarantee ever come to be enforced. Anything different would have required express disclosure to and/or agreement from Njord. Indeed, Tahir's attempt in his evidence to deflect on to George the responsibility for this extension suggests to me that he was well aware that what was being provided was not what Njord expected or wanted in the Statement of Net Worth.

161. **(2) Falsity**. I am also satisfied that the representations made in the Statement of Net Worth were false (1) as to the ownership of the 9 listed assets which did not belong personally to Tahir, and (2) as to Tahir's belief in the individual values of the listed assets, and consequently as to Tahir's belief in the total value given for his net worth.

162. As noted in paragraph 82. above, Tahir accepted that 9 of the 16 items itemised in the Statement of Worth sent to Njord did not in fact belong to him. Given the contents of both earlier[60] and later[61] drafts of the statement, that concession was almost inevitable.

163. As for the values given, the evidence shows that these had been arbitrarily inflated from earlier, much lower, valuations[62]. Tahir, an experienced businessman, would have had at least a reasonable (if approximate) estimate of the value of his own assets, and would therefore probably have known that the values given in the Statement of Net Worth were significantly above the true value of the assets there listed. Tahir's evidence in relation to the value of the house in Watford Way and the worth of his share in DTA[63] was also evasive and incredible. I do not accept that he genuinely believed that what was required in the Statement of Net Worth was (as he maintained in his evidence) the gross value of the Watford Way house, ignoring the very substantial mortgage. Nor do I accept that he honestly believed that DTA, having started the process of transferring its business to North Star, was itself still worth as much as USD 20m. A fortiori, I do not accept that he honestly believed that that was the value of his 24% share. His willingness to lie about these specific matters is a further indication that he did not honestly believe in the other values given.

164. **(3) No honest belief in the truth of the representation.** For the reasons that I have just given, I am satisfied that Tahir did not have an honest belief in the truth of either of the representations identified in paragraph 158. above. He did not have an honest belief that he owned each of the 16 assets listed, but instead knew that he did not own

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60 See paragraph 54. above.
61 See paragraphs 97. and 100. above.
62 See paragraphs 54. to 56. above.
63 See paragraph 87. above.

9 of them. He also did not have an honest belief that each of the assets listed was worth the net value ascribed to it in the table.

165. **(4) Intending that Njord (on behalf of the Lenders) should rely upon the representations in the sense in which they were false.** I have no doubt that Tahir intended Njord to rely upon the representations identified in paragraph 158. above in the sense in which (to his knowledge) they were untrue.

166. Tahir knew very well why Njord wanted the Statement of Net Worth. He accepted in cross-examination that it was "fairly certain" that, if he refused, it would be less likely that they would agree to lend the money[64]. He knew that they wanted to be reassured about the assets available to him to back the Tahir Guarantee and intended that the Statement of Net Worth should (falsely) provide that reassurance.

167. **(5) Reliance.** I am satisfied that Njord (by Arvid, and on behalf of the Lenders) believed that the Statement of Net Worth contained representations by Tahir that he personally owned each of the assets listed and that he honestly believed that those assets were worth the net values given.

168. In my judgement, Arvid's evidence that he "read through [the Statement of Net Worth] on a line-by-line basis"[65] was probably a reconstruction rather than a recollection, and slightly exaggerated the degree of care with which he considered this document. I am nevertheless satisfied that he considered the list, at least in outline, and believed that it indicated both that Tahir personally owned the listed assets and that their net value was in total over USD 46m, sufficient to give "decent coverage if things subsequently went wrong"[66].

169. In relation to the question whether the representations identified in paragraph 158. above played a real and substantial part in Njord's (and therefore the Lenders') decision, I have naturally considered the evidence indicating that the Statement of Net Worth did not, at least initially, satisfy Njord[67]. This was strongly relied upon by Ms John (on behalf of Ali, whose interests for this purpose are identical with those of Tahir) who submitted that "the contemporaneous documents show beyond a doubt that the [Lenders] did not as a matter of fact rely upon the .. Statement of Net Worth".

170. As Ms John rightly pointed out, the Statement of Net Worth[68] was a very rudimentary list, which did not clearly identify the assets and did not give any breakdown of how the asserted net value was arrived at. It would not have been of much practical assistance to Nordic Trustee A/S, the Security Trustee, if and when it ever came to enforce any judgement under the Tahir Guarantee. In Ms John's submission, the

64 See paragraph 74. above.
65 See paragraph 90. above.
66 See paragraph 90. above.
67 See paragraphs 88. to 103. above.
68 See paragraph 80. above.

evidence of Arvid and Anna that, as experienced professional lenders, they were satisfied with this minimal level of asset information was incredible and unconvincing.

171. It is clear, as indicated in paragraph 88. above, that the Statement of Net Worth did not at least initially satisfy Njord, which seems thereafter to have asked for a certified version[69] in a different and more detailed format[70]. It is also clear that no such certified and detailed version was ever supplied, the parties having been distracted by some adverse information that Njord had received about the reputation in the market of Tahir and DTA[71].

172. I am nevertheless satisfied that the Statement of Net Worth, for all its defects and inadequacies, played a real and substantial part in the Lenders' decisions. For this purpose, I mean not merely the initial lending decision which resulted in the execution of the facility agreement on 1 March 2017, but also the subsequent lending decisions which resulted in the Amended and Restated Facility Agreement executed on 14 September 2017 and the further Amended and Restated Facility Agreement executed on 28 December 2017.

173. While, as I have said, Arvid's evidence about his consideration of the Statement of Net Worth has probably acquired some embellishment in remembrance and reconstruction, I accept the fundamental point in his evidence, which is that he considered that the Statement of Net Worth showed that Tahir had net worth of about USD 46m, sufficient to give "decent coverage if things subsequently went wrong" [72].

174. That also seems to me to be consistent with the overall probabilities. First of all, the repeated demands for a certified version in a different and more detailed format do not show that some form of statement of net worth had ceased to be important to Njord (and, through Njord, to the Lenders). On the contrary, they seem to me to emphasise its continued importance.

175. Secondly, the terms of the Facility Agreement made delivery of the Tahir Guarantee an Initial Condition Precedent[73], made the death or incapacity of Tahir (as Personal Guarantor) an event requiring mandatory repayment unless replaced by an acceptable successor[74], and required Astir to provide an annual statement of Tahir's net worth, certified by him as being true and correct[75]. The terms of the Tahir Guarantee itself included a warranty by Tahir that the financial and other information provided by or on his behalf was true and not misleading and required him not to make substantial disposals of or to grant security over his assets[76]. These provisions all also suggest

69 See paragraphs 88. and 92. above.
70 See paragraph 97. above.
71 See paragraphs 104. to 106. above.
72 See paragraph 90. above.
73 See paragraph 108. above.
74 See paragraph 107.8. above.
75 See paragraph 107.9. above.
76 See paragraph 109. above.

that Njord (and through Njord, the Lenders) attached importance to what they had been told about the level of Tahir's net assets.

176. Thirdly, the level of Tahir's net assets as stated in the Statement of Net Worth, was mentioned in the updated copy of Njord's Investment Committee Memo which was provided to Apollo in September 2017, before the first increase in the facility.

177. In those circumstances, it seems to me to be more probable than not that Njord, having been distracted by other matters and in the rush to complete, decided to be satisfied with what they had got by way of the Statement of Net Worth, and relied on that as providing enough comfort as to the value of the assets behind the Tahir guarantee.

178. **(6) Causation and Loss.** Finally, for broadly the same reasons as I have just given, I am satisfied that Njord would not have caused or permitted the Lenders to enter into the Facility Agreement (let alone the Amended and Restated Facility Agreements which increased the facility) if it had not received the Statement of Net Worth and believed it to have been honestly and accurately provided.

179. Although the terms of the Facility Agreement do not make the provision of a Statement of Net Worth formally a condition precedent, they do make the provision of the Tahir Guarantee a condition precedent: and I am satisfied that the Tahir Guarantee would not have been acceptable without an acceptable statement of net worth to back it.

180. It follows that the Lenders are entitled to recover as against Tahir the total amount lent by them, less the fees received by them (but not any contributions to costs) and less the recoveries made (1) by enforcement against a bank account at UniCredit Bank AG, and (2) by enforcement against the property at Watford Way, As at the date of the Re-Amended Particulars of Claim, the total of the amounts advanced less interest and profit income and the fees and recoveries to which I have referred, have been calculated by the Lenders as amounting on a global basis to USD 32,208,090.93. I will, however, invite counsel to agree or to make further submissions as to the precise amount for which I should give judgment in favour of each of the Lenders under this head of claim.

(F2.2) Ali

181. **(1) Accessory liability.** The pleaded case on behalf of the Lenders (in paragraph 67A(1) and Schedule 1 paragraph 1 of the Re-Amended Particulars of Claim) is that the Statement of Net Worth was supplied by Tahir, rather than by Ali. If Ali is to be held liable for the lies in the Statement of Net Worth, it must therefore be on some different legal basis.

182. On behalf of Ali, Ms John put at the forefront of her case the submission that the Lenders' case against Ali that he also was responsible for the Asset Representations was neither properly pleaded nor properly particularised. She drew my attention to the familiar passage in the speech of Lord Millet in *Three Rivers DC v Bank of England (No 3)*[77] which emphasises the need for allegations of fraud to be properly particularised:

> **.. It is important to appreciate that there are two principles in play. The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him. .. The second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud. It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved ..**

183. With those principles in mind, I turn to consider the relevant part of the pleaded case against Ali. The Lenders' case in relation to Ali's responsibility for the Asset Representations is set out in paragraphs 67 and 67A of the Re-Amended Particulars of Claim, as follows:

> **[67] As particularised in this section of these POC, shortly before the agreement of the Facility Agreement, Tahir and Ali made a series of false and deceitful statements to the Lenders (and/or to the Njord Lenders) ..**
>
> **[67A] The first of deceit consisted of:**
>
> **(1) In the case of Tahir, lying about his asset position in [the Statement of Net Worth] ..**
>
> **(2) In the case of Ali, being party to Tahir's lies in [the Statement of Net Worth]. The Asset Representations made in the Statement [of Net Worth] (as set out in Schedule 1) were made with Ali's knowledge and Ali has never corrected them and has assumed responsibility for them. As to knowledge, Ali was copied on the email dated 13 December 2016 by which [George] sent the Statement [of Net Worth]**

[77] [2004] 2 AC 1 at [185]-[186].

> **to the Claimants. As to responsibility, as a Director of Astir and 50% beneficial shareholder of Astir's parent company, North Star, Ali was responsible for statements made to his knowledge on behalf of or for the benefit of Astir in the course of the negotiations for the Facility Agreement ..**

184. The overall allegation against Ali which is pleaded in these paragraphs is that he knew of Tahir's lies in the Statement of Net Worth, stood by and did not do anything to correct them, took advantage of the benefit which they conferred upon his company, Astir, and thereby was "party to" and/or "assumed responsibility for" those lies.

185. As I have already noted in paragraphs 140. to 146. above, it seems to me that there are two alternative legal bases for the case against Ali which are wrapped up in this pleading, one narrow and one much broader.

186. The narrower way of putting the case is the assertion that Ali, as a director and part-owner of Astir, is legally liable for failing to correct fraudulent mis-statements made to his knowledge on behalf of or for the benefit of Astir.

187. Mr Salzedo did not put that forward as his primary case. In my judgment, he was wise not to do so. As I have held in paragraphs 144. and 145. above, there is no general principle that a company director who fails to correct a statement which he knows to be false made by somebody else on behalf of his company thereby (and without more) becomes personally liable in the tort of deceit to the representee for that statement.

188. In support of this part of his argument, Mr Salzedo relied upon the passage from the judgment of Miles J in the case of *Libyan Investment Authority v King* which I have quoted in paragraph 142. above, arguing that Ali had "manifestly approved and adopted" Tahir's lies, and so had become personally liable for them. However, as Ms John submitted (and as the second paragraph of the quotation from Miles J makes clear), for a defendant's approval and adoption of a fraudulent representation made by someone else to be "manifest" for these purposes, that approval and adoption must be communicated in some way, either expressly or (perhaps) impliedly, to the representee. No such communication between Ali and Njord or the Lenders is pleaded. The only relevant pleaded fact is that "Ali has never corrected" Tahir's lies. That, in my judgment, cannot of itself amount to a sufficient communication of Ali's approval and adoption.

189. Ali was undoubtedly present at and (in my judgment) was an active participant in the meeting on 13 December 2016, during which George sent his email attaching the Statement of Net Worth[78]. The face of that email showed that it was copied to Ali. In my judgment, Ali was also held out at that meeting as an active participant in the management of Astir, not only by Tahir and George, but also by his own words and

[78] See paragraphs 77. to 80. above.

actions. It might, perhaps, be possible to infer some communication of approval of Tahir's lies from these and/or from other later interactions between Ali and Njord. None of this, however, has been pleaded. Arvid did not give evidence that he had relied upon any communication of approval and adoption by Ali, and Ali was not cross-examined on the basis that he had made any such communication. In the absence of any such pleaded or proved communication of approval and adoption by Ali to Njord, it seems to me that this narrower way of putting the Lenders' case against Ali cannot succeed.

190. The primary case which Mr Salzedo advanced in his written and oral submissions was, however, put on a wider basis. It was that Ali was a "party to Tahir's lies" and so was liable as an accessory to Tahir's primary tort. Mr Salzedo submitted orally that Ali "helped in the preparation of the statement of net worth, knowing what it was for, and was therefore a knowing and active party in a scheme to defraud or complicit in the commission of deceit pursuant to a common design".

191. Before considering whether that wider case is sufficient to satisfy the conditions for accessory liability set out in paragraphs 148. and 149. above (and whether it is open to the Lenders on their current statements of case), it is helpful to consider the wider issue of the extent of Ali's involvement in the management of Astir and North Star, and of Ali's relationship with Tahir as his father. These considerations are important, not just for the present issue, but also for the issues concerning the ABS Representations and the claim in conspiracy.

192. In my judgment, George was clearly right to say in his 16 October 2016 email[79] that North Star and Astir were "run as a family business in terms of corporate governance, where Tahir takes most of the decisions". Tahir struck me as being a strong and dominant character, who did not take kindly to being challenged or contradicted, either in corporate or family matters[80]. It is plain from the extensive email correspondence which I have read that the employees of North Star would always turn primarily to Tahir for their instructions, and that nothing of importance would happen without Tahir's approval. It is also plain that Njord (and other third parties) looked primarily to Tahir for communications and decisions on behalf of North Star and Astir.

193. I also accept much of the evidence of Tahir and of Ali[81] to the effect that Ali's expressed desire to marry Charlotte, a white British girl who was not a Muslim, caused a significant deterioration in the relationship between Tahir and Ali in the period between 2017 and 2019.

194. I do not, however, accept that either or both of these circumstances had the effect at any point of shutting Ali out from a degree of involvement in the business of North

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79 See paragraph 59. above.
80 See paragraph 114. above.
81 See paragraphs 114. to 118. above.

Star and Astir. Tahir's purpose in setting up North Star, and in making his sons its owners, was to prepare them to take over his business[82]. Tahir allowed Ali to choose the name of the company and made him its "President"[83]. Tahir held Ali out to Njord as being the Chairman and CEO of North Star[84]. Tahir wanted Ali to learn the business so as to be ready eventually to take it over, albeit that – at the least for the moment - he was reluctant to hand over any real power to Ali and did not leave any important decisions to Ali[85].

195. Because he wanted Ali, as his son, to learn about the business, Tahir did involve Ali in the business of North Star and Astir, at least to some extent. I accept the evidence of Tahir and Ali that Tahir did not usually consult Ali about business decisions in the sense of seeking Ali's prior approval for them[86]. Tahir would make the decisions, and they would then be for his employees (sometimes with the assistance of Ali) to implement them. I do not, however, accept that that meant that Tahir did not discuss and provide information about the business of North Star with Ali.

196. In my judgment, Tahir (either personally or through his employees) would usually seek to keep Ali informed, at least in general terms, of what was going on. Tahir wanted Ali to participate in the business, despite Tahir's reluctance to entrust any important decisions to Ali. According to Tahir, he "told Tariq to basically keep Ali in copy [because] I wanted him to learn things"[87]. The employees of North Star, such as Ajay and Tariq, therefore often (though not always) copied emails that they sent to Tahir and others to Ali[88]. On certain matters, they would consult Ali, rather than bother Tahir[89]. Ali himself volunteered to help on certain occasions, and his offers were accepted[90]. The employees of North Star would not have acted in this way without Tahir's approval.

197. I therefore do not accept the evidence of Tahir and Ali that Ali did not know, at least in general terms, what was going on in the business. The evidence given by them seeking to minimise the extent of Ali's participation and knowledge was, in my judgment, untruthful. It had a small basis in truth, in that Tahir rather than Ali was very much the decision-maker for the business. But the edifice constructed on that basis, which sought to present Ali in consequence as almost entirely ignorant of, and as playing no part in, the business was (in my judgment) made up in a carefully constructed but untruthful joint effort to exonerate Ali.

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82 See paragraph 31. above.
83 See paragraph 34. above.
84 See paragraph 68. above.
85 See paragraphs 69. and 70. above.
86 See paragraphs 69., 70. and 119. above
87 See paragraph 84. above.
88 See for example paragraphs 50., 51., 53., 67., 68., 121., 122. and 134. above.
89 See for example paragraphs 52., 54., 95.,96.,97.,98.,99. and 105. above.
90 See for example paragraphs 52. (updating the group presentations), 66. and 95. (assembling the documents required to responding to due diligence requests) above,

198. Against that background, I now turn to consider the conditions for accessory liability set out in paragraphs 148. and 149. above. The first of those conditions is that another person, here Tahir, has committed a tort. As I have already held, that condition is satisfied in the present case.

199. The second condition is that the person alleged to be an accessory, here Ali, has assisted the primary tortfeasor to commit the tort, and that the assistance provided by the accessory was more than trivial.

200. The evidence, in my judgment, clearly shows that Ali played a more than minimal part in the preparation of the Statement of Net Worth. It is true that the first email about the statement sent by Tariq on 5 September 2016 was sent to Tahir and was only copied to Ali[91]. Tariq's second email on the subject that day was, however, sent to Ali alone[92]. In my judgment, Tariq would not have sent this second email unless he had been told, either by Tahir or by Ali, that Ali would be dealing with the detail of the matter on behalf of Tahir.

201. That inference is consistent with Tahir's evidence that he dealt with George's email requesting (among other things) an "Updated Personal Net Worth Statement" by "pass[ing] it on to my people to answer the question and whatever he needs"[93]. Ajay then asked Ali to provide some of the information requested by Njord[94].

202. Although it was Tariq who was (at that point) asked by Ajay to deal with the Statement of Net Worth, the evidence of what happened *after* the Statement of Net Worth had been provided to Njord, and Njord had asked for an improved version, also supports the inference that Ali had a significant involvement in the production of the original Statement of Net Worth. On 20 and 21 December 2016, Tariq sent no less than four emails to Ali on the subject[95]. On 3 January 2017, Ali sent an email to himself attaching an updated version of a revised statement[96].

203. I do not accept Ali's evidence that he did not open and simply disregarded the email sent to him on 7 December 2016[97]. The contemporary documents show that that evidence cannot be correct. I also do not accept Ali's evidence that he did not know why Tariq had copied him with his first email sent on 5 September 2016[98] or why Tariq had directed his second email of that date directly to him[99]. Nor do I accept Ali's evidence that he did not know why Tariq had sent his later emails on 20 and 21

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91 See paragraph 53. above.
92 See paragraph 54. above.
93 See paragraphs 73. and 74. above.
94 See paragraph 75. above.
95 See paragraphs 96. to 100. above.
96 See paragraph 102. above.
97 See paragraph 75. above.
98 See paragraph 53. above.
99 See paragraph 57. above.

December 2016[100]. It is very improbable that Tariq would have sent these emails unless he had good reason to believe that Ali would deal with them and with their contents on Tahir's behalf. Ali's evidence on these points (which was not given in a convincing manner) is therefore very unlikely to have been truthful.

204. Taking all these matters into consideration, I find that Ali's evidence that "I had nothing to do with the net worth statement, to comment or prepare"[101] was untrue. In my judgment, the evidence clearly shows that Ali assisted in a more than trivial way in the preparation of the Statement of Net Worth.

205. I am also satisfied that Ali knew that the Statement of Net Worth contained statements which were false, in that he knew that Tahir did not own some of the assets that are listed, and either knew that the values ascribed to the assets, both (in some cases) individually and in total, were overstated or at least was reckless (in the sense described in paragraph 139.3. above) about the truth of those values. The information in the first tab of the spreadsheet attached to the second email sent by Tariq on 5 September 2016[102] would have alerted Ali to the fact (if he did not already know it) that the representations eventually made to Njord in the Statement of Net Worth were untrue. I do not accept his evidence that he did not open that spreadsheet. Ali's evidence, when asked in cross-examination about some of the specific items in the Statement of Net Worth, was evasive and incredible[103].

206. I am also satisfied that Ali knew that the Statement of Net Worth was sent to Njord (on behalf of the Lenders), with the intention that they should rely on it in deciding whether to make the proposed lending against the security (inter alia) of the Tahir Guarantee.

207. The third condition for accessory liability is that the assistance must have been given pursuant to a common design between the parties to do the act which constitutes the tort. As to that, there is no direct evidence of any discussion between Tahir and Ali about the matter. What direct evidence there was came from Tahir and Ali and was, of course, to the contrary.

208. I am, however, satisfied that Ali would not have worked together with Tariq to produce a dishonestly exaggerated Statement of Net Worth without (at the very least) the encouragement of Tahir. That was the way in which Tahir ran the business. In my judgment, this third condition is therefore satisfied.

209. Taking all these matters together, I am satisfied that the conditions for accessory liability, as restated by the Supreme Court in the recent *Lifestyle Equities* case, are

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100 See paragraphs 99. and 101. above.
101 See paragraph 99. above.
102 See paragraph 54. above.
103 See paragraph 86. above.

satisfied and that the evidence in the case, taken as a whole, establishes that Ali is liable as an accessory party to Tahir's deceit.

210. Is that case one that is open to the Lenders on the present state of their pleadings? The making of the representations by Tahir is pleaded in paragraph 67(A)(1) and Schedule 1 paragraphs 1 to 4 of the re-Amended Particulars of Claim. The falsity of those representations is pleaded in paragraph 67B and Schedule 1 paragraph 5. Ali's knowledge of the making of those representations is pleaded in paragraph 67A(2), where it is said that the ABS Representations were "made with Ali's knowledge and Ali has never corrected them and has assumed responsibility for them" in that Ali "was copied on the email dated 13 September 2016 by which [George]sent the Statement [of Net Worth] to the Claimants". There is also a reference in paragraph 2(6) of the Reply to Ali's "participation in discussions prior to the inception of the Facility Agreement". Ali's knowledge of the falsity of those representations is pleaded in paragraph 67B(2), where is it is asserted that " Ali knew that Tahir did not, in fact own the assets he said that he did - including because Ali owned some of them .. and/or Ali knew that there was no reasonable basis for the valuation is provided". That paragraph refers forward to Schedule 1. However, Ali is specifically mentioned only in paragraph 5(e) of that Schedule (in relation to the apartment in Palm Jumeirah), and paragraph 5(f) (in relation to the investment in the Apple dealership in Karachi).

211. It follows that the fact of Ali's knowledge of the essential elements of the tort of deceit is pleaded, but the sort of particulars of that knowledge contemplated by Lord Millett in the passage quoted in paragraph 182. above have not been given. Nor have any details of Ali's assistance to Tahir in the commission of the tort been pleaded, other than by the very general assertion that Ali was "party" to Tahir's lies, knew that they had been made, and did nothing to correct them although he participated in discussions before the Facility Agreement was executed.

212. Some of these details will, in the nature of things, only have come out following disclosure. However the Particulars of Claim were Re-Amended as recently as 26 February 2024, without these details being added and with paragraph 67B still referring to the pleading of falsity as being "pending disclosure".

213. The only Request for Further Information made by Tahir and Ali was dated 29 December 2023 and asked only for details of the figures given for the Lenders' losses. No application was made either before or at the trial either to strike out the claim pleaded against Ali or for reverse summary judgment on the basis that that claim was not adequately pleaded. That may perhaps be explained by the fact that, between 28 January 2021 and 19 February 2024, Tahir and Ali were acting in person.

214. Having regard to the Overriding Objective, it seems to me that the crucial question for present purposes is whether Ali has been prejudiced in any way by these deficiencies

in the particularity of the pleading of the claim against him, either in his preparation for trial or in the conduct of his defence at trial. In my judgment, he has not been so prejudiced. Ms John did not submit that Ali had in fact suffered any such prejudice. Nor did she seek to stop Mr Salzedo from cross-examining Ali in relation to the detail of the documents in the Trial Bundle. It was moreover clear, both from the contents of Ali's Trial Witness Statement and from the way in which he answered Mr Salzedo's questions, that Ali was well aware of the factual case that was likely to be put to him (for example in relation to his participation in the drafting of the Statement of Net Worth) and was well prepared to deal with it.

215. In the circumstances, it does not seem to me that there can be any injustice to Ali in my dealing with the case against him on the wider basis for accessory liability put by Mr Salzedo at trial.

216. **(2) Causation and Loss.** In relation to causation and loss, the position with regard to Ali is the same as that which I have dealt with in relation to Tahir in paragraphs 178. to 180. above. For the reasons that I have just given, Ali is liable as an accessory to Tahir's deceit and is liable to the Lenders to the identical extent as Tahir in relation to the ABS Representations.

(F.3) The Delay Representations

217. The case pleaded against Tahir by the Lenders in relation to the making of and the falsity of the Delay Representations in paragraphs 71 to 79 of the Re-Amended Particulars of Claim is admitted by Tahir and Ali in paragraph 29 of their Amended Defence. Paragraph 30 of the Amended Defence also admits that Tahir intended the Lenders to act in reliance on the Delay Representations. The only matters which I have to consider in relation to this head of claim are therefore reliance, causation and loss.

218. The claim in paragraphs 80 and 81 of the Re-Amended Particulars of Claim is pleaded on the basis that the Lenders have suffered loss and damage by permitting contributions from the Funding Account and Transaction Account and not taking steps to enforce their rights with effect from the very first of the Delay Representations on 5 March 2019[104].

219. I do not believe that that absolute position is entirely realistic. As Arvid said in his witness statement:

> **Over time, we found there were more than more delayed vessels .. This unfolded quite slowly .. [F]or a long-time we were quite forgiving of the delays and other issues we encountered ..**

[104] See paragraph 132.1. above.

> **.. As time went on, we became more and more frustrated with the delays .. I wrote to Tahir [on 5 September 2019] .. [that] I was tired of hearing excuses for the delays. It was clear to me that things were not going well ..**

The text of that email, quoted in paragraph 133. above, indicates that Arvid had at that point ceased to believe in the truth of the explanations that he was being given. His reaction was to put all further new transactions on hold.

220. It seems to me therefore to be probable that, had Tahir not provided the apparently plausible excuses in the Delay Representations, Arvid would have taken the action of suspending the facility at a much earlier date. He would certainly have done so had he been told that he was being defrauded. That however is not the test[105]. The question is what he would have done at each point if the relevant Delay Representation had not been made.

221. As to that, it seems to me to be likely that Arvid would have allowed things to run on, at least for a period, if the first few of the Delay Representations have not been made, until his patience was finally exhausted. When that would have been is quite difficult to assess, as it is a counterfactual. On the basis of the email correspondence which I have read (not all of which is referred to in the earlier paragraphs this judgment), and doing the best I can, I think that that point would probably have come by about 1 June[106]. At that point, if Arvid and Anna had not received a satisfactory response from Tahir (which, had he been acting honestly, he would have unable to provide), they would in my judgment have suspended the facility unless and until they got a better answer.

222. It therefore seems to me that the loss suffered by the Lenders is properly measured by reference to that date and not by reference to the earlier date of 5 March 2019.

223. It may be that the parties will regard the detailed assessment of this loss as unnecessary, given the judgment that I have already given against Tahir in relation to the Asset Representations and having regard to the judgment already given against Tahir under the Tahir Guarantee in favour of Nordic Trustee A/S. It may be sufficient if I simply give a declaration of liability under this head of claim and/or a judgment for damages to be assessed. If necessary, however, I will invite counsel to agree or to make further submissions as to best way to assess the precise amount for which I should give judgment I favour of each of the Lenders under this head of claim.

(F.4) The ABS Representations

224. **(1) A representation**. As mentioned in paragraphs 122. and 123. above, Ali personally signed the purchase MOAs for each of the vessels and his electronic

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105 See paragraph 139.6.1. above.

106 See paragraph 132.2. above.

signature was applied to each of the Approved Borrower Statements containing the ABS Representations.

225. I am satisfied, on the basis of the evidence that I have read and heard, that the application of Ali's electronic signature these documents was done with Ali's knowledge and approval. It is likely that these documents were all prepared and primarily dealt with by employees of North Star, including Ajay, Tariq and Brian. It is also likely that the preparation of these documents was carried out on the instructions of Tahir, rather than of Ali. Neither of those facts, however, makes it likely that the use of Ali's electronic signature was done without Ali's knowledge and approval.

226. Ali said in an early witness statement dated 18 June 2020 that "I do not recall ever having been asked to provide an electronic signature to be used on documents", and suggested that his electronic signature might have been obtained without his knowledge by scanning another document. He gave similar evidence in his trial witness statement, which I have quoted in paragraph 120. above. However, as noted in paragraphs 121., 125. and 126. above, the documentary evidence shows that that evidence was (at least in relation to the March and October 2017 Utilisation Requests) untrue. Ali had no explanation for these untruths.

227. Having regard to all the evidence and, in particular, my findings in paragraphs 191. to 197. above in relation to the extent of Ali's involvement in the business of North Star, I am satisfied that Ali was well aware that his electronic signature was being attached to the Approved Borrower Statements. Although he was inclined to dispute the matter[107], I am satisfied that Ali knew that his signature was required on behalf of North Star, Astir and Astir's subsidiaries on all formal documents, since (as he eventually accepted), as against the outside world, he had an authority to act in a way that employees such as Ajay, Tariq and Brian did not[108].

228. I am therefore satisfied that Ali, by authorising and/or approving the attachment of his electronic signature to the Approved Borrower Statements, made the statements contained in those documents.

229. **(2) Falsity.** Paragraph 34(a) of the Defence admits that there was a continuing default from 30 November 2018 onwards and therefore, in effect, admits that the ABS Representations were untrue, when made.

230. **(3) No honest belief.** Ali strongly denied knowing the detail of what was contained in the Approved Borrower Statements, and denied that the details of any delays or possible breaches of the terms of the Facility Agreement were ever discussed with him[109].

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107 See for example paragraph 121. above.
108 See paragraph 129. above.
109 See, for example, paragraph 129. above.

231. I am prepared to accept that it is likely that Tahir did not discuss the details of these matters with Ali. Tahir would probably have regarded these matters as for him, as the one running the business. Ali's job was primarily to do as he was told by Tahir, and to sign or to approve the use of his signature when and where he was told to.

232. I am, however, also satisfied that Ali knew (at least in general terms) that the Approved Borrower Statements were important documents, containing statements which would be of importance to Njord and the Lenders in deciding whether to permit drawdowns under the facility.

233. If, therefore, Ali's evidence that he did not read these documents or consider their contents is true, then he was (in fact and in law) entirely reckless about their contents, making no effort to verify that what he was signing contained only statements that were true.

234. I am therefore satisfied that Ali did not have an honest belief in the truth of the ABS Representations made by him in the Approved Borrower Statements which he signed.

235. **(4) Intending that Njord (on behalf of the Lenders) should rely upon the representations in the sense in which they were false.** As I have just said, Ali knew that the Approved Borrower statements would be of importance to Njord and the Lenders in deciding whether to permit drawdowns under the facility. In my judgment, Ali therefore intended Njord and the Lenders to rely on whatever was said in the Approved Borrower Statements and, accordingly, had the necessary intention that Njord and the Lenders should rely on the ABS Representations.

236. **(5) Reliance.** As set out in paragraph 107. above, the Facility Agreement made the provision of an Approved Borrower Statement, duly executed by the chief financial officer of Astir (that is, by Ali) a condition precedent to any withdrawal from the Funding Account. I therefore have no hesitation in accepting the evidence of Arvid that each Approved Borrower Statement "was an important document which we relied on when approving each transaction and permitting withdrawals to fund the transactions".

237. I am therefore satisfied that Njord (and, through Njord, the Lenders) relied upon the ABS Representations made in the Approved Borrower Statements.

238. **(6) Causation and loss**. On the balance of probabilities, I am satisfied that Njord on behalf of the Lenders would not have permitted any withdrawals to be made without receiving a satisfactory Approved Borrower Statement.

239. I am therefore satisfied that the Lenders have suffered loss and damage in the amount of all contributions from the Funding Account permitted by them after the first

fraudulent Approved Borrower Statement was delivered on 26 November 2018, less the payments received under the Facility Agreement after that date.

240. As at the date of the Re-Amended Particulars of Claim, the total of the amounts claimed under this head amounted to USD 23,713,495.39. It may be that the parties will regard the detailed assessment of this loss as unnecessary, given the judgment that I have already given against Ali in relation to the Asset Representations. It may be sufficient if I simply give a declaration of liability under this head of claim and/or a judgment for damages to be assessed. If necessary, however, I will invite counsel to agree or to make further submissions as to best way to assess the precise amount for which I should give judgment for each of the Lenders under this head of claim.

(F.5) Conspiracy

241. Having regard to the findings which I have already made, I am satisfied that there was a sufficient "combination, arrangement or understanding" between Tahir and Ali to satisfy the first element of the cause of action in the tort of conspiracy[110]. I am also satisfied that there was sufficient "concerted action (in the sense of active participation)" to satisfy the fourth element, and sufficient use of the unlawful means of deceit as part of the concerted action to satisfy the fifth element. The sixth element, consisting of loss to the Lenders as the target of the conspiracy, is also plainly satisfied.

242. Finally, I am also satisfied that there was the necessary "intention to injure", sufficient to satisfy the second and third elements. I do not believe that either Tahir or Ali specifically wished to injure the Lenders. They did, however, want to use the Lenders' money, and could not get it without lying to the Lenders. Tahir and Ali could not obtain the Lenders' funds for their business (or, more accurately, for the business of Astir and Astir's subsidiaries) without depriving the Lenders of those funds in return for repayment covenants of uncertain value, secured (inter alia) by the Tahir Guarantee which was not backed by the represented personal assets.

243. Tahir and Ali thus could not obtain their desired ends - the borrowing - without bringing about loss to the Lenders. That, in my judgment, is sufficient to satisfy the mental element of intention necessary to constitute the tort of unlawful means conspiracy.

(G) Disposition

244. For these reasons, I am satisfied that each of the Lenders has made out its case against Tahir in relation to the Asset Representations and the Delay Representations, and that each of the Lenders has made out its case against Ali in relation to the Asset Representations and the ABS Representations. I am also satisfied that the Lenders

[110] See paragraph 152. above.

have made out their case against both Tahir and Ali in the tort of unlawful means conspiracy.

245. There will therefore be judgment in favour of the Lenders against both Tahir and Ali accordingly. I invite counsel either to agree or to make further submissions as to the best way to assess the precise amount for which I should give judgment for each of the Lenders under each of these heads of claim.

246. I invite the parties to attempt to agree the terms of a Minute of Order giving effect to this judgment and dealing with all consequential matters. In the event that agreement cannot be reached by 4pm on Friday 12 July 2024, the parties should so inform the court and should lodge written submissions in relation to the points of disagreement by 4pm on Wednesday 17 July 2024. I will then either give a ruling by email or direct a short further hearing.

247. Pursuant to CPR PD 52A 4.1(a), I adjourn any application for permission to appeal together with all other consequential applications to be determined in that way and extend time under CPR Pt 52.12(2)(a) until 21 days after that determination.

248. This judgment will be handed down remotely by circulation to the parties' representatives by email and release to the National Archives. No attendance by the parties is necessary.